



Amendment No. 4
to
Contract No. NA130000152
for
John Deere OEM Parts and Repair Services
between
Offutt Companies Inc. dba RDO Equipment Co.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective June 26, 2018 through June 25, 2019. Zero options remain.
- 2.0 The total contract amount is increased by \$368,978.00 for the extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/08/2013 – 08/07/16	\$920,938.00	\$920,938.00
Amendment No. 1: Option 1 08/08/2016 – 08/07/17	\$336,346.00	\$1,257,284.00
Amendment No. 2: Option 2 08/08/2017 – 08/07/18	\$352,265.00	\$1,609,549.00
Amendment No. 3: Name Change 09/08/2017	\$0.00	\$1,609,549.00
Amendment No. 4: Option 3 06/26/2018 – 06/25/19	\$368,978.00	\$1,978,527.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: Tray Young 6/22/18

Printed Name: Tray Young
Authorized Representative

Offutt Companies Inc. dba RDO Equipment Co.
16415 N. IH 35
Pflugerville, TX 78660
CKosse@rdoequipment.com
512-272-4141

Sign/Date: Danielle Lord 6/25/18

Danielle Lord
Procurement Manager
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 3
to
Contract No. NA130000152
for
John Deere OEM Parts and Repair Services
Between
RDO Equipment Co. dba RDO Equipment
and the
City of Austin

- 1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
Vendor Name	RDO Equipment Co., dba RDO Equipment	Offutt Companies Inc. dba RDO Equipment Co.
Vendor Code	RDO8305059	V00000947408
FEIN	[REDACTED]	[REDACTED]

- 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.3 is hereby incorporated into and made a part of the Contract.

Linell Goodin-Brown
Contract Management Supervisor II
City of Austin, Purchasing Office

9-7-17

Date



Amendment No. 2
to
Contract No. NA130000152
for
John Deere OEM Parts and Repair Services
between
RDO Equipment Co.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective August 8, 2017 through August 7, 2018. One option remains.
- 2.0 The total contract amount is increased by \$352,265.00 for the extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/08/2013 – 08/07/16	\$920,938.00	\$920,938.00
Amendment No. 1: Option 1 08/08/2016 – 08/07/17	\$336,346.00	\$1,257,284.00
Amendment No. 2: Option 2 08/08/2017 – 08/07/18	\$352,265.00	\$1,609,549.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date:

Printed Name: Cory D Koss
Authorized Representative

RDO Equipment Co.
16415 N. IH 35
Pflugerville, TX 78660
Scott Majala
smajala@rdoequipment.com
512-272-4141

Sign/Date:

Linell Goodin-Brown
Linell Goodin-Brown,
Contract Management Supervisor II
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

7-27-17



Amendment No. 1
to
Contract No. NA130000152
for
John Deere OEM Parts and Repair Services
between
RDO Equipment Co.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective August 8, 2016 through August 7, 2017. Two options remain.
- 2.0 The total contract amount is increased by \$336,346.00 for the extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/08/2013 – 08/07/16	\$920,938.00	\$920,938.00
Amendment No. 1: Option 1 08/08/2016 – 08/07/17	\$336,346.00	\$1,257,284.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the 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.

Sign/Date: Scott A. Majala 7-29-16

Printed Name: Scott A. Majala
Authorized Representative

RDO Equipment Co.
16415 N. IH 35
Pflugerville, TX 78660

Sign/Date: Linell Goodin-Brown 8-1-16
Linell Goodin-Brown, Contract Compliance Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



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

August 12, 2013

RDO Equipment Co.
Scott Maijala & Duane Wordekemper
16415 N. IH 35
Pflugerville, TX 78660

Dear Mr. Maijala and Mr. Wordekemper:

The City of Austin has approved the award and execution of a service contract with RDO Equipment for John Deere OEM Parts and Repair Services in accordance with solicitation JSD0216.

Responsible Department:	Fleet Services
Department Contact Person:	Hazel Black
Department Contact Email Address:	hazel.black@austintexas.gov 1190 Hargrave, Austin, TX 78702
Department Contact Telephone:	(512) 974-1751
Project Name:	John Deere OEM Parts and Repair Services
Contractor Name:	RDO Equipment Co.
Contract Number:	NA130000152
Contract Period:	08/08/2013 – 08/07/2016
Contract Period Amount	\$920,938.00
Extension Options:	Three 12-month options
Requisition Number:	7800 - 13032700292
Solicitation Number:	JSD0216
Agenda Item Number:	41
Council Approval Date:	8/8/13

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this purchase, please contact the person referenced under Department Contact Person above.

Sincerely,

Jonathan Dalchau, Buyer II
Purchasing Office

CC: Matt Samaripa, Hazel Black

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
FOR
JOHN DEERE (OEM) PARTS AND REPAIR SERVICES**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and RDO Equipment ("Contractor"), having offices at 16415 N. IH 35, Pflugerville, TX 78660.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Contractor. Subject to the general oversight of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor shall provide the OEM parts and repair services set forth in Section 2.

1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the OEM parts and repair services identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Scott Majjala; Phone: 512-272-4141; Email: pf.parts@rdoequipment.com. The City's Contract Manager for the engagement shall be Hazel Black; 512-974-1751; Email: hazel.black@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. STATEMENT OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all OEM parts and Non-warranty repair services with associated parts as described herein in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations. The services are set forth on the Statement of Work attached hereto as Exhibit A.

SECTION 3. COMPENSATION

3.1 Contract Amount. Quantities will be as needed and specified by the City for each order. Contractor will be paid monthly pursuant to the OEM parts and repair services ordered for the previous month. There is no guaranteed minimum amount for this Contract. In consideration for the services to be performed under this Contract, the Contractor shall be paid an estimated amount not-to-exceed \$920,937.50 for the initial thirty-six (36) month term and amounts not-to-exceed \$336,346.88 for the first extension option, \$352,264.22 for the second extension option, and \$368,977.42 for the third extension option, for a total estimated Contract amount not to exceed \$1,978,526.02.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each delivery order 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.

3.2.2 **Invoices shall contain a unique Invoice number, the 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.** Additionally, invoices shall include, as applicable, the following information: Equipment and/or parts numbers and descriptions, unit number or license plate number of the vehicle, credit for core charge for core exchanges, documentation to support parts charged to the City per the Published Price List paragraph. 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.

3.2.3 The Contractor's business name, "remit to" address 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. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the Fleet Service Center that placed the order.

3.2.4 Monthly statements shall be mailed to the below address:

	City of Austin
Department	Fleet Services
Attn:	Accounts Payable
Address:	1190 Hargrave
City, State, Zip Code	Austin, Texas 78702

3.2.5 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.6 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.

3.2.7 Final invoices at the end of the Contract must be received at the Fleet Service Center that placed the order within thirty (30) calendar days after the Contract expiration date to be considered for payment. No exceptions to this 30-day submission requirement will be considered.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within forty-five (45) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), 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.**

3.3.3 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;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 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;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 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;

3.3.3.5 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;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 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.

3.3.5 Payment will be made by check 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 transfer of funds.

3.4 **Non-Appropriation.** 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.

3.5 **Final Payment and Close-Out.**

3.5.1 If an MBE/WBE Program Compliance Plan is required, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the City 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.

3.5.2 The making and acceptance of final payment will constitute:

3.5.2.1 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

3.5.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

3.6 **Verification of Contractor's Labor Hours and Parts Pricing.**

3.6.1 Labor hours must be based on published industry standards where they apply. In areas where such standards have not been published, the City reserves the right to restrict labor hours based on historic experience for like repairs.

3.6.2 The Materials Control Manager, Fleet Services Contract Compliance and/or Accounts Payable personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed by using the current price list and percentage discount or mark up and labor rates as indicated on Exhibit A.

- 3.6.3 If pricing is found to be different than on Exhibit A, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the Contract Manager.

3.7 Economic Price Adjustment.

- 3.7.1 Prices shown in this Contract shall remain firm for the first twelve (12) month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor subject to the following considerations:

3.7.2 Price Increases

- 3.7.2.1 Requests for price increases must be made in writing and submitted to the City's Contract Manager. The letter must be signed by a person with the authority to bind the Contractor contractually, shall reference the Contract number, and include the following documentation:

3.7.2.1.1 An itemized, revised price list with the effective date of the proposed increase

3.7.2.1.2 Copies of the documentation provided by the manufacturer regarding the proposed price increase if the Contractor is not the manufacturer of the products. If the Contractor is the manufacturer of the products, a letter so stating must be provided.

3.7.2.1.3 For an increase in Labor Cost, Contractor shall submit, as a part of the request for increase, the version of the U.S Department of Labor Consumer Price Index for U.S. City Average CUUR0000SETD (the "Index") current as of the effective date of this Contract; and a copy of the index for the most current period.

3.7.2.1.4 For an increase in the prices for the parts, Contractor shall submit, as a part of the request for increase, the version of the Consumer Price Index (s) (Series Id: CUUR0000SETC Not Seasonally Adjusted Area: U.S. city average Item: Motor vehicle parts and equipment Base Period: 1982-84=100 Years: 2003 to 2013) Industry/Product name/code (the "Index") current as of the date of the Contractor's Offer; and a copy of the index for the most current period.

3.7.2.1.5 Proposed price increases must be solely for the purpose of accommodating increases in the Contractor's costs for the products or services provided. Prices for products or services unaffected by verifiable cost trends shall not be subject to change.

3.7.2.2 Requests for price increases must be made in writing and submitted to the City's Contract Manager not less than sixty (60) calendar days prior to each yearly anniversary date of the Contract. Prices will only be considered for an increase at that time except for pass through price increases from the Original Equipment Manufacturer (OEM) as indicated in Section 3.7.2.4 below. Once received, the City will have thirty (30) calendar days to review and approve/disapprove the requested increase. Should the City not agree with the requested increase, the Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the Contract.

3.7.2.3 The proposed percentage change between the current Contract price and the requested price shall not exceed the percentage change between the Index in effect at the beginning of the current review period and the one in effect at the time the price increase is requested. Except in the case of emergency situations, the requested index related or non-index related price increase shall not exceed twenty-five percent (25%) for any single line item, and in no event shall the total

amount of the Contract be automatically increased as a result of the increase in any one or more line items made pursuant to this provision.

3.7.2.4 Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully-documented increase requests which, in the Contractor's opinion, justify price increases for one or more line items in the Contract. Contractor may request a pass through increase from the OEM due to an increase in the cost of a particular component caused by outside influences such as transportation costs. Such requests must be fully documented. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

3.7.3 Price Decreases

3.7.3.1 Proposed price decreases may be offered to the City at any time, and become effective upon acceptance by the City unless a different effective date is specified by the Contractor. Price decrease offers may also be subject to negotiation.

3.7.3.2 Price decreases based on relevant factors may be requested by the City at any time. Such requests shall be accompanied by a complete statement of the City's justification for the request. The Contractor shall have thirty (30) calendar days to respond to the City's request. Following receipt of the Contractor's agreement with the requested decrease, the City may implement the decrease at any time. Should the Contractor not agree with the requested decrease, the City may either maintain the prices currently in effect, negotiate with the Contractor, or terminate the Contract.

3.8 Published Price List.

3.8.1 The Contractor shall submit Two (2) CDs or electronic copies, if available, of the price list(s) upon which the discounts or markups are based in Exhibit A within five (5) business days after execution of the Contract.

3.8.2 The City will accept a printed copy only if no electronic format is available. NOTE: If a price list is no longer available in hard copy or electronic format, the Contractor shall grant the City access to a company website or company-owned local computer to research parts pricing for verification purposes

3.8.3 If the Contractor is unable to provide a CD, electronic copies, access to a company website, or a hard copy of the price list, the Contractor shall document by written invoice from the supplier the cost for all parts charged to the City. The cost documentation must be submitted with each invoice.

3.8.4 All price lists submitted become part of the Contract and will be used to place orders and to verify the percent discount as stated in Exhibit A throughout the term of the Contract. Price list(s) submitted must include descriptions of items listed.

3.8.5 The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the documentation supporting the price revision must be submitted to the City's Contract Manager with the effective date of change to be at least thirty (30) calendar days after written notification. The City reserves the right to refuse any list revision

3.8.6 The percentage discounts on material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract, and are not subject to increase.

3.8.7 Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

3.9 **Cores.**

3.9.1 Fleet Services will return cores within thirty (30) calendar days after installation of new or rebuilt parts.

3.9.2 If Fleet Services does not return core(s) within thirty (30) calendar days, the Contractor must contact the Fleet Service Center Manager or designee, from where the part was delivered to request that the core be returned or to request reimbursement from the City for the Core(s) at the Contract rate. If the City pays for a core and later returns it to the Contractor, the City must be reimbursed.

3.9.3 The City will not accept invoices for any core charges until thirty-one (31) calendar days after the installation of the new or rebuilt part.

3.10 **Unused Inventory Stock Lift.**

3.10.1 The Contractor shall, on a quarterly basis, pick up and credit the City's account for items purchased during the Contract term which have not been used or have become obsolete for the City's needs, provided that these items are in the original cartons and in marketable condition. The amount credited to the City's account shall be the original purchase price for the items.

3.10.2 The date for the quarterly stock lift shall be mutually agreed upon between the Contractor and the Fleet Services Materials Control Manager or designee.

3.10.3 No restocking fees will be assessed for parts returned during a quarterly stock lift.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective when signed by an authorized representative of the City and shall remain in effect for an initial 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 Purchasing Officer or his designee.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract 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).

4.2 **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 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.

4.3 **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 the Right to Assurance paragraph contained herein (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 Contractor to the City.

4.4 **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. 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. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 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.

4.6 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.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance. The following insurance requirements apply.

5.1.1 General Requirements

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 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 holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by 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.

5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 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.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / contract number, the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

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

5.1.1.8 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.

5.1.1.9 If insurance policies are not written for amounts specified, 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.

5.1.1.10 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.

5.1.1.11 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.

5.1.1.12 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.

5.1.1.13 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.

5.1.1.14 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.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project

5.1.2.1.2 Independent Contractor's Coverage

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage

5.1.2.4 **Garage Liability Coverage.** Contractor may provide Garage Liability coverage in place of the Commercial General Liability and Business Automobile Liability policies. The Garage Liability policy shall provide a minimum limit of liability of \$500,000 Auto Only/\$500,000 Aggregate other than Auto. Coverage shall be provided for all owned, hired, and non-owned vehicles. The policy shall contain the following provisions and endorsements:

5.1.2.4.1 Waiver of Subrogation

5.1.2.4.2 Thirty (30) days Notice of Cancellation

5.1.2.4.3 The City of Austin listed as an additional insured

5.1.2.5 **Property Coverage.** Contractor shall provide all risk physical loss coverage for the vehicle and equipment in the care, custody, and control of the Contractor. Coverage shall continue until the work is accepted by the City. The limit of coverage required is the total estimated actual cash value of vehicles/equipment in the Contractor's care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.

5.1.2.6 **Garagekeepers Liability.** Contractor may provide Garagekeepers Liability for the required property coverage for vehicles in the care, custody, and control of the Contractor.

Comprehensive and collision coverage shall be provided on a Legal Liability basis. The limit of coverage required is the total estimated actual cash value of vehicles in the Contractor's care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.

5.1.2.7 **Endorsements**. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.1.2.8 **Certificate**. The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies."

5.2 **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. 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 Contract 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.

5.3 **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.

5.4 **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. In the case of the consignment inventory, title will pass only when the City installs the consignment part on the vehicle.

5.5 **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.

5.6 **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.

5.7 **Special Tools & Test Equipment**. If the price stated on Exhibit A includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling an 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.

5.7 **Pickup and/or Delivery Requirements**.

5.7.1 Pickup and/or delivery shall be made as specified in the Statement of Work after the order is placed.

5.7.2 **For Parts:** All orders for parts must be shipped complete unless arrangements for partial shipments are made in advance. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.

5.7.3 **For Repairs:** The Contractor shall provide an itemized service ticket to the Fleet Service Center Manager or designee upon completion of each repair that includes the information specified in the Contractor's Responsibilities for Repair Services paragraph in the Statement of Work.

5.7.4 The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

5.7.5 Unless requested by the City, deliveries shall not be made on City-recognized legal holidays.

5.7.6 No additional delivery charges (FedEx, UPS, etc.) will be paid by the City for any shipment unless the Fleet delivery order specifically states "Code Red" and "Code Red" is noted on the invoice. (NOTE: The term "code red" means that there is a critical need for the shipment such that the City is willing to pay expedited shipping charges for faster delivery.)

5.8 **Equal Opportunity.**

5.8.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification and has submitted a copy of the Contractor's employment non-discrimination policy. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B Non-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.

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

5.9 **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.

5.10 **Recycled Products.** The City prefers that Contractor offers products that contain recycled materials. When a recycled product is offered by the Contractor, the Contractor must state in their quote the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.

5.11 **Delays.**

5.11.1 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 items 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 herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.11.2 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 the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion 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.

5.12 **Rights to 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.

5.13 **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.

5.14 **Workforce Security Clearance and Identification (ID).**

5.14.1 Access to any Fleet Services facility by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City.

5.14.2 Contractor personnel will be required to check in at the Service Writer's desk when entering or leaving any Fleet Services facility. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule.

5.14.3 The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

5.15 **Non-Compliance.** The City will not tolerate repetitive non-compliance to the City's terms and conditions and Statement of Work as stated in the Contract. The City will be the sole judge evaluating any unacceptable performance. The City will notify the Contractor of any unacceptable performance in writing. The Contractor shall prepare a written response to the Contract Manager within two (2) working days after receipt of the City's notification. The Contractor's response shall include action taken to correct and prevent unacceptable performance from reoccurring. The City may terminate the Contract for cause based on repetitive non-compliance.

SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted on Exhibit A are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices 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.

6.1.3 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.

6.2 **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.

6.3 **Warranty – Deliverables.** The Contractor warrants and represents that all deliverables sold to 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 Contract, 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 Contract, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

6.3.1 Recycled deliverables shall be clearly identified as such.

6.3.2 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.

6.3.3 Unless otherwise specified in the Contract, the warranty period on new bodies shall be: for the body parts, three (3) years from the part being put into use by the City; for the cylinder parts five (5) years from the part being put into use by the City; provided however that if a part needs to be replaced during the warranty period, the new part will only be warranted for the remainder of such warranty period. For all other parts the warranty period shall be twelve (12) months from the part being put into use by the City. 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) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.3.4 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.

6.3.5 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.

6.4 **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.

6.5 Warranty Requirements for Parts.

6.5.1 The warranty period shall be: for the body parts, three (3) years from the part being put into use by the City; for the cylinder parts five (5) years from the part being put into use by the City, and for all other parts 12 months from the part being put into use by the City or for the standard warranty period as provided by the original equipment manufacturer (OEM); whichever is longest.

6.5.2 A copy of the manufacturer's parts warranty shall be provided with each delivery of parts.

6.5.3 For repair services including parts, proof of the parts warranty shall be provided to the Fleet Service Center Manager or designee immediately after installation.

6.5.4 The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.

SECTION 7. MISCELLANEOUS

7.1 Right To Audit.

7.1.1 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.

7.1.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.2 Subcontractors.

7.2.1 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.

7.2.2 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:

7.2.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

7.2.2.2 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;

7.2.2.3 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;

7.2.2.4 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

7.2.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.2.3 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.

7.2.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) days after receipt of payment from the City.

7.3 Indemnity.

7.3.1 Definitions:

7.3.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.3.1.1.1 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;

7.3.1.1.2 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),

7.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.3.2 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 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.

7.4 **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 hereunder, 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.

7.5 **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 class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Anne Forsey, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

RDO Equipment

Scott Majjala

16415 N. IH 35

Pflugerville, TX78660

7.6 **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 Contract, 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.

7.7 **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.

7.8 **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.

7.9 **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.

7.10 **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.

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

7.12 **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.

7.13 **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.

7.14 **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.

7.15 **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.

7.16 **Dispute Resolution.**

7.16.1 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.

7.16.2 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 fee 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 mediation.

7.17 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.17.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.17.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.17.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.18 Non-Solicitation.

7.18.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.19 **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, 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.

7.20 **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.

7.21 **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.

7.22 **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.

7.23 **Living Wages and Benefits.**

7.23.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain contracts in order to assure quality and continuity of service.

7.23.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

7.23.3 The City requires Contractors to provide a signed certification within five (5) calendar days of contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan (see Exhibit C, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.23.4 The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.23.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.23.4.2 time and date of week when employee's workweek begins;

7.23.4.3 hours worked each day and total hours worked each workweek;

7.23.4.4 basis on which employee's wages are paid;

7.23.4.5 regular hourly pay rate;

7.23.4.6 total daily or weekly straight-time earnings;

7.23.4.7 total overtime earnings for the workweek;

7.23.4.8 all additions to or deductions from the employee's wages;

7.23.4.9 total wages paid each pay period; and

7.23.4.10 date of payment and the pay period covered by the payment.

7.23.5 The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications for all employees directly assigned to the contract containing (see Exhibit D, Living Wages and Benefits Employee Certification):

7.23.5.1 the employee's name and job title;

7.23.5.2 a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;

7.23.5.3 a statement certifying that the employee is offered a health care plan with optional family coverage.

7.23.6 The employee certifications shall be signed by each employee directly assigned to the contract.

7.23.7 Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract.

7.23.8 The City's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

7.24 **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.

7.25 Post Award.

7.25.1 The Contractor may be required to attend a post award meeting with City personnel within thirty (30) calendar days after Contract award. The purpose of the meeting is to discuss the terms and conditions of the Contract.

7.25.2 The City may perform site visits during the term of the Contract to verify that the Contractor has the appropriate facilities, equipment, inventory, licenses, permits, and qualified personnel to perform according to the Statement of Work. The Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

7.26 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm> .

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

RDO EQUIPMENT

By: Scott A. Majjala
Signature

Name: Scott A. Majjala
Printed Name

Title: Parts Dept MGR

Date: 7-16-13

CITY OF AUSTIN

By: [Signature]
Signature

Name: Terry Nicholson
Printed Name

Title: Sr. Buyer Specialist

Date: 8/5/13

EXHIBITS

Exhibit A – Statement of Work for Non-Warranty John Deere OEM Parts and Repair Services

Exhibit B - Non-Discrimination Certification

Exhibit C – Living Wage Contractor Certification

Exhibit D– Living Wage Employee Certification

Exhibit A
FLEET SERVICES AND AVIATION DEPARTMENT
STATEMENT OF WORK FOR NON-WARRANTY JOHN DEERE OEM PARTS
AND REPAIR SERVICES

1. PURPOSE

- 1.1 The Contract will be utilized by the Fleet Services Department and the Aviation Department. The City reserves the right to allow other City Departments to utilize the Contract.
- 1.2 This is a sole source contract for parts and repair services for John Deere equipment and other heavy-duty equipment with a John Deere engine.

2. DEFINITIONS

- 2.1 Stock Parts are defined as high turnover parts that are most commonly needed by the City.
- 2.2 Non-Stock Parts are defined as low usage, high dollar parts that are not kept in inventory.
- 2.3 Back-ordered (or Out-of-Stock) Parts are defined as parts that are not currently in stock but have been ordered or will be ordered.
- 2.4 Code Red is a term used by the City to designate that the parts are critical to providing services to the public to the extent that the City is willing to pay express shipping charges. The Contractor shall include the term "Code Red" on invoices when the delivery orders so stipulates.
- 2.5 Fleet Service Center is a term used to designate any City facility where vehicles and equipment are repaired or serviced.
- 2.6 Repairs means to return or restore a broken, damaged, or failed part, vehicle, or piece of equipment to an acceptable operating or usable condition or state.

3. CONTRACTOR QUALIFICATIONS

- 3.1. The Contractor shall accept payment by credit card, check, or Electronic Funds Transfer ("EFT") for all parts and repair services provided under the Contract, as indicated in the Invoices and Payment Provision in the Contract. The Contractor shall factor the cost of processing credit card payments into the prices. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- 3.2. The Contractor must be a manufacturer's authorized representative for parts, repair services and must have an operational repair facility regularly engaged in the business of providing John Deere parts and repair services for a minimum of three (3) consecutive years within the last five (5) years.
- 3.3. The Contractor must be a manufacturer authorized warranty repair facility equipped with all tools, diagnostic equipment, and supplies necessary to repair and provide warranty services (when requested by the City) for John Deere equipment and other equipment with a John Deere engine. In order to minimize downtime of City units, said facility shall be located within 30 miles of the Texas State Capitol.
- 3.4. The Contractor must have a facility with adequate warehouse space and equipped with supplies and equipment necessary to satisfy the requirements of the Contract.

- 3.5. The Contractor shall maintain a storage area that is secure from vandalism or theft, for all City units and equipment at the Contractor's location.
- 3.6. The Contractor shall have a minimum of two (2) service technicians, fully qualified to work on John Deere equipment and other equipment with a John Deere engine. The Contractor shall be able to verify that all service technicians have had sufficient training with a minimum of three (3) years hands-on experience within the last five (5) years working on John Deere equipment and other equipment with a John Deere engine. Training certificates and/or documentation shall be provided to the City, upon request.

4. CONTRACTOR'S RESPONSIBILITIES FOR REPAIR SERVICES

- 4.1. The Contractor shall provide all labor, parts, equipment, materials, tools, supervision, and transportation required to perform the services described herein. Contractor shall perform all services according to manufacturer recommended repair techniques and standards.
- 4.2. The Contractor shall stock or have immediate access to a parts inventory sufficient to complete needed repairs within the timeframe stipulated in this Statement of Work.
- 4.3. The Contractor shall perform all repair services on the Contractor's premises.
- 4.4. The Contractor shall transport (pick up and/or return) all drivable City units to and/or from the Contractor's place of business where the repair services will be completed. Unit(s) in need of repair(s) shall be picked up within one (1) working day after notification and returned within one (1) working day after completion of the repair(s). On occasion, the city may transport units to and/or from the Contractor's place of business for repair services.
- 4.5. The City will provide transportation for non-drivable units to the Contractor's premises. Upon completion of repairs, the Contractor shall deliver the unit back to the City within one (1) working day after completion of the repair(s).
- 4.6. The Contractor shall diagnose the unit for repairs and provide a written cost estimate to the Fleet Service Center Manager or designee within one (1) working day after taking possession of the unit. The written cost estimate shall include:
 - The cause of failure
 - The correction or repair needed
 - Estimated labor hours and cost
 - Description and cost of parts
 - Total cost to complete repair services
 - Total amount of time needed to complete repairs
 - Unit identification (either unit number, license plate, or VIN)
- 4.7. The Fleet Service Center Manager or designee will provide written authorization (e.g. email) to proceed with the repairs after evaluating the estimate. Authorization shall include a unique delivery order number. The Contractor is not authorized to proceed with repairs based on verbal authorizations and assumes all liability and responsibility for repairs performed based on such verbal authorizations.
- 4.8. The Contractor shall submit a new cost estimate if the cost of the necessary repairs increases from the original cost estimate due to hidden damage. The new cost estimate shall list the additional repairs and costs and shall be submitted in advance to the Fleet Service Center Manager or designee for written (e.g. email) approval for the hidden damage repairs.

- 4.9. The Contractor shall complete the repairs within the timeframe indicated in the estimate, after receipt of the Fleet Service Center Manager or designee written approval to proceed with the repairs. If more time is required to complete the necessary repairs, the Contractor shall request an extension in writing (e.g. email) that includes the reason for the extension and the date repairs will be completed. The Fleet Service Center Manager or designee must approve the Contractor's request for extension in writing (e.g. email).
- 4.10. Upon receipt of the repaired unit, the Fleet Service Center Manager or designee will inspect the repairs for compliance with all contract requirements and to ensure repairs were completed in a satisfactory manner. If, upon inspection, deficiencies are detected, the repairs shall be rejected and the Contractor shall be required to make the necessary adjustments or correct the repairs at its own expense. This includes round trip transportation, if applicable. If corrective work is required, the Contractor will arrange for pickup of the unit within one (1) business day of notification. Contractor shall complete corrective work within one (1) business day unless additional time is approved by the Fleet Service Center Manager or designee in writing (e.g. email).
- 4.11. The Contractor shall anticipate that repairs made will be tested and/or inspected by the City during the term of the Contract. Fleet Services reserve the right to conduct any tests or inspections deemed necessary to ensure services or parts conform to the vehicle or equipment manufacturer's specifications. Inspections completed by the City will not relieve the Contractor of its obligation to ensure all repairs, articles, materials, and parts are consistent with the vehicle or equipment manufacturer's specifications, and are fit for their intended use.
- 4.12. The Contractor shall be responsible for any damage by the Contractor or Contractor's Subcontractor to City equipment, buildings, and/or property. Any damage shall be repaired at the Contractor's expense.
- 4.13. The Contractor shall be responsible for risk of loss or damage to all items in the care, custody, and control of the Contractor until accepted by the Fleet Service Center Manager or designee.
- 4.14. The Contractor shall provide an itemized invoice to the Fleet Service Center Manager or designee, upon completion of each repair. The invoice shall include the following information:
- Date repairs were authorized
 - List of repairs made
 - Date repairs were completed
 - Itemized list of parts and other products used for the repairs
 - Number of labor hours associated with the repairs
 - Repaired unit identification (either unit number, license plate, or VIN)
- 4.15. The Contractor shall return all non-usable cores to the City upon completion of the repair job, if cores are applicable to the repair. The City will not be charged for usable cores from City units repaired at Contractor's facility.
- 4.16. The Contractor shall provide the parts removed during repair of the unit, for verification purposes upon request by the Fleet Service Center Manager or designee.
- 4.17. The Contractor shall provide a 12-month labor warranty for all repair services. A copy of the labor warranty shall be provided to the Fleet Service Center Manager or their respective designee with each delivery.
- 4.18. The Contractor warrants that all repair parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time. The warranty period shall not start until the part is actually installed on a unit as evidenced by the Contractor's invoice for repair services. This warranty shall provide for replacement parts and shall include pick up and return of the unit, removal

of the defective part and installation of the replacement part at no additional cost. A copy of the manufacturer's parts warranty shall be provided to the Fleet Service Center Manager or their respective designee within five (5) calendar days of request by the City.

- 4.19. The Contractor shall provide, upon request, a monthly and/or yearly total of all repairs performed for Fleet Services. The City prefers that the report be in an electronic format that may be sorted or other City-approved format. The report shall itemize repairs by date, Service Center that placed the order, type of repair, cost for labor (including hours and rates), description and cost for parts, total cost of repair, and repaired unit identification (either unit number, license plate, or VIN).

5. CONTRACTOR'S RESPONSIBILITIES FOR PARTS

- 5.1. The Contractor shall stock or have immediate access to a parts inventory sufficient to fill stock orders 95% of the time and to complete needed repairs within the timeframe stipulated in this Statement of Work. The stock level required shall be a two-week supply of inventory, which will be determined by the City after Contract award. All parts will be ordered on an as-needed basis. The City reserves the right to inspect the Contractor's, or the Contractor's Subcontractor's, parts inventory and/or repair facility.
- 5.2. Within five (5) business days of Contract execution, the Contractor shall submit to the Fleet Services Contract Manager two (2) CDs or electronic copies, if available, of the price list(s) upon which the markups are based on the bid sheet. The City will accept a printed copy only if no electronic format is available.
- 5.3. If a price list is no longer available in hard copy or electronic format, the Contractor shall grant the City access to a company website or company-owned local computer to research parts pricing for verification purposes. If the Contractor is unable to provide a CD, electronic copies, access to a company website, or a hard copy of the price list, the Contractor shall document by written invoice from the supplier the cost for all parts charged to the City. The cost documentation must be submitted with each invoice.
- 5.4. The Contractor shall provide new parts, except for core components on renewed assemblies. Parts must meet all applicable federal, state and local requirements for quality and safety. If new parts are not available, or if Fleet Services requests them in writing (e.g. email), remanufactured or rebuilt parts may be used. Used, factory seconds, remanufactured, shopworn, demonstrator, prototype, and discontinued parts or materials are not acceptable.
- 5.5. The Contractor shall provide John Deere OEM parts. If John Deere OEM parts are not available, any parts that are not John Deere OEM shall be approved by the Fleet Service Center Manager or designee in writing (e.g., email), and shall be equivalent to or better than the manufacturer's parts originally installed on the respective unit.
- 5.6. The Contractor warrants that ALL parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time. This warranty shall provide for replacement parts and shall include pickup of the defective part and delivery of the replacement part at no additional cost.
- 5.7. The Contractor shall provide a copy of the manufacturer's parts warranty to the Fleet Service Center Manager or their designee within five (5) calendar days of written request by the City. The warranty period for all parts shall not start until the part is actually installed on a unit as evidenced by the City's work order or the Contractor's invoice for repair services.
- 5.8. The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.

- 5.9. The Contractor shall notify the Contract Manager and the Fleet Service Center Manager or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding the parts being sold. Failure to report this within fifteen (15) calendar days after receipt of notice may result in cancellation of the contract.
- 5.10. The Contractor shall provide a point of contact for receiving orders from the City. A City representative from the Fleet Service Center will contact the Contractor by e-mail, fax, or telephone to place an order for parts. The request will include the part number, part description, delivery requirements, and a unique delivery order number.
- 5.11. The Contractor shall confirm the quantity to be shipped to the ordering Fleet Service Center representative by telephone within two (2) hours after the order is sent.
- 5.12. The Contractor shall ship all orders for parts complete unless arrangements for partial shipments are made in advance. The Contractor shall provide, with each delivery, an invoice showing the description of each item, quantity, and unit price.
- 5.13. The Contractor shall deliver Stock Parts to the ordering Fleet Service Center as follows:
- 5.13.1 Parts ordered before 10:00 AM shall be delivered to the ordering Fleet Service Center no later than noon the next working day. Parts ordered after 10:00 AM shall be delivered within two (2) working days after the order is sent. The City will not pay shipping costs to obtain "stock" parts that the Contractor does not have in inventory at the time the City places the order.
- 5.14. The Contractor shall deliver Non-Stock Parts to the ordering Fleet Service Center within three (3) working days after the order is sent. All special orders will be honored under the Contract pricing, without any additional markups.
- 5.15. The Contractor shall deliver Back-ordered (or out-of-stock) Parts to the Fleet Service Center within five (5) working days after the order is sent. The Contractor shall advise the ordering Fleet Service Center representative by telephone of when the part(s) will be available. Notification will be within two (2) hours after the order is sent. If the Contractor cannot provide the backordered part within five (5) working days, the City reserves the right to purchase the part on the open market and charge the Contractor the difference between the Contract price and the purchase price in accordance with the Performance paragraph in Section 0400.
- 5.16. The Contractor shall deliver "Code Red" orders **within four (4) business hours after the order is sent**. A delivery fee may be assessed for any "Code Red" orders placed by the City as indicated on the Bid Sheet, Section 0600. "Code Red" must be noted on the invoice when authorized by the City.
- 5.17. The Contractor shall provide, upon request, a monthly and/or yearly total of all parts purchased by Fleet Services. The City prefers that the report be in an electronic format that may be sorted, or other City-approved format. The report shall include date purchased, invoice number, part number, part description, price per part, and the total dollar amount for all parts purchased.

6. CONTRACTOR'S TRAINING RESPONSIBILITIES

- 6.1. The Contractor, as a courtesy to the City, shall provide a qualified factory-authorized service representative to provide technical training for Fleet Services automotive technicians.
- 6.2. The training shall consist of a combination of classroom discussion and/or audio-visual aids and/or other training modules.

- 6.3. The training shall also include safety instructions, operation, maintenance, and lubrication requirements, any special adjustments and minor repair procedures. Fleet Services automotive technicians and supervisors shall also receive repair manual and parts book orientation.
- 6.4. The training shall be up to 8-hours a day, or longer if the Contractor deems necessary.
- 6.5. The date of the training shall be coordinated between the Contractor and a Fleet Service Center Manager or designee.
- 6.6. Equipment training will be held at one of the Fleet Service Centers (see Section 0505 for locations) and the classroom training will be held at a designated location arranged by a Fleet Service Center Manager or designee.

7. WORK HOURS

The City will not pay off-shift rates for repairs performed. Off-shift hours are any hours other than Monday through Friday from 7:00 A.M. through 5:00 P.M. local time.

8. PICK UP AND DELIVERY REQUIREMENTS

Pickup and delivery shall be made as specified herein during normal City business hours Monday through Friday between the hours of 7:00 A.M. through 5:00 P.M. except for City-recognized legal holidays and weekends unless requested by Fleet Services in advance (see paragraph 52 in Section 0300 for City Holidays).

9. MILEAGE

Mileage is not reimbursable, and shall not be billed. However, the Contractor may charge one flat fee as indicated on the Bid Sheet for pickup and delivery of units being repaired on Contractor's premises.

Pricing/Bld Sheet

Line Item	Part Number	Description	Price Each
1	Hourly Labor Rate	Field Service/Contractor's facility	\$125/\$115
2	T132418	Molding	\$303.68
2	4652121	Trac Wheel Rubber	\$1,736.48
4	U43792	Shank Backhoe Bucket	\$20.47
5	T62560	Isolator	\$3.94
6	TT230L	Tooth Bucket Rock	\$11.03
7	T79002	Bolt Mower Cutting Edge	\$16.29
8	T6Y5230	Tooth Scarfire	\$17.71
9	TF23P	Pin	\$4.49
10	T231644	Pulley Drive Belt Assembly	\$612.15
11	T230SP	Tooth Bucket Dirt	\$11.44
12	T230183	Hose Shield Assembly	\$200.09
13	T224795	Bushing Hydraulic Cylinder	\$138.90
14	T223946	Fuel Tank Assembly	\$539.88
15	T211749	Shank Ripper Scarifier	\$318.72
16	T209428	Key Engine Ignition	\$3.71
17	T209349	Center Cutting Edge	\$776.15
18	T207072	Fan Pulley Shaft Assembly	\$406.25
19	T161583	Snap Ring Link Pin	\$5.37
20	T156471	Filter Air	\$44.89
21	T155815	Window Cav Tractor RH	\$228.24
22	T154922	Pin Backhoe Boom	\$205.51
23	T143804	Edge Off Road Cutting	\$282.24
24	T119593	Isolator	\$208.04
25	T118750	Pipe Exhaust	\$151.60
26	SE502626	Alternator Engine main	\$353.96
27	SE501851	Starter Engine Cranking	\$223.24
28	SE501844	Starter Engine main	\$186.72
29	SE501833	Alternator Charging 180 AMPS	\$615.00
30	SE501820	HVAC Compressor Assembly	\$904.94
31	SE501454	Starter Rebuilt	\$593.31
32	SE501348	Alternator 100 AMPS	\$680.18
33	RE548737	Charger Exhaust Turbo	\$1,330.10
34	AT308274	Filter Hydraulic	\$65.11
35	670008	Couper Hydraulic Male	\$26.71
36	670007	Couper Hydraulic Female	\$42.43
37	0861105	861105Rod Bucket Hydraulic Cylinder	\$376.86
38	4420724	Mirror Cab Outside Left	\$67.14
39	AT106365	Pump Wiper Motor	\$49.44
40	AT190595	Radiator Engine Cooling	\$1,079.57
41	AT195669	Pad Outtrigger Street	\$84.00
42	AT323301	Spot Light Complete	\$45.12
43	AT328223	Controller Flex Load	\$977.85
44	AT324938	Tail Light Assembly	\$530.31
45	AT336140	Filter Transmission	\$45.41
46		Pick up and delivery of "drivable units"	No Bid
47		Flat fee for "Code Red" deliveries made w/in 4 business hours	\$40.00

Exhibit B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

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 16th day of July, 2013

CONTRACTOR

Authorized
Signature

Title

RDO Equipment
Scott A. Mignola
Parts Dept MGR

EXHIBIT C
CITY OF AUSTIN, TEXAS
Living Wages and Benefits Contractor Certification
(Please duplicate as needed)

Pursuant to the Living Wages and Benefits the Contractor is required to pay to all employees directly assigned to providing Services pursuant to this Contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this Contract:

are compensated at wage rates equal to or greater than \$11.00 per hour; and
are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title
BLYAN Field	SALES PROFESSIONAL

all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.

Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

If Contractor violates this Living Wage provision Contractor shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the Contractor to possible suspension or debarment.

Company Name RDO		
Signature of Officer or Authorized Representative <i>Scott A. Maijala</i>	Title Parts Dept MGR	Date 7-16-13
Type or Print Name Scott A. Maijala		

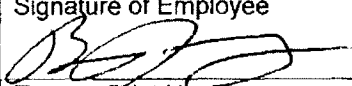
EXHIBIT D
CITY OF AUSTIN, TEXAS
Living Wages and Benefits Employee Certification

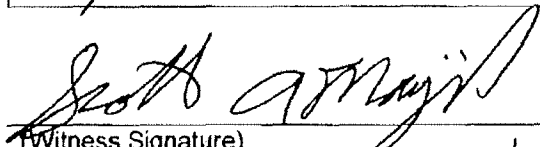
Contract Number:	Description of Services:
Contractor Name:	

Pursuant to the Living Wages and Benefits provision of the Contract, the Contractor is required to pay to all employees directly assigned to providing Services pursuant to this Contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this Contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee Name <i>Bryan Field</i>	Title <i>Sales Professional</i>
Signature of Employee 	Date <i>7-3-13</i>
Type or Print Name <i>Bryan J. Field</i>	


(Witness Signature)
Scott A. Majala
(Printed Name)

CITY OF AUSTIN, TEXAS
Purchasing Office
INVITATION FOR BID (BEST VALUE)
Offer Sheet

SOLICITATION NO: JSD0216

COMMODITY/SERVICE DESCRIPTION: John Deere OEM Parts and Repair Services

DATE ISSUED: 4/15/2013

REQUISITION NO.: RQM 7800 13032700292

PRE-BID CONFERENCE TIME AND DATE: N/A

COMMODITY CODE: 7600348

LOCATION: N/A

FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:

BID DUE PRIOR TO: 1:00 p.m. 4/30/2013

COMPLIANCE PLAN DUE PRIOR TO: N/A

Jeff Dilbert

Corporate Purchasing Manager

Phone: (512) 974-2021

BID OPENING TIME AND DATE: 1:00 p.m. 4/30/2013

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

When submitting a sealed Offer 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	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

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

SUBMIT 1 ORIGINAL AND 2 SIGNED COPIES OF OFFER

OFFER SUBMITTED BY

By the signature below, I certify that I have submitted a binding offer.


Signature of Person Authorized to Sign Offer

Scott A. Maijala Parts Dept Manager
Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. XXXXXXXXXX

Date: 4-29-2013

Company Name: RDO Equipment

Address: 16415 N.IH 35

City, State, Zip Code Pflugerville Tx. 78660

Phone No. (512) 272-4141

Fax No. (512) 272-9365

Email Address: pf.parts@rdoequipment.com

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0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	1
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT	2
0815	LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION	1
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0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE or NO GOALS UTILIZATION PLAN	2
1000	"NO OFFER" RESPONSE FORM	1

All other Sections may be viewed at: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm

RETURN THE FOLLOWING DOCUMENTS WITH YOUR OFFER**

- Cover Page Offer Sheet
- Section 0600 Bid Sheet(s)
- Section 0605 Local Business Presence Identification Form
- Section 0700 Reference Sheet (if required)
- Sections 0800 - 0835 Certifications and Affidavits (return all applicable Sections)
- Section 0900 MBE/WBE Procurement Program Package or No Goals Utilization Plan
- Bid Guaranty (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 Offer.**

The Vendor agrees, if this Offer is accepted within 90 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

*** INCORPORATION OF DOCUMENTS.** 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.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS.

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 address or phone number indicated on page 1 of this Offer Sheet. 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.

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 should be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture should be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. 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 http://www.austintexas.gov/financeonline/vendor_connection/index.cfm and follow the directions.

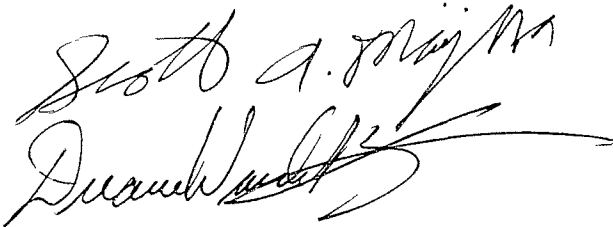
Please see below for notes / discrepancies on 6 items on the bid sheet.

- Section # 1, item# 1; we have 2 labor rates. One for field service and one for Shop service at our facility. \$115.00 / hr & \$105.00 / hr respectively. We do both for you depending on the specific situation.
- Section # 2, the below items as per later info supplied by Mr. Jeff Dilbert. Pricing reflect the price for part numbers listed below.
 - Item 5 this part number should be **T62560**
 - Item 9 this part number should be **TF23P**
 - Item 34 number supplied is from NAPA, the John Deere Equivalent for this part is **AT308274**
 - Item 37 the correct part number is **0861105**. I believe **Excel** may have not accepted the original part# with a zero at the beginning.
- Section # 4, item # 47; There are no unit the RDO has or would work on for the City of Austin that could be categorized as drivable.

Please let us know if there is any clarification needed.

Thanks

Scott Maijala & Duane Wordekemper



BID SHEET
CITY OF AUSTIN ("CITY") - FLEET SERVICES
JOHN DEERE EQUIPMENT AND EQUIPMENT WITH JOHN DEERE ENGINE

Solicitation No.: IFB Best-Value JSD0216

Special Instructions:

A bid of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to bid on that item.

The City reserves the right to award to one or more bidders, by line item based on best value.

The quantities noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide to historical usage. Actual purchases may vary.

Failure to respond to each section of this bid sheet may result in disqualification of your bid.

SECTION 1 -- HOURLY LABOR RATE (30 Points)

#	DESCRIPTION	UNIT PRICE	ESTIMATED ANNUAL QUANTITY	UNIT	EXTENDED PRICE		
1	LABOR RATE PER HOUR FOR SERVICES PROVIDED DURING NORMAL BUSINESS HOURS (Refer to Verification of Contractor's Labor Hours and Parts Pricing, Section 0400)	\$115.00	1100	Hourly	\$126,500.00		

SECTION 2 -- MOST FREQUENTLY ORDERED ITEMS (25 Points)

The quantities noted below are annual estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide to historical usage. Actual purchases may be more or less.

#	CITY PART NUMBER	DESCRIPTION	INDICATE MANUFACTURER OFFERED*	DEALER COST	% MARK-UP TO DEALER COST	UNIT PRICE TO CITY	UNIT	ESTIMATED ANNUAL QUANTITY	EXTENDED PRICE
2	T132418	MOLDING		\$	%	\$303.68	EA	1	\$303.68
3	4652121	TRAC WHEEL RUBBER		\$	%	\$1,736.48	EA	2	\$3,472.96
4	U43792	SHANK BACKHOE BUCKET		\$	%	\$20.47	EA	22	\$450.34
5	TY62560	**** ISOLATOR ****		\$	%	\$3.94	EA	30	\$118.20
6	TT230L	TOOTH BUCKET ROCK		\$	%	\$11.03	EA	300	\$3,309.00
7	T79002	BOLT MOWER CUTTING EDGE		\$	%	\$16.29	EA	12	\$195.48
8	T6Y5230	TOOTH SCARFIRE		\$	%	\$17.71	EA	10	\$177.10
9	T239	**** PIN *****		\$	%	\$4.49	EA	250	\$1,122.50
10	T231644	PULLEY DRIVE BELT ASSEMBLY		\$	%	\$612.15	EA	2	\$1,224.30
11	T230SP	TOOTH BUCKET DIRT		\$	%	\$11.44	EA	70	\$800.80
12	T230183	HOSE SHIELD ASSEMBLY		\$	%	\$200.09	EA	3	\$600.27
13	T224795	BUSHING HYDRAULIC CYLINDER		\$	%	\$138.90	EA	2	\$277.80
14	T223946	FUEL TANK ASSEMBLY		\$	%	\$539.68	EA	2	\$1,079.36
15	T211749	SHANK RIPPER SCARIFIER		\$	%	\$318.72	EA	2	\$637.44
16	T209428	KEY ENGINE IGNITION		\$	%	\$3.71	EA	15	\$55.65
17	T209349	CENTER CUTTING EDGE		\$	%	\$776.15	EA	6	\$4,656.90
18	T207072	FAN PULLEY SHAFT ASSEMBLY		\$	%	\$406.25	EA	2	\$812.50
19	T161583	SNAP RING LINK PIN		\$	%	\$5.37	EA	25	\$134.25
20	T156471	FILTER AIR		\$	%	\$44.89	EA	15	\$673.35
21	T155815	WINDOW CAV TRACTOR RH		\$	%	\$228.24	EA	2	\$456.48
22	T154922	PIN BACKHOR BOOM		\$	%	\$205.51	EA	2	\$411.02
23	T143804	EDGE OFF ROAD CUTTING		\$	%	\$282.24	EA	3	\$846.72
24	T119593	ISOLATOR		\$	%	\$208.04	EA	2	\$416.08
25	T118750	PIPE EXHAUST		\$	%	\$151.60	EA	2	\$303.20
26	SE502626	ALTERNATOR ENGINE MAIN		\$	%	\$353.96	EA	1	\$353.96

27	SE501851	STARTER ENGINE CRANKING	\$	%	\$223.24	EA	2	\$446.48
28	SE501844	STARTER ENGINE MAIN	\$	%	\$186.72	EA	6	\$1,120.32
29	SE501833	ALTERNATOR CHARGING 180AMPS	\$	%	\$615.00	EA	3	\$1,845.00
30	SE501820	HVAC COMPRESSOR ASSEMBLY	\$	%	\$904.94	EA	2	\$1,809.88
31	SE501454	STARTER REBUILT	\$	%	\$593.31	EA	3	\$1,779.93
32	SE501348	ALTERNATOR 100 AMPS	\$	%	\$680.18	EA	3	\$2,040.54
33	RE548737	CHARGER EXHAUST TURBO	\$	%	\$1,330.10	EA	2	\$2,660.20
34	57624	**** FILTER HYDRAULIC ****	\$	%	\$65.11	EA	10	\$651.10
35	670008	COUPER HYDRAULIC MALE	\$	%	\$26.71	EA	5	\$133.55
36	670007	COUPER HYDRAULIC FEMALE	\$	%	\$42.43	EA	5	\$212.15
37	861105	***** ROD BUCKET HYDRAULIC CYLINDER *****	\$	%	\$376.87	EA	2	\$753.74
38	4420724	MIRROR CAB OUTSIDE LEFT	\$	%	\$67.14	EA	5	\$335.70
39	AT106365	PUMP WIPER MOTOR	\$	%	\$49.44	EA	5	\$247.20
40	AT190595	RADIATOR ENGINE COOLING	\$	%	\$1,079.57	EA	2	\$2,159.14
41	AT195669	PAD OUTRIGGER STREET	\$	%	\$84.00	EA	60	\$5,040.00
42	AT323301	SPOT LIGHT COMPLETE	\$	%	\$45.12	EA	20	\$902.40
43	AT328223	CONTROLLER FLEX LOAD	\$	%	\$977.65	EA	2	\$1,955.70
44	AT324938	TAIL LIGHT ASSEMBLY	\$	%	\$30.31	EA	5	\$151.55
45	AT336140	FILTER TRANSMISSION	\$	%	\$45.41	EA	10	\$454.10
TOTAL								\$47,588.02

SECTION 3-- PICK UP AND DELIVERY (15 Points)

#	DESCRIPTION	UNIT PRICE	EST QTY	UNIT	EXTENDED PRICE		
46	Flat fee for Pickup and Delivery of City's "Driveable" units .	\$ NO BID **	50	EA	see next page		NO BID **

SECTION 4 -- DELIVERY CHARGE FOR CODE RED ITEMS ONLY (5 POINTS)

#	DESCRIPTION	ESTIMATED ANNUAL	UNIT	EXTENDED PRICE
47	Flat fee for "Code Red" deliveries, to be made within 4 business hours.	unknown	EA	\$40.00

SECTION 5 -- DEALER MARKUP FOR NON-SPECIFIED ITEMS (15 POINTS)

Bidder must be able to provide other John Deere Parts and Service

FAILURE TO PROVIDE PRICING INFORMATION FOR THIS SECTION WILL RESULT IN DISQUALIFICATION OF YOUR BID

Indicate below the MARK-UP TO DEALER COST the City will be charged for all items not listed above in Section 1.

Include Price List name, number and date. If there is no price list, please indicate "no list" and provide your percentage markup to your cost. If no price list is available, the Contractor must furnish with each invoice to the City, proof of Dealer Cost with a copy of invoice from supplier.

Indicate below the Manufacturer's Price List(s) offered in response to this solicitation.

#	MANUFACTURER'S PRICE LIST*	DATE OF PRICE LIST**	NAME AND NUMBER OF PRICE LIST***	MARK-UP TO DEALER COST
48	JOHN DEERE	NO LIST	JOHN DEERE parts sold to the City by RDO Equipment CO. are sold at JOHN DEERE list Price.	_____ %
49	HOLMBURY INC	NO LIST	No List	42.80%
50				_____ %
51				_____ %
52				_____ %

* INDICATE MANUFACTURER OFFERED FOR THIS ITEM.		
** DATE OF PRICE LIST – The effective date of the price list listed above shall be disclosed. This Bid will be based on the latest published price list. (Refer to Published Price List, Section 0400.)		
*** PRICE LIST NAME AND NUMBER – Offeror shall include the current price list Name and Number used for the pricing they included in the Bid.		
SECTION 6-- CONFIRMATION OF REQUIREMENTS		
53	State the distance your "Repair Facility" is to the Texas State Capitol.	_____ 17.9 _____ MILES
54	Do you have a minimum of two (2) service technicians fully qualified to work on John Deere Equipment?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
55	Do the service technicians have 3 years of hands on experience in the last five (5) years?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
56	Can you provide "Code Red" deliveries within four (4) business hours?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
SECTION 7 -- EVALUATION CRITERIA		
<p>The Contractor will be selected by the City based on a best-value model. Evaluation factors outlined below shall be applied to all eligible, responsive Bidders in comparing and selecting the successful Bid. Award of a Contract may be made without discussion with Bidders after Bids are received. Bids should, therefore, be submitted on the most favorable terms.</p> <p>The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years.</p> <p>The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located.</p> <p>The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.</p> <p>Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. (Section 0605)</p>		
SECTION 8 -- EVALUATION FACTORS		MAXIMUM POINTS (100 Points total)
Cost for Most Frequently Ordered Items (i.e., Specified Items)		25
Hourly Labor Rate for Repairs		30
Dealer Markup for Non-Specified Items		15
Flat Fee for Pickup and Delivery (Round Trip)		15
Delivery Charge for Code Red		5
Local Business Presence (10 Points Maximum based on % of work performed by companies with a Local Presence) Local business presence of 90% to 100% - 10 points Local business presence of 75% to 89% - 8 points Local business presence of 50% to 74% - 6 points Local business presence of 25% to 49% - 4 points Local presence of between 1 and 24% - 2 points No local presence - 0 points		10
SECTION 9 -- EVALUATION OF BIDS		
An evaluation of all the Bids received for this solicitation will be made in a comparative manner to determine which Bids offer the best value to the City of Austin. BIDDER MUST SUBMIT TWO (2) PRINTED COPIES OF ITS SIGNED BID - one original and one copy. Two (2) CDs or electronic copies, if available, of the price list(s) upon which the markups are based shall be submitted within five (5) working days after notice of award. The City will accept a printed copy only if no electronic format is available. ALL PAGES OF THE BID SHEET MUST BE RETURNED OR THE BID MAY BE DISQUALIFIED.		
DELIVERY TERMS: PrePaid FOB DESTINATION, FREIGHT PRE-PAID AND ALLOWED ALL CODE RED DELIVERIES TO BE MADE WITHIN 4 BUSINESS HOURS AFTER THE ORDER IS SENT. DELIVERY METHOD: COMMON CARRIER _____X_____ VENDOR STAFF _____ COMPANY NAME: _____RDO EQUIPMENT _____ SIGNATURE OF AUTHORIZED REPRESENTATIVE:  PRINTED NAME: SCOTT A MAJALA EMAIL ADDRESS pf.parts@rdoequipment.com		

City of Austin
Purchasing Office
Local Business Presence Identification Form

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE).

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN.

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	RDO Equipment Co.					
Address	16415 N. IH 35 Pflugerville Tx 78660					
Is Firm located in the Corporate City Limits? (circle one)	Yes		No			
In business at this location for past 5 yrs?	Yes		No			
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes		No			
In business at this location for past 5 yrs?	Yes		No			
Location Type:	Headquarters	Yes	No	Branch	Yes	No

City of Austin
Purchasing Office
Local Business Presence Identification Form

SUBCONTRACTOR(S)

Name of Local Firm						
Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

ACKNOWLEDGEMENT

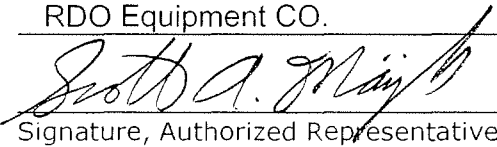
THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information provided on **Form 0605** are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

RDO Equipment CO.



Signature, Authorized Representative of Offeror

Parts Department Mgr

Title

4-29-2013

Date

END

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**
Please Complete and Return This Form with the Offer

Solicitation Number: JSD0216

Offeror's Name RDO EQUIPMENT CO.

Date 4-26-2013

The Offeror shall furnish, with the Offer, the following information, for at least **5** recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

Add Reference

Company's Name	CITY OF CEDER PARK		
Name of Contact	JAMES	Contact Title	
Present Address	450 CYPRESS CREEK RD BLD # 1		
City	CEDAR PARK	State	Texas Zip Code 78613
Telephone Number	(512) 401-5150	FAX Number	(512) 336-4859
Email Address			

Company's Name	CITY OF ROUND ROCK		
Name of Contact	GABRIEL APODACA	Contact Title	PARTS MANAGER
Present Address	221 E MAIN STREET		
City	ROUND ROCK	State	Texas Zip Code 78664
Telephone Number	(512) 218-5567	FAX Number	(512) 218-5442
Email Address	gapodaca@round-rock.tx.us		

Company's Name	HAYS COUNTY		
Name of Contact	HEATH	Contact Title	
Present Address	149 PARK 35 COVE S		
City	BUDA	State	Texas Zip Code 78610
Telephone Number	(512) 295-1250	FAX Number	
Email Address			

Company's Name	WILLIAMSON COUNTY		
Name of Contact	EDWARD POSPISIL	Contact Title	
Present Address	3151 SE INNER LOOP STE C		
City	GEORGETOWN	State	Texas Zip Code 78626
Telephone Number	(512) 943-3349	FAX Number	
Email Address			

Company's Name	CITY OF SAN MARCOS		
Name of Contact	BOB HARENDT	Contact Title	EQUIPMENT SUPERVISOR
Present Address	630 E. HOPKINS		
City	SAN MARCOS	State	Texas Zip Code 78666
Telephone Number	(512) 353-4444	FAX Number	
Email Address	wellman_diana@ci.san-marcos.tx.us		

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

SOLICITATION NO JSD0216

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 26th day of April, 2013.


CONTRACTOR	<u>RDO EQUIPMENT CO.</u>
Authorized Signature	<u></u>
Title	<u>GENERAL MANAGER</u>

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION

SOLICITATION NO. JSD0216

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:	<div style="border: 1px solid black; min-height: 20px;">RDO EQUIPMENT CO.</div>		
Signature of Officer or Authorized Representative:		Date:	<div style="border: 1px solid black; min-height: 20px;">4-26-2013</div>
Printed Name:	<div style="border: 1px solid black; min-height: 20px;">CORY KOSSE</div>		
Title:	<div style="border: 1px solid black; min-height: 20px;">GENERAL MANAGER</div>		

CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT
SOLICITATION NO. JSD0216
FOR

John Deere Parts and Service

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

The term "Offeror", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.


If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Offeror's
Explanation:

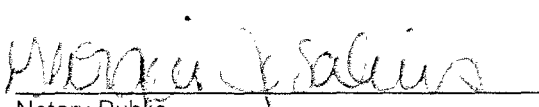
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7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

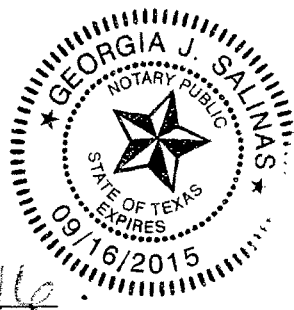
Contractor's Name:	RDO EQUIPMENT CO.
Printed Name:	CORY D KOSSE
Title:	GENERAL MANAGER


Signature of Officer or Authorized Representative:

Subscribed and sworn to before me this 24th day of April, 2013.


Notary Public

My Commission Expires 09/15/16



CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO. JSD0216

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

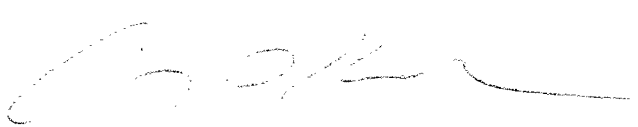
- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add	BRYAN FIELD	SALES PROFESSIONAL
Delete		
Add	SUSAN SCHOCK	CUSTOMER SERVICE ADVISOR
Delete		

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name:	RDO EQUIPMENT CO.		
Signature of Officer or Authorized Representative:		Date:	4-26-2013
Printed Name:	CORY KOSSE		
Title:	GENERAL MANAGER		

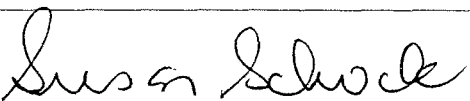
**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	John Deere Parts and Service
Contractor Name:	RDO EQUIPMENT CO.

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Customer Service Advisor		
Signature of Employee:		Date:	4-26-2013
Employee's Printed Name:	Susan Schock		


(Witness Signature)


(Printed Name)

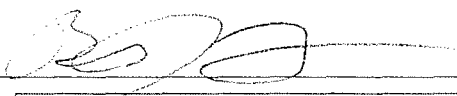
**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

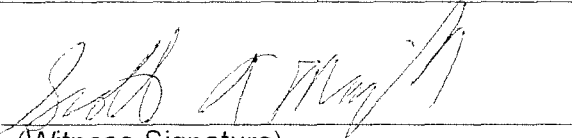
Contract Number:	
Description of Services:	John Deere Parts and Service
Contractor Name:	RDO EQUIPMENT CO.

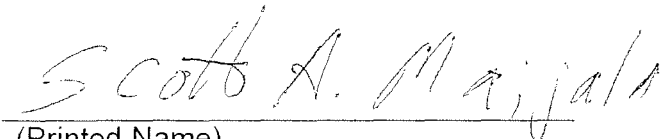
Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Sales Professional		
Signature of Employee:		Date:	4-25-2013
Employee's Printed Name:	Brian Field		


(Witness Signature)


(Printed Name)

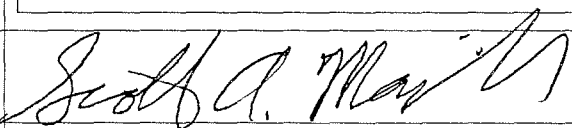
City of Austin, Texas
NONRESIDENT BIDDER PROVISIONS
SOLICITATION NO. JSD0216

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

- ☐ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- ☒ Non-resident Bidder

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state? ☐ Yes ☒ No

Bidder's Name:	RDO EQUIPMENT CO.		
Signature of Officer or Authorized Representative:		Date:	4-26-2013
Printed Name:	Scott A. Maijala		
Title:	Parts Dept Mgr		

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER: JSD0216

PROJECT NAME: John Deere Equipment Parts and Service

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No X If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

RDO Equipment Co.

Company Name

Scott A Maijala

Name and Title of Authorized Representative (Print or Type)

Scott A. Maijala
Signature

4-29-2013

Date



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 05/08/2013

DEPT: Fleet Services

TO: Purchasing Officer or Designee

FROM: Hazel Black

BUYER: Jeffrey Dilbert

PHONE: (512) 974-1751

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212

☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for

cooperative purchasing administered by a regional planning commission established under Chapter 391

☐ services performed by blind or severely disabled persons

☐ goods purchased by a municipality for subsequent retail sale by the municipality

☐ electricity

☐ advertising, other than legal notices

☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Request a MA for estimated \$1,888,526.02 over a six-year period with RDO Equipment Co. Pflugerville, TX 512-272-4141 to provide OEM parts and repair services for all City owned John Deere Construction Equipment. OEM parts and repair services are only available from an authorized distributor and RDO Equipment Co in Pflugerville, TX is the sole source and authorized John Deere Construction Dealer for the Austin Area. There are no other authorized John Deere construction equipment distributors that can provide sales, parts, and repair service to the Austin Area.

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: Evaluation of other firms, knowledge of market, etc).

There are no other authorized distributors for John Deere construction equipment in the Austin area. John Deere has authorized distributors and RDO Equipment Co in Pflugerville, TX is the sole source and authorized John Deere Construction Dealer for the Austin Area. John Deere authorized distributors outside the State of Texas may not sell John Deere OEM parts or provide repair services to customers located in Texas.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with RDO Equipment Co. 16415 N.IH-35 Pflugerville, TX 78660 which will cost approximately \$ 1,888,526.02 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Hazel Blank 5/8/13 uma
Originator Date

Approved
Certification

J. C. Calk 05/16/13
Department Director or designee Date

Randy Paray 5/16/13
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

[Signature] 5/30/13 N/A
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

[Signature] 5/31/2013
Purchasing Officer or designee Date

02/07/2013



JOHN DEERE

John Deere Construction & Forestry Company
1515 5th Avenue Moline, IL 61265

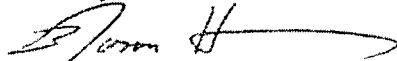
Jason Herrmann
Territory Customer Support Manager

April 15, 2013

To Whom It May Concern:

This letter is to acknowledge that RDO Equipment Company, with a facility in Pflugerville, Texas is the sole source and authorized John Deere Construction dealer for the Austin area. RDO Equipment Co. provides our customers in the Austin area with sales, parts, and service for their John Deere construction equipment. There are no other authorized construction equipment distributors for John Deere in the Austin area. In addition, authorized distributors for John Deere outside the state of Texas may not sell John Deere OEM parts or provide repair services to customers located in Texas.

Sincerely,


Jason Herrmann

Request for Chief of Staff Signature

What needs to be signed? Please provide a short summary of document.

A Certificate of Exemption to purchase OEM parts and repair services for City owned John Deere construction equipment from RDO Equipment Co., Pflugerville, Texas.

Why is the Chief of Staff's Signature needed?

Purchasing Office Policy requires ACM approval for purchases over \$50,000

Do you need this back before the three day requirement? If yes, why?

No.

Who should this form be returned to?

Urcha Dunbar-Crespo, Fleet Services



Director's Signature

05/20/2013

Date

All requests should be forwarded from one Single Point of Contact (SPOC) in each department. Requests for signature should be submitted three days prior to needing the document signed. All documents for signature should be submitted in hard copy, with this form attached. Once signed, documents will be scanned and sent back to the department SPOC electronically, as well as the hard copy forwarded back to the department. It is the responsibility of the department to handle the signed document from that point for distribution.

For Chief of Staff Office Use

_____ Date Received _____ Date Signed _____ Date Returned