



Amendment No. 7
to
Contract No. NR110000007
for
Sale of Used Garbage and Recycling Carts
between
Wastequip LLC dba Toter, LLC
and the
City of Austin

- 1.0 The City hereby wishes to execute a third holdover of the above referenced contract for a period of 120 days.
- 2.0 Effective January 25, 2017, the term for the hold over will be January 27, 2018 to May 27, 2018.
- 3.0 Section 7.1 in the Scope of Work (0500) of the Contract shall be deleted and replaced in its entirety with the following:

The Contractor shall deliver payment for the full amount due to the City within thirty (30) days after the preceding calendar month for all residential garbage carts and recycling carts sold to the Contractor during the preceding calendar month. The Contractor's payments to the City shall be calculated by multiplying the contracted price per pound by the total net weight for garbage and recycling carts sold to the Contractor during the previous month, with weights substantiated by certified scale tickets.

- 4.0 The total Contract amount is unchanged for the hold over period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 6/1/2011 – 5/31/2014	\$0.00	\$0.00
Amendment No. 1: Name Change 4/2/2013	\$0.00	\$0.00
Amendment No. 2: Option 1 6/1/2014 – 5/31/2015	\$0.00	\$0.00
Amendment No. 3: Option 2 6/1/2015 – 5/31/2016	\$0.00	\$0.00
Amendment No. 4: Option 3 6/1/2016 – 5/31/2017	\$0.00	\$0.00
Amendment No. 5: 120 Day Holdover 6/1/2017 – 9/28/2017	\$0.00	\$0.00
Amendment No. 6: Second 120 day holdover 9/29/2017 – 1/26/2018	\$0.00	\$0.00
Amendment No. 7: Third 120 day holdover 1/27/2018 – 5/27/2018	\$0.00	\$0.00

- 5.0 MBE/WBE goals were not established for this contract.
- 6.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

WASTEQUIP LLC dba TOTER, LLC

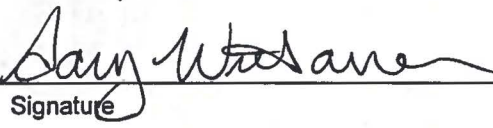

Signature

JAMES W. PICKETT
Printed Name of Authorized Person

VICE PRESIDENT, SALES
Title

JANUARY 25, 2018
Date

CITY OF AUSTIN


Signature

Sandy Wirtanen
Printed Name of Authorized Person

Procurement Specialist IV
Title

1/25/18
Date



Amendment No. 6
to
Contract No. NR110000007
for
Sale of Used Garbage and Recycling Carts
between
Wastequip LLC dba Toter, LLC
and the
City of Austin

- 1.0 The City hereby wishes to execute a second holdover of the above referenced contract for a period of 120 days.
- 2.0 Effective September 28, 2017, the term for the hold over will be September 29, 2017 to January 26, 2018.
- 3.0 The total Contract amount is unchanged for the hold over period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 6/1/2011 – 5/31/2014	\$0.00	\$0.00
Amendment No. 1: Name Change 4/2/2013	\$0.00	\$0.00
Amendment No. 2: Option 1 6/1/2014 – 5/31/2015	\$0.00	\$0.00
Amendment No. 3: Option 2 6/1/2015 – 5/31/2016	\$0.00	\$0.00
Amendment No. 4: Option 3 6/1/2016 – 5/31/2017	\$0.00	\$0.00
Amendment No. 5: 120 Day Holdover 6/1/2017 – 9/28/2017	\$0.00	\$0.00
Amendment No. 6: Second 120 day holdover 9/29/2017 – 1/26/2018	\$0.00	\$0.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

WASTEQUIP LLC dba TOTER, LLC


Signature

James W. Pickett

Printed Name of Authorized Person

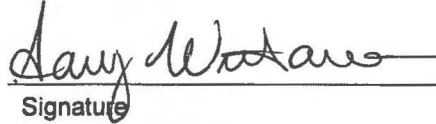
Vice President, Sales

Title

September 13, 2107

Date

CITY OF AUSTIN


Signature

Sandy Wirtanen

Printed Name of Authorized Person

Procurement Specialist III

Title

9/15/17

Date



Amendment No. 5
to
Contract No. NR110000007
for
Sale of Used Garbage and Recycling Carts
between
Wastequip LLC dba Toter, LLC
and the
City of Austin

- 1.0 The City hereby exercises the hold over provision of the above referenced contract for a period of 120 days in accordance with the hold over language in the "Term of Contract" provision which reads as follows:

"Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing)."

- 2.0 Effective May 26, 2017, the term for the hold over will be June 1, 2017 to September 28, 2017.

- 3.0 The total Contract amount is unchanged for the hold over period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 6/1/2011 – 5/31/2014	\$0.00	\$0.00
Amendment No. 1: Name Change 4/2/2013	\$0.00	\$0.00
Amendment No. 2: Option 1 6/1/2014 – 5/31/2015	\$0.00	\$0.00
Amendment No. 3: Option 2 6/1/2015 – 5/31/2016	\$0.00	\$0.00
Amendment No. 4: Option 3 6/1/2016 – 5/31/2017	\$0.00	\$0.00
Amendment No. 5: 120 Day Holdover 6/1/2017 – 9/28/2017	\$0.00	\$0.00

- 4.0 MBE/WBE goals do not apply to this contract.

- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Sandy Wirtanen Date: 5/26/17

Sandy Wirtanen, Procurement Specialist III
City of Austin
Purchasing Office



Amendment No. 4
of
Contract No. NR110000007
for
Sale of Used Garbage & Recycling Carts
between
Wastequip LLC
Dba; Toter, LLC
and the
City of Austin

1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 1, 2016 to May 31, 2017. There are no remaining options.

2.0 The total Contract authorization is recapped below:

Basic Term: 06/01/11 – 05/31/14
Amendment No. 1 - Name Change 4/2/13
Amendment No. 2: Option 1 06/01/14 – 05/31/15
Amendment No. 3: Option 2 06/01/15 – 05/31/16
Amendment No. 4: Option 3 06/01/16 – 05/31/17

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: _____

Printed

Name: James W. Pickett - Vice President, Sales
Authorized Representative

Signature & Date: _____

Cindy Reyes, Sr. Contract Compliance Specialist
City of Austin
Purchasing Office

Wastequip LLC
Dba; Toter, LLC
841 Meacham Road
Statesville, NC 28677



Amendment No. 3
To
Contract No. NR110000007
for
Sale of Used Garbage & Recycling Carts Between
Toter LLC
and the
City of Austin

1.0 The above referenced Contract is amended as follows:

1.1 All references to "Solid Waste Services Department" and "SWS" in the Contract are changed to "Austin Resource Recovery" and "ARR", respectively.

1.2 Section 0500, Paragraph 7.1 is replaced in its entirety with the following:

The Contractor shall deliver payment for the full amount due to the City within thirty (30) days after the preceding calendar month for all residential garbage carts and recycling carts sold to the Contractor during the preceding calendar month. The Contractor's payments to the City shall be calculated by multiplying the contracted price per pound by total net pounds of garbage and recycling carts sold to the Contractor during the previous month with weights substantiated by certified data-entered computer-generated scale tickets showing both gross weight and net weight. Hand-written scale tickets will not be accepted by the City and will be returned to the Contractor for data-entered computer-generated scale tickets.

1.3 The first sentence of Section 0500, Paragraph 7.3 is replaced in its entirety with the following:

Contractor's payments to the City shall be in the form of a check made payable to the City of Austin – Austin Resource Recovery. The check shall reference NR110000007 in the memo line and be drawn on the Contractor's account at an insured bank or lending institution legally authorized to perform banking services within the State of Texas.

1.4 Section 0500, Paragraph 7.4 is replaced in its entirety with the following:

With each payment made to the City, the Contractor shall provide a tabulation of the quantity and calculation of the price paid for items obtained from the City's facility. The tabulation shall consist of all the previous month's data-entered computer-generated scale tickets showing gross and net weights.

2.0 The City hereby exercises the extension option for the above-referenced contract. Effective June 1, 2015, the term for the extension option will be June 1, 2015 to May 31, 2016 and there is one remaining option.

3.0 The total Contract authorization is recapped below:

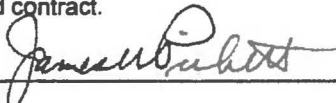
Basic Term: 06/01/11 – 05/31/14
Amendment No. 1 - Name Change 4/2/13
Amendment No. 2: Option 1 06/01/14 – 05/31/15
Amendment No. 3: Option 2 06/01/15 – 05/31/16

4.0 MBE/WBE goals were not established for this contract.

5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: 
Printed
Name: James W. Pickett
Authorized Representative Vice President,
Sales

Signature: 
Joe Barrios, Acting Contract Compliance Supervisor
City of Austin
Purchasing Office

Toter, LLC
841 Meacham Road
Statesville, NC 28677

NR110000007



Amendment No. 2
of
Contract No. NR110000007
for
Sale of Used Garbage & Recycling Carts
between
Toter, LLC
and the
City of Austin

1.0 The City hereby exercises the extension option for the above-referenced contract. Effective June 1, 2014, the term for the extension option will be June 1, 2014 to May 31, 2015 and there are two remaining options.

2.0 The total Contract authorization is recapped below:

Basic Term: 06/01/11 – 05/31/14
Amendment No. 1 - Name Change 4/2/13
Amendment No. 2: Option 1 06/01/14 – 05/31/15

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date: James W. Pickett 4-14-2014
Printed
Name: James W. Pickett, VP, Municipal Sales
Authorized Representative

Signature & Date: Debbie DePaul 4-19-14
Debbie DePaul, Contract Compliance Supervisor
City of Austin
Purchasing Office

Toter, LLC
841 Meacham Road
Statesville, NC 28677



Amendment No. 1
to
Contract No. NR110000007
for
Sale of Used Garbage & Recycling Carts
Between
Toter Incorporated
and the
City of Austin

1.0 The Contract is hereby amended as follows: Change the contractor name as required by contractor's business structure and name change from Toter Inc. to Toter, LLC.

	From	To
Vendor Name	Toter Inc.	Toter, LLC

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 2 is hereby incorporated into and made a part of the Contract.

Cynthia Gonzales

Cynthia Gonzales
Corporate Contract Compliance Manager
City of Austin, Purchasing Office

4/2/13

Date



Financial and Administrative Service Department
Purchasing Office
PO Box 1088, Austin, Texas, 78767

June 1, 2011

Toter Incorporated
Laura Gates
841 Meacham Road
Statesville, NC 28677

Re: Solicitation No. SDC0210
Sale of Used Garbage & Recycling Carts

Dear Laura Gates:

The City of Austin has approved the execution of a contract with your company for the above-referenced service as follows:

Responsible Department:	Solid Waste Services Department
Department Contact Person:	Jaime Moreno
Department Contact Email Address:	jaime.moreno@ci.austin.tx.us
Department Contact Telephone:	512-243-3462
Project Name:	Sale of Used Garbage & Recycling Carts
Contract Number:	NR110000007
Contract Period:	06/1/2011 to 05/31/2014
Extension Options:	Three 12/Month Options
Requisition Number:	1500-11040700283
Solicitation Number:	SDC0210
Agenda Item Number:	N/A
Council Approval Date:	N/A

Attached is a copy of all contract terms and conditions. Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-2003.

Sincerely,

Steve Cocke, Buyer II
Purchasing Office
Finance and Administrative Services Department

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Toter Incorporated ("Contractor")
for
Sale of Used Garbage & Recycling Carts
Contract No. NR11000007**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Toter Incorporated having offices at Statesville, NC 28677 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number SDC0210.

1.1 This Contract is composed of the following documents:

1.1.1 This Contract

1.1.2 The City's Solicitation, Invitation for Bid (IFB), SDC0210 including all documents incorporated by reference

1.1.3 Toter Incorporated Offer, dated May 10, 2011, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This Contract

1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications

1.3 Delivery. The Contractor shall perform the services as specified in the Solicitation upon delivery by the City.

1.4 Compensation. The Contractor shall reimburse the City an estimated total amount of \$1,250 as indicated in the Offer. Payment shall be made as indicated in the Solicitation after acceptance of the goods and/or services.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

CITY OF AUSTIN

Printed Name of

Authorized Person: Steve Cocke

Signature:

Steve Cocke

Title:

Buyer II

Date

June 1, 2011

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.

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- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event

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that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first

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class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
- A. **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and

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the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor.

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The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code,

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

55. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
 - iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
 - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

Proposal

City of Austin, Texas

Invitation To Bid
Solicitation No: SDC0210
"Sale of Used Garbage and Recycling Carts"

Toter®

Due: May 12, 2011
2:30 pm

841 Meacham Road
Statesville, NC 28677

Original



City of Austin

**INVITATION FOR BID SALE
CITY OF AUSTIN
PUBLIC WORKS DEPARTMENT**

SALE OF USED GARBAGE AND RECYCLING CARTS

IFB Sale No.: SDC0210

Addendum No. 1

Date of Addendum: May 12, 2011

1.0 The bid due date and time has been changed to May 19, 2011 prior to 2:30 P.M.

2.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Addendum No. 1
is hereby incorporated and made a part of the above-referenced **IFB SALE**

APPROVED BY: Steve Cocke
Steve Cocke, Buyer II
Finance and Administrative Services Department

ACKNOWLEDGED BY: Toter Incorporated
Bidder

Laura P. Gates May 17, 2011
Authorized Signature Date
Laura P. Gates
Vice President, Contract Management

**RETURN ONE (1) COPY TO THE PURCHASING OFFICE, CITY OF AUSTIN, TEXAS PRIOR TO
BID OPENING OR WITH YOUR BID. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR
REJECTION OF YOUR BID.**

CITY OF AUSTIN, TEXAS

Purchasing Office INVITATION FOR BID (IFB), SALE Offer Sheet

SOLICITATION NO: SDC0210

COMMODITY/SERVICE DESCRIPTION: SALE OF USED GARBAGE
AND RECYCLING CARTS

DATE ISSUED: 4/18/2011

PRE-BID CONFERENCE TIME AND DATE: N/A

REQUISITION NO.: 1500 11040700283

LOCATION: N/A

FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:

BID DUE PRIOR TO: 5/12/2011 @ 2:30 PM

Steve Cocke

BID OPENING TIME AND DATE: 5/12/2011 @ 2:30 PM

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET,
RM 308, AUSTIN, TX 78701

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this solicitation are contained in Section 0900.

All Contractors and Subcontractors must be registered to do business with the City prior to submitting a response to a City solicitation. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system Log onto www.cityofaustin.org/purchase and follow the directions.

***** **SUBMIT 1 ORIGINAL AND 1 SIGNED COPY OF ALL REQUIRED DOCUMENTS** *****

SOLICITATION TO:


Signature of Person Authorized to Sign Bid

Laura P. Gates, Vice President, Contract
Signer's Name and Title: (please print or type) Management

FEDERAL TAX ID NO. [REDACTED]

Date May 10, 2011

Company Name: Toter Incorporated

Address: 841 Meacham Road

City, State, Zip Code: Statesville, NC 28677

Phone No. (800) 424-0422

FaxNo. (704) 878-0734

Email Address kclark@toter.com; Kellie Clark, Manager, Bids & Contracts

Table of Contents

SECTION NO.	TITLE	PAGES
0100, 0200, 0300	See http://www.ci.austin.tx.us/purchase/standard.htm *	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	2
0500	SCOPE OF WORK / SPECIFICATION	4
0600	BID SHEET	2
0700	REFERENCE SHEET	1
0800	NON-DISCRIMINATION CERTIFICATION	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	1
0900	N/A	N/A
1000	NO OFFER RESPONSE FORM	1

All other Sections may be viewed at: <http://www.ci.austin.tx.us/purchase> by clicking the link to "Current Purchasing Notices"

RETURN FOLLOWING DOCUMENTS WITH BID**

- Cover Page Offer and Award Sheet (IFB Sale)
- Section 0600, Bid Sheet(s)
- Section 0700, Reference Sheet (if required)
- Bid Guarantee (if required)

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the bid.**

NOTES:

The bidder agrees, if this bid is accepted within _____ calendar days (90 days unless a different period is inserted) after date of opening, to fully comply in strict accordance with the solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying bid.

*** INCORPORATION OF DOCUMENTS.** As of March 22, 2000, three (3) Sections of the solicitation documents have been made available via the Internet. These three sections: Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm>. Please select the appropriate set of documents for the type solicitation – i.e. Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Quotations (RFQ).

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the below address. Please have the solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed or faxed to you.

When sending a sealed Bid and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin
Purchasing Office	Purchasing Office
P.O. Box 1088	Municipal Building
Austin, Texas 78767-8845	124 W 8 th Street, Rm 308
	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Notes: Bids (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

Unless authorized in the solicitation, telegraphic or facsimile Bids will not be accepted.



QUOTE SHEET
CITY OF AUSTIN
SALE OF USED GARBAGE AND RECYCLING CARTS

QUOTE NO. SDC0210
RQM NO. 1500 11040700283
ISSUE DATE 4/18/2011

CLOSING 5/5/2011
DATE & TIME: 2:30 P.M.
BUYER Steve Cocke

Copies of Quote: Vendor must submit two copies of it's signed quote - one original and one copy.


Special Instructions: The City will consider avoided costs to the City in addition to revenue potential in recommending an award of Contract. Revenue potential will be analyzed under a variety of market conditions. Each possible option or combination of options will be assessed in terms of their projected total comparative costs and or revenue to the City. Any option which would reduce the scope of the City's overall environmental protection, resource conservation, or waste reduction efforts, even though it may increase projected revenues, may be rejected. Be advised that exceptions taken to any portion of the solicitation may jeopardize acceptance of the quote.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
1	Purchase and Recycling of old, used residential garbage carts and recycling carts.	12,500 lbs	\$0.10*	\$1,250.00
TOTAL PRICE:				\$1,250.00

OFFERORS BEST DELIVERY IS see note CALENDAR DAYS AFTER RECEIPT OF ORDER
DELIVERY TERMS: DELIVERY IS TO B EFOB DESTINATION, PREPAID AND ALLOWED
DELIVERY METHOD: common carrier - 53' trailer

Note: Delivery per requirements listed in Item 4.2
of page 2 of 4.

*Please see Toter's "Credit for Retired
Carts!" within our attached response.

COMPANY NAME: Toter Incorporated
SIGNATURE OF AUTHORIZED REPRESENTATIVE: 
PRINTED NAME: Laura P. Gates, Vice President, Contract Management
EMAIL ADDRESS: kclark@toter.com; Kellie Clark, Manager, Bids & Contracts

The following Supplemental Sale provisions apply to this Solicitation.

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 3 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by 2:00 PM on April 22, 2011. Please send to: Steve Cocke by email steven.cocke@ci.austin.tx.us or fax: (512) 974-2388

2. **INSURANCE:** (reference paragraph 17 in Section 0300).

A. The insurance certificate shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Steve Cocke – SDC0210
P. O. Box 1088
Austin, Texas 78767-8845

9. **TERM OF CONTRACT**

- A. This Contract shall be in effect for a period of thirty six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month periods, subject to the approval of the Contractor and the City Manager or his designee.
- B. Upon expiration of the initial term or the period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days, or such period as mutually agreed upon by the parties).

12. **PAYMENT – AT TIME OF SALE**

- A. Payment in full shall be made in cash, by cashier's check, traveler's check, money order, company or personal check, or a certified check prior to taking possession of Goods. Company or personal checks used for payment must be accompanied by a letter of guarantee from a bank. Checks submitted without such a guarantee will not be accepted.
- B. Payment for all Goods must be made to the City of Austin at :

Department	See Specification
Address	
City, State Zip	
Contact, Name	
Phone Number	

15. **REMOVAL OF PROPERTY**

- A. See Specifications.

B. Unless requested by the City, removal shall not occur on the following City-recognized legal Holiday.

16. **CONTRACT MANAGER**

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor:

Department	Solid Waste Services Department,
Address	10108 FM 812
City, State Zip	Austin, TX 78719

Contact, Name	Jaime Moreno, Cart Maintenance
Phone Number	512 243-3462
FAX Number	512 243-1656



**CITY OF AUSTIN
SPECIFICATION FOR
SALE OF USED GARBAGE AND RECYCLING CARTS**

1.0 PURPOSE

The City of Austin Solid Waste Services Department (SWS) hereinafter referred to as the "City", seeks bids in response to this Invitation for Bids (IFB) from qualified contractors (individuals and/or firms) hereinafter referred to as the "Contractor," experienced in the purchase and recycling of used residential garbage carts and recycling carts. The Contractor will be required to purchase and transport old, used residential garbage carts and recycling carts that the City deems no longer usable. The old, used garbage and recycling carts purchased from the City under this contract shall be recycled into new containers and shall not be landfilled.

2.0 OBJECTIVES

The City seeks bids from experienced and qualified firms to accomplish the following:

- 2.1 Secure a reliable market for old, used residential garbage carts and recycling carts from the City of Austin Resource Recovery Center located at 10108 FM 812, Austin, TX 78719.
- 2.3 Safely and cost effectively recycle the City's old, used garbage and recycling collection assets to partially offset operational costs and minimize the amount of otherwise unusable material to be disposed of in the landfill.

3.0 BACKGROUND

- 3.1 The City's garbage and recycling collection crews collect a large volume of refuse and recyclable material throughout the City's service area.
- 3.3 Residential garbage carts and recycling carts frequently become unusable due to damage and regular wear from repetitive use in the field. Unusable carts are stored at the City of Austin Resource Recovery Center located at 10108 FM 812, Austin, TX 78719.

4.0 BIDDER'S RESPONSIBILITIES

The City requires the Contractor to provide the following:

- 4.1 Provide a continuous market for the old, used residential garbage and recycling carts

stored at the Resource Recovery Center and a means of transporting the carts to the Contractor's facility or facilities. A tractor-trailer shall be supplied by the Contractor and located at the Resource Recovery Center to allow City personnel to load old, used carts until sufficient quantities are built up for cost-effective removal.

- 4.2 Provide a tractor trailer for removal of the old, used carts from the Resource Recovery Center on an on-call basis within two (2) business days of notification by the City. The Contractor is not required to conduct operations on days the City's collection personnel and subcontractors are off work due to weekends, observed holidays, or bad weather.
- 4.3 The Contractor shall specify in section I of the Bid Sheet the absolute minimum price per pound the Contractor will pay for old, used garbage and recycling carts.
- 4.4 Within ten (10) days prior to the commencement of the contract, the Contractor will designate a contact person or persons who will be available during normal City business hours (Monday through Friday, 8 a.m. to 5 p.m.) to address any questions, problems or complaints associated with this contract. The City's designated Contract Manager will communicate comments to the Contractor.
- 4.5 The Contractor shall be responsible for all costs associated with equipment offered for use by the City, except for electricity usage which will be provided by the City.

5.0 MATERIALS OFFERED FOR SALE

- 5.1 This specification is for the sale of old, used residential garbage carts and recycling carts. The estimated annual volume to be offered for sale by the City is shown in parenthesis.
 - 5.1.1 Used residential garbage carts and recycling carts (150,000 pounds per year).
- 5.2 No quantity is guaranteed by the City.

6.0 TRANSPORTATION REQUIREMENTS

- 6.1 Successful bidder will be required to furnish a tractor-trailer as needed to the City of Austin Resource Recovery Center located at 10108 FM 812, Austin, TX 78719. All costs associated with providing the tractor-trailer and transporting carts from the City facility to Contractor facilities will be the responsibility of the Contractor and should be factored in the prices offered.
- 6.2 The tractor-trailer furnished by the Contractor will be transported and emptied by the Contractor as requested by the City with two (2) business days notice. The City shall be responsible for picking up loose equipment parts which are on the ground around an empty or partially full tractor-trailer.

7.0 PERFORMANCE AND PAYMENT REQUIREMENTS

- 7.1 The Contractor shall deliver payment for the full amount due to the City within thirty (30) days after the preceding calendar month for all residential garbage carts and recycling carts sold to the Contractor during the preceding calendar month. The Contractor's payments to the City shall be calculated by multiplying the contracted price per pound by total pounds of garbage and recycling carts sold to the Contractor during the previous month, with weights substantiated by certified scale tickets.
- 7.2 Contractor shall maintain and make available for inspection, audit and/or reproduction by any authorized representative of the City or any other governmental agency, books, documents, and other evidence pertinent to the costs, expenditures, and revenue of this contract.
- 7.3 Contractor's payments to the City shall be in the form of a check made payable to the **City of Austin – Solid Waste Services Department** which is drawn on the Contractor's account at an insured bank or lending institution legally authorized to perform banking services within the State of Texas. In the event that a Contractor's payment check is returned unpaid by the Contractor's bank, the Contractor shall replace the returned check with a fully negotiable Cashier's Check, for the same amount as the returned check, within two business days of notification by the City that the check was returned. Subsequent to the unpaid return of a Contractor's check by the Contractor's bank, for any reason, all future payments to the City shall be made in the form of a Cashier's Check.
- 7.4 With each payment made to the City, the Contractor shall provide a tabulation of the quantity and calculation of the price paid for items obtained from the City's facility.

8.0 CONTRACTOR'S QUALIFICATIONS

To qualify for contract award, the Contractor shall demonstrate their ability to successfully perform the responsibilities under this contract by documenting adequate relevant experience, a high level of financial stability and satisfactory credit history, and the absence of material adverse litigation and documented criminal activity.

- 8.1 Experience - With Contractor's bid, Contractor shall provide:
 - 8.1.1 Written documentation verifying that the Contractor has a minimum of three (3) years of experience successfully performing similar collection and recycling services.
- 8.2 Financial Stability - With Contractor's bid, Contractor shall provide:
 - 8.2.1 A list of at least three names, addresses, and telephone numbers with individuals at entities that can provide references documenting the Contractor's history of meeting its financial obligations for payments relating

to the purchase of used garbage and recycling carts over at least the last twelve months.

- 8.2.2 A list of at least three names, addresses, and telephone numbers with individuals at entities that can provide references documenting the Contractor's history of meeting its financial obligations for payments relating to purchased equipment and operating supplies over at least the last twelve months.

8.3 Bankruptcy, Litigation, Judgements/Liens and Criminal Records.

- 8.3.1 By submitting a Bid in response to this IFB, a Bidder warrants and represents to the City that the Contractor, its Managers (who are expected to be involved with the services required herein), its greater than ten percent shareholders (or other owners if not a corporation), and its Board of Directors and Officers:

8.3.1.1 Have not sought relief under the bankruptcy code in the seven years preceding the date of its Bid; and

8.3.1.2 Are not involved in any outstanding or threatened litigation; and

8.3.1.3 Do not currently owe or hold any property that is subject to an outstanding or otherwise unpaid judgement or lien (except liens resulting from assets pledged as collateral in financing agreements which are neither past due nor in default); and

8.3.1.4 Have not been convicted of a crime or pled nolo contendere or been granted deferred adjudication within the last ten years (other than violations for which the fine was less than \$50).

- 8.3.2 If Bidder cannot warrant as specified in section 8.3.1, Bidder must expressly take exception to this section (8.3.1) and include with its Bid a full description of all bankruptcy proceedings, litigation, judgements and liens, and criminal histories. Bidder shall promptly provide upon request all additional information requested by the City concerning such matters.

- 8.4 Bidder's failure to provide additional information requested by the City regarding this section (8.0) or to demonstrate to the City's full satisfaction that such matters will not impair its ability to perform its obligations under its Bid shall be grounds for rejection of the Bid.

9.0 CONTRACT TERM

- 9.1 This agreement shall be in effect for a period of thirty-six (36) months from the date of its commencement. This agreement may be extended for up to three (3) additional one (1) year periods subject to the approval of the Contractor and the City of Austin.

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET (IFB, SALE)**

Please Complete and Return This Form with the Bid

SDC0210

SOLICITATION NUMBER: _____

VENDOR'S NAME: Toter Incorporated **DATE:** May 10, 2011

The Bidder shall furnish, with the Bid, the following information, for at least three (3) recent customers from whom Goods or salvage property have been purchased, requiring Bidder performance similar to that required by this Solicitation.

- | | | |
|----|-----------------------|--|
| 1. | Company's Name | <u>City of Austin, Texas</u> |
| | Name of Contact | <u>Richard McHale</u> |
| | Title of Contact | <u>Solid Waste Supervisor</u> |
| | Present Address | <u>4108 Todd Lane</u> |
| | City, State, Zip Code | <u>Austin, TX 78744</u> |
| | Telephone Number | <u>(512) 974-4301</u> Fax Number <u>(512) 482-0696</u> |
| | | |
| 2. | Company's Name | <u>Toter's additional references for this</u> |
| | Name of Contact | <u>service are confidential.</u> |
| | Title of Contact | _____ |
| | Present Address | _____ |
| | City, State, Zip Code | _____ |
| | Telephone Number | <u>()</u> Fax Number <u>()</u> |
| | | |
| 3. | Company's Name | _____ |
| | Name of Contact | _____ |
| | Title of Contact | _____ |
| | Present Address | _____ |
| | City, State, Zip Code | _____ |
| | Telephone Number | <u>()</u> Fax Number <u>()</u> |

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION
SOLICITATION NO. SDC0210

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

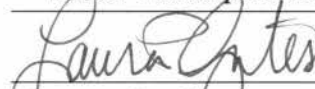
The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 10th day of May, 2011

CONTRACTOR

Toter Incorporated

Authorized Signature



Title

Laura P. Gates

Vice President, Contract

Management

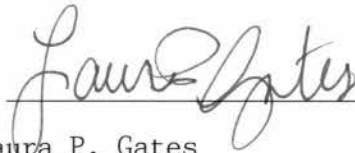
City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO. SDC0210

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: Toter Incorporated

Signature of Officer
or Authorized
Representative:



Date: May 10, 2011

Printed Name: Laura P. Gates

Title Vice President, Contract Management

CITY OF AUSTIN
PURCHASING OFFICE
"NO OFFER" REPLY FORM

Not Applicable to
Toter's Response

SOLICITATION NUMBER: SDC0210

Please Complete and Return This Form to the following address to Indicate a "No Offer" Reply

City of Austin
Purchasing Office
P.O. Box 1088
Austin, Texas 78767-8845

(DO NOT RETURN ALONG WITH OFFER)

Please check the appropriate box to indicate why your firm is submitting a "no offer" response. Failure to respond to three (3) consecutive solicitations may result in your company being removed from the source list for this commodity or service. Completion of this form will assist us in maintaining an accurate, up-to-date source list.

COMMODITY CODE: 99815

DESCRIPTION: Batteries, All Types, Sale of Surplus

- ☐ Unable to supply item(s) specified. Remove my company from the source list for the Commodity / Service Group
- ☐ Unable to supply item(s) specified. Retain my company on the vendor list for this commodity / service.
- ☐ Cannot meet the Scope of Work / Specifications.
- ☐ Cannot provide required Insurance.
- ☐ Cannot provide required Bonding.
- ☐ Job too small.
- ☐ Job too large.
- ☐ Do not wish to do business with the City. Remove my company from the City's Vendor list.
- ☐ Other reason (please state why you will not submit a bid):

Contractor's Name:

Street Address

City, State, Zip Code

Signature of Officer or
Authorized

Representative:

Date:

Printed Name:

Title

Toter®

Company:

Toter Incorporated

841 Meacham Road
Statesville, NC 28677
Toll Free: (800) 424-0422
Phone: (704) 872-8171
Fax: (704) 878-0734

Website:

www.toter.com

Registered As:

Corporation

Date of Incorporation:

Continuous operation since 1962 as subsidiary of Rubbermaid Products. Organized as private corporation April 21, 1983 as Applied Products, Inc. Changed name to Toter Incorporated April 28, 1988.

State of Incorporation:

North Carolina

Federal Tax I.D. Number:

██████████

Point of Contact for this Proposal:

Kellie K. Clark, Manager – Bids & Contracts
800-424-0422 phone; 704-878-0734 fax;
kclark@toter.com email

Toter Incorporated is a manufacturer and marketer of high quality plastic containers and related products for residential, industrial, commercial and retail accounts. The Company has been in continuous operation since 1962, originally as a subsidiary of Rubbermaid Incorporated. In 2007, the Company was acquired by Wastequip and operates as a subsidiary of Wastequip. Toter is a 100% U.S. owned company, and it is the largest roll cart rotational molder in North America. Headquarters for Toter is in North Carolina, with five regional manufacturing/ distribution facilities within the following four locations: Statesville, NC; Fresno, CA; Acuna, Mexico; and Del Rio, TX. Toter's Statesville, NC headquarters are in conformance with ISO9001:2000/Full Design Standard; other locations also operate under this ISO model.



Toter is the leading supplier of wheeled, rollout carts (21-96 gallons) used for curbside automated waste and recycling by cities and government entities, as well as private waste haulers. Toter introduced the automated curbside cart system in North America during the late 1960's, and Toter carts are the #1 selling brand today. Toter's clients include city-wide installations in San Antonio, TX; Detroit, MI; Sacramento, CA; Austin, TX; Fort Worth, TX; Nashville, TN; Akron, OH; Phoenix, AZ; Washington, DC; San Francisco, CA; and thousands of other government entities, private haulers, and recyclers. Toter also supplies containers in the retail market to Lowes Home Improvement Centers, The Home Depot, and Wal-Mart.

Toter's patented EVR® carts (21, 32, 48, 64, and 96 gallons) are compatible with all semi and fully automated refuse trucks in North America, and are the "World's Toughest Carts™." All are manufactured in full conformance with ANSI Standards Z245.30-2008 and Z245.60-2008. In addition, Toter offers a complete line of rear and side loading, semi-automated truck mounted cart lifters, 2, 3, and 4 Cubic Yard Plastic Front Load Containers, and a number of containers for professional sports facilities, malls, and commercial buildings. Toter was also the first container manufacturer to introduce a new color option for the industry – Granite. This upscale look allows municipalities and haulers to provide a low cost, premium finish to highlight new automated container programs. And, our newest products include a 21 gallon EVR II Universal cart, and a 96 gallon Bear Tight cart!

In 1994, Toter introduced its patented Advanced Rotational Molding™ process which has revolutionized both the rotational molding and waste industry. With this new state-of-the-art manufacturing process, Toter is able to mold intricate designs heretofore impossible for conventional rotomolders. Toter's "zero stress" molding technology produces products which offer important strength and durability advantages over "high stress" processes such as injection molding. As a result, Toter products have the longest useful life (15-20+ years of active service life), lowest life cycle costs, and the highest value compared to any other competitive product on the market.



CREDIT FOR AUSTIN'S RETIRED CARTS!

RECYCLE CARTS THAT HAVE SERVED THEIR USEFUL LIFE

Toter® Incorporated has noted the City of Austin's effort to replace roll carts that have served their useful life, and **we are pleased to have been able to provide the service of recycling the City's retired roll carts.** We would like to continue to work with the City to insure a safe, economical, and environmentally friendly procedure to recover a valuable resource and to reduce landfill cost and volume.

Toter will arrange for the pick up of rotationally and injection molded containers/bins that are at the end of their useful life - non-crosslinked polyethylene, non-blow molded materials, and Toter carts not currently under their warranty period. This purchase price for resin will be at a **\$0.10 per pound rate for credit toward purchase of Toter carts or rebate check.** Terms, conditions, and prices are based on current market price (see below).

Toter agrees to the terms listed within the City's Quote No. SDC0210.

The City can contact Toter's Recycled Materials Manager (800-424-0422), to discuss aspects of this program, and to make arrangements for containers to be picked up.

Toter agrees to hold the resin purchase price firm for 90 days from the first purchase of old containers. After the initial 90 days, Toter will review the purchase price each 90 days thereafter. Should the market price of resin change by more than 25%, the purchase price will be adjusted by that amount. The purchase price will then be based on certified documentation from Chemical Data and/or Plastic News to validate any request for adjustments. There will be no more than one purchase price adjustment in each 90 day period.

Toter agrees to the payment terms of the City, but we offer (and prefer) to provide a credit which will be valid for the City's next purchase of new Toter containers!



TOTER SUSTAINABILITY AND GREEN INITIATIVES

As the leader in rollout waste and recycling containers for over 30 years, Toter has responded to the need for sustainable products expressed by our hundreds of municipal customers. At the same time, we have adopted significant green initiatives in our manufacturing and logistics operations.

Toter Products are the most sustainable because:

1. **Choice of the correct manufacturing process:**
 - a. Rotationally Molded Toter Carts with higher strength Medium Density Polyethylene (MDPE) have a strength to weight ratio that requires less plastic to handle the maximum load rating allowed by ANSI (3.5 lbs./gal.). Toter's annual sales save Toter customers approximately 12 million pounds of unnecessary plastic consumption for competitors' carts. This savings is equivalent to 2.88 million gallons of gasoline.
2. **Innovative Product Design:**
 - a. Toter's Nestable Design of EVR II Universal/Nestable Carts (carts stack one inside another when fully assembled) allows our customers to deliver 2 to 3 times more Toter Carts per delivery trip compared to other brands, thereby reducing fuel consumption and emissions.
 - b. Toter Carts are designed for better truck fill, thereby reducing fuel consumption per cart delivered by up to 33% compared to competitors' carts.
 - c. Toter has engineered a superior solid steel axle for Toter Carts that saves our customers approximately 4.2 million pounds of unnecessary steel consumption annually for competitors' carts. This saves 5.25 million pounds of Iron Ore and 2.1 million pounds of Coal.
3. **Use of Recycled Materials:**
 - a. Toter Carts are manufactured with up to 50% Recycled Polyethylene. Approximately 25 million pounds of recycled plastic goes into Toter Carts each year. This saves the equivalent of 6 million gallons of gasoline.
 - b. Toter steel components contain 80% to 100% recycled steel, thereby saving over 3 million pounds of unnecessary primary steel processing each year. This saves 3.75 million pounds of Iron Ore and 1.5 million pounds of Coal.

4. Toter Recycling Plant:

- a. Toter's in-house Polyethylene Recycling Plant purchases and reprocesses stretch film, and carts that have been removed from service. We currently process approximately 25 million pounds of recycled material annually. This saves the equivalent of 6 million gallons of gasoline.

5. Green Manufacturing and Logistics Innovations:

- a. New shipping plans have eliminated all corrugated boxes. Carts are shipped fully assembled with the exception of components inside the cart.
- b. By locating component manufacturing as close as possible to our cart molding operation, our over the road shipping, fuel consumption, and emissions have been reduced significantly.
- c. Reduced shipping distance makes the use of reusable/returnable packaging possible, thereby reducing the use of disposable packaging materials.
- d. Any and all inbound disposable packaging is recycled.
- e. Toter recycles the cooling water used in its rotational molding manufacturing.

6. Reinforce the Public's Perception of "Closing the Loop":

- a. Toter's innovative "Granite" colors reinforce the recycling message with the public who point to our Granite carts and say, "I can see the recycled plastic".



LEGAL AND ADMINISTRATIVE SETTLEMENTS

Toter Incorporated has had no legal or administrative settlement of warranty, cart failure claims or contract performance (including liquidated damages assessed) within the last ten (10) years including ongoing negotiations of settlement.

CITY OF AUSTIN, TEXAS

Purchasing Office INVITATION FOR BID (IFB), SALE Offer Sheet

SOLICITATION NO: SDC0210

COMMODITY/SERVICE DESCRIPTION: SALE OF USED GARBAGE
AND RECYCLING CARTS

DATE ISSUED: 4/18/2011

PRE-BID CONFERENCE TIME AND DATE: N/A

REQUISITION NO.: 1500 11040700283

LOCATION: N/A

FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:

BID DUE PRIOR TO: 5/12/2011 @ 2:30 PM

Steve Coche

BID OPENING TIME AND DATE: 5/12/2011 @ 2:30 PM

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET,
RM 308, AUSTIN, TX 78701

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this solicitation are contained in Section 0900.

All Contractors and Subcontractors must be registered to do business with the City prior to submitting a response to a City solicitation. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system Log onto www.cityofaustin.org/purchase and follow the directions.

******* SUBMIT 1 ORIGINAL AND 1 SIGNED COPY OF ALL REQUIRED DOCUMENTS *******

SOLICITATION TO:

Signature of Person Authorized to Sign Bid

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. _____

Date _____

Company Name: _____

Address: _____

City, State, Zip Code: _____

Phone No. () _____

FaxNo. () _____

Email Address _____

Table of Contents

SECTION NO.	TITLE	PAGES
0100, 0200, 0300	See http://www.ci.austin.tx.us/purchase/standard.htm *	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	2
0500	SCOPE OF WORK / SPECIFICATION	4
0600	BID SHEET	2
0700	REFERENCE SHEET	1
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All other Sections may be viewed at: <http://www.ci.austin.tx.us/purchase> by clicking the link to "Current Purchasing Notices"

RETURN FOLLOWING DOCUMENTS WITH BID**

- Cover Page Offer and Award Sheet (IFB Sale)
- Section 0600, Bid Sheet(s)
- Section 0700, Reference Sheet (if required)
- Bid Guarantee (if required)

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the bid.**

NOTES:

The bidder agrees, if this bid is accepted within _____ calendar days (90 days unless a different period is inserted) after date of opening, to fully comply in strict accordance with the solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying bid.

*** INCORPORATION OF DOCUMENTS.** As of March 22, 2000, three (3) Sections of the solicitation documents have been made available via the Internet. These three sections: Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm>. Please select the appropriate set of documents for the type solicitation – i.e. Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Quotations (RFQ).

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the below address. Please have the solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed or faxed to you.

When sending a sealed Bid and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin
Purchasing Office	Purchasing Office
P.O. Box 1088	Municipal Building
Austin, Texas 78767-8845	124 W 8 th Street, Rm 308
	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Notes: Bids (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

Unless authorized in the solicitation, telegraphic or facsimile Bids will not be accepted.

The following Supplemental Sale provisions apply to this Solicitation.

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 3 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by 2:00 PM on April 22, 2011. Please send to: Steve Cocke by email steven.cocke@ci.austin.tx.us or fax: (512) 974-2388

2. **INSURANCE**: (reference paragraph 17 in Section 0300).

A. The insurance certificate shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Steve Cocke – SDC0210
P. O. Box 1088
Austin, Texas 78767-8845

9. **TERM OF CONTRACT**

- A. This Contract shall be in effect for a period of thirty six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month periods, subject to the approval of the Contractor and the City Manager or his designee.
- B. Upon expiration of the initial term or the period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days, or such period as mutually agreed upon by the parties).

12. **PAYMENT – AT TIME OF SALE**

- A. Payment in full shall be made in cash, by cashier's check, traveler's check, money order, company or personal check, or a certified check prior to taking possession of Goods. Company or personal checks used for payment must be accompanied by a letter of guarantee from a bank. Checks submitted without such a guarantee will not be accepted.
- B. Payment for all Goods must be made to the City of Austin at :

Department	See Specification
Address	
City, State Zip	
Contact, Name	
Phone Number	

15. **REMOVAL OF PROPERTY**

- A. See Specifications.

B. Unless requested by the City, removal shall not occur on the following City-recognized legal Holiday.

16. **CONTRACT MANAGER**

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor:

Department	Solid Waste Services Department,
Address	10108 FM 812
City, State Zip	Austin, TX 78719

Contact, Name	Jaime Moreno, Cart Maintenance
Phone Number	512 243-3462
FAX Number	512 243-1656



**CITY OF AUSTIN
SPECIFICATION FOR
SALE OF USED GARBAGE AND RECYCLING CARTS**

1.0 PURPOSE

The City of Austin, Solid Waste Services Department (SWS) hereinafter referred to as the "City", seeks bids in response to this Invitation for Bids (IFB) from qualified contractors (individuals and/or firms) hereinafter referred to as the "Contractor," experienced in the purchase and recycling of used residential garbage carts and recycling carts. The Contractor will be required to purchase and transport old, used residential garbage carts and recycling carts that the City deems no longer usable. The old, used garbage and recycling carts purchased from the City under this contract shall be recycled into new containers and shall not be landfilled.

2.0 OBJECTIVES

The City seeks bids from experienced and qualified firms to accomplish the following:

- 2.1 Secure a reliable market for old, used residential garbage carts and recycling carts from the City of Austin Resource Recovery Center located at 10108 FM 812, Austin, TX 78719.
- 2.3 Safely and cost effectively recycle the City's old, used garbage and recycling collection assets to partially offset operational costs and minimize the amount of otherwise unusable material to be disposed of in the landfill.

3.0 BACKGROUND

- 3.1 The City's garbage and recycling collection crews collect a large volume of refuse and recyclable material throughout the City's service area.
- 3.3 Residential garbage carts and recycling carts frequently become unusable due to damage and regular wear from repetitive use in the field. Unusable carts are stored at the City of Austin Resource Recovery Center located at 10108 FM 812, Austin, TX 78719.

4.0 BIDDER'S RESPONSIBILITIES

The City requires the Contractor to provide the following:

- 4.1 Provide a continuous market for the old, used residential garbage and recycling carts

stored at the Resource Recovery Center and a means of transporting the carts to the Contractor's facility or facilities. A tractor-trailer shall be supplied by the Contractor and located at the Resource Recovery Center to allow City personnel to load old, used carts until sufficient quantities are built up for cost-effective removal.

- 4.2 Provide a tractor trailer for removal of the old, used carts from the Resource Recovery Center on an on-call basis within two (2) business days of notification by the City. The Contractor is not required to conduct operations on days the City's collection personnel and subcontractors are off work due to weekends, observed holidays, or bad weather.
- 4.3 The Contractor shall specify in section I of the Bid Sheet the absolute minimum price per pound the Contractor will pay for old, used garbage and recycling carts.
- 4.4 Within ten (10) days prior to the commencement of the contract, the Contractor will designate a contact person or persons who will be available during normal City business hours (Monday through Friday, 8 a.m. to 5 p.m.) to address any questions, problems or complaints associated with this contract. The City's designated Contract Manager will communicate comments to the Contractor.
- 4.5 The Contractor shall be responsible for all costs associated with equipment offered for use by the City, except for electricity usage which will be provided by the City.

5.0 MATERIALS OFFERED FOR SALE

- 5.1 This specification is for the sale of old, used residential garbage carts and recycling carts. The estimated annual volume to be offered for sale by the City is shown in parenthesis.
 - 5.1.1 Used residential garbage carts and recycling carts (150,000 pounds per year).
- 5.2 No quantity is guaranteed by the City.

6.0 TRANSPORTATION REQUIREMENTS

- 6.1 Successful bidder will be required to furnish a tractor-trailer as needed to the City of Austin Resource Recovery Center located at 10108 FM 812, Austin, TX 78719. All costs associated with providing the tractor-trailer and transporting carts from the City facility to Contractor facilities will be the responsibility of the Contractor and should be factored in the prices offered.
- 6.2 The tractor-trailer furnished by the Contractor will be transported and emptied by the Contractor as requested by the City with two (2) business days notice. The City shall be responsible for picking up loose equipment parts which are on the ground around an empty or partially full tractor-trailer.

7.0 PERFORMANCE AND PAYMENT REQUIREMENTS

- 7.1 The Contractor shall deliver payment for the full amount due to the City within thirty (30) days after the preceding calendar month for all residential garbage carts and recycling carts sold to the Contractor during the preceding calendar month. The Contractor's payments to the City shall be calculated by multiplying the contracted price per pound by total pounds of garbage and recycling carts sold to the Contractor during the previous month, with weights substantiated by certified scale tickets.
- 7.2 Contractor shall maintain and make available for inspection, audit and/or reproduction by any authorized representative of the City or any other governmental agency, books, documents, and other evidence pertinent to the costs, expenditures, and revenue of this contract.
- 7.3 Contractor's payments to the City shall be in the form of a check made payable to the **City of Austin – Solid Waste Services Department** which is drawn on the Contractor's account at an insured bank or lending institution legally authorized to perform banking services within the State of Texas. In the event that a Contractor's payment check is returned unpaid by the Contractor's bank, the Contractor shall replace the returned check with a fully negotiable Cashier's Check, for the same amount as the returned check, within two business days of notification by the City that the check was returned. Subsequent to the unpaid return of a Contractor's check by the Contractor's bank, for any reason, all future payments to the City shall be made in the form of a Cashier's Check.
- 7.4 With each payment made to the City, the Contractor shall provide a tabulation of the quantity and calculation of the price paid for items obtained from the City's facility.

8.0 CONTRACTOR'S QUALIFICATIONS

To qualify for contract award, the Contractor shall demonstrate their ability to successfully perform the responsibilities under this contract by documenting adequate relevant experience, a high level of financial stability and satisfactory credit history, and the absence of material adverse litigation and documented criminal activity.

- 8.1 Experience - With Contractor's bid, Contractor shall provide:
 - 8.1.1 Written documentation verifying that the Contractor has a minimum of three (3) years of experience successfully performing similar collection and recycling services.
- 8.2 Financial Stability - With Contractor's bid, Contractor shall provide:
 - 8.2.1 A list of at least three names, addresses, and telephone numbers with individuals at entities that can provide references documenting the Contractor's history of meeting its financial obligations for payments relating

to the purchase of used garbage and recycling carts over at least the last twelve months.

- 8.2.2 A list of at least three names, addresses, and telephone numbers with individuals at entities that can provide references documenting the Contractor's history of meeting its financial obligations for payments relating to purchased equipment and operating supplies over at least the last twelve months.

8.3 Bankruptcy, Litigation, Judgements/Liens and Criminal Records.

- 8.3.1 By submitting a Bid in response to this IFB, a Bidder warrants and represents to the City that the Contractor, its Managers (who are expected to be involved with the services required herein), its greater than ten percent shareholders (or other owners if not a corporation), and its Board of Directors and Officers:

- 8.3.1.1 Have not sought relief under the bankruptcy code in the seven years preceding the date of its Bid; and

- 8.3.1.2 Are not involved in any outstanding or threatened litigation; and

- 8.3.1.3 Do not currently owe or hold any property that is subject to an outstanding or otherwise unpaid judgement or lien (except liens resulting from assets pledged as collateral in financing agreements which are neither past due nor in default); and

- 8.3.1.4 Have not been convicted of a crime or pled nolo contendere or been granted deferred adjudication within the last ten years (other than violations for which the fine was less than \$50).

- 8.3.2 If Bidder can not warrant as specified in section 8.3.1, Bidder must expressly take exception to this section (8.3.1) and include with its Bid a full description of all bankruptcy proceedings, litigation, judgements and liens, and criminal histories. Bidder shall promptly provide upon request all additional information requested by the City concerning such matters.

- 8.4 Bidder's failure to provide additional information requested by the City regarding this section (8.0) or to demonstrate to the City's full satisfaction that such matters will not impair its ability to perform its obligations under its Bid shall be grounds for rejection of the Bid.

9.0 CONTRACT TERM

- 9.1 This agreement shall be in effect for a period of thirty-six (36) months from the date of its commencement. This agreement may be extended for up to three (3) additional one (1) year periods subject to the approval of the Contractor and the City of Austin.



**QUOTE SHEET
CITY OF AUSTIN
SALE OF USED GARBAGE AND RECYCLING CARTS**

QUOTE NO. SDC0210
RQM NO. 1500 11040700283
ISSUE DATE 4/18/2011

CLOSING 5/12/2011
DATE & TIME: 2:30 P.M.
BUYER Steve Cocke

Copies of Quote: Vendor must submit two copies of it's signed quote - one original and one copy.

Special Instructions: The City will consider avoided costs to the City in addition to revenue potential in recommending an award of Contract. Revenue potential will be analyzed under a variety of market conditions. Each possible option or combination of options will be assessed in terms of their projected total comparative costs and or revenue to the City. Any option which would reduce the scope of the City's overall environmental protection, resource conservation, or waste reduction efforts, even though it may increase projected revenues, may be rejected. Be advised that exceptions taken to any portion of the solicitation may jeopardize acceptance of the quote.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY		UNIT PRICE	EXTENDED PRICE
1	Purchase and Recycling of old, used residential garbage carts and recycling carts.	12,500 lbs			
TOTAL PRICE:					

OFFERORS BEST DELIVERY IS _____ CALENDAR DAYS AFTER RECEIPT OF ORDER

DELIVERY TERMS: DELIVERY IS TO B EFOB DESTINATION, PREPAID AND ALLOWED

DELIVERY METHOD: _____

COMPANY NAME: _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

PRINTED NAME: _____

EMAIL ADDRESS: _____

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET (IFB, SALE)**

Please Complete and Return This Form with the Bid

SDC0210

SOLICITATION NUMBER: _____

VENDOR'S NAME: _____ **DATE:** _____

The Bidder shall furnish, with the Bid, the following information, for at least three (3) recent customers from whom Goods or salvage property have been purchased, requiring Bidder performance similar to that required by this Solicitation.

1. Company's Name _____
Name of Contact _____
Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number () _____

2. Company's Name _____
Name of Contact _____
Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number () _____

3. Company's Name _____
Name of Contact _____
Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () Fax Number () _____

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION
SOLICITATION NO. SDC0210

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin
Minimum Standard Non-Discrimination in Employment Policy:**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

CONTRACTOR _____

Authorized Signature _____

Title _____

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO. SDC0210

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Signature of Officer
or Authorized
Representative:

Date:

Printed Name:

Title

CITY OF AUSTIN
PURCHASING OFFICE
"NO OFFER" REPLY FORM

SOLICITATION NUMBER: SDC0210

Please Complete and Return This Form to the following address to Indicate a "No Offer" Reply

City of Austin
Purchasing Office
P.O. Box 1088
Austin, Texas 78767-8845

(DO NOT RETURN ALONG WITH OFFER)

Please check the appropriate box to indicate why your firm is submitting a "no offer" response. Failure to respond to three (3) consecutive solicitations may result in your company being removed from the source list for this commodity or service. Completion of this form will assist us in maintaining an accurate, up-to-date source list.

COMMODITY CODE: 99815

DESCRIPTION: Batteries, All Types, Sale of Surplus

- ☐ Unable to supply item(s) specified. Remove my company from the source list for the Commodity / Service Group
- ☐ Unable to supply item(s) specified. Retain my company on the vendor list for this commodity / service.
- ☐ Cannot meet the Scope of Work / Specifications.
- ☐ Cannot provide required Insurance.
- ☐ Cannot provide required Bonding.
- ☐ Job too small.
- ☐ Job too large.
- ☐ Do not wish to do business with the City. Remove my company from the City's Vendor list.
- ☐ Other reason (please state why you will not submit a bid):

Contractor's Name: _____

Street Address _____

City, State, Zip Code _____

Signature of Officer or
Authorized

Representative: _____

Date: _____

Printed Name: _____

Title _____



**INVITATION FOR BID SALE
CITY OF AUSTIN
PUBLIC WORKS DEPARTMENT**

SALE OF USED GARBAGE AND RECYCLING CARTS

IFB Sale No.: SDC0210

Addendum No. 1

Date of Addendum: May 12, 2011

1.0 The bid due date and time has been changed to May 19, 2011 prior to 2:30 P.M.

2.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, Addendum No. 1
is hereby incorporated and made a part of the above-referenced **IFB SALE**

APPROVED BY: Steve Cocke
Steve Cocke, Buyer II
Finance and Administrative Services Department

ACKNOWLEDGED BY: _____
Bidder Authorized Signature Date

**RETURN ONE (1) COPY TO THE PURCHASING OFFICE, CITY OF AUSTIN, TEXAS PRIOR TO
BID OPENING OR WITH YOUR BID. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR
REJECTION OF YOUR BID.**