



Amendment No. 4
To
Contract No. GA150000057
For
Weed Killer, Roundup Quickpro, 6.8 lb Container Liquid
Between
Red River Specialties, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 13, 2020, through April 12, 2021. No options remain.
- 2.0 The above-referenced contract also incorporates a correction to Amendment 3, revised to correct option amount of \$5,200.00. Amount of \$5,653.44 was entered in error. Combination of two vendors in one amendment (Amendment 6) was also in error. This amendment corrects all previous mistakes.
- 3.0 The total contract amount is increased by \$5,200.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/13/2015 – 04/12/2018	\$15,600.00	\$15,600.00
Amendment No. 1: Administrative Increase of 25% 05/16/2017	\$3,900.00	\$19,500.00
Amendment No. 2: Option 1 - Extension 04/13/2018 – 04/12/2019	\$5,200.00	\$24,700.00
Amendment No. 3: Option 2 - Extension 04/13/2019 – 04/12/2020 Price Increase of 8.72% 04/13/2019	\$5,200.00	\$29,900.00
Amendment No. 4: Option 3 – Extension 04/13/2020 – 04/12/2021 Correction: Action Amount in Amendment No. 3 revised to correct option amount of \$5,200.00. Amount of \$5,653.44 was entered in error. Combination of both vendors in one amendment (Amendment 6) was also in error. This amendment corrects all previous mistakes.	\$5,200.00	\$35,100.00

- 4.0 MBE/WBE goals do not apply to this contract.
- 5.0 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.
- 6.0 All other terms and conditions remain the same.

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

Sign/Date:

Chad Chambliss 4/1/20

Printed Name:

Chad Chambliss

Authorized Representative

RedRiver Specialties, Inc.
P O Box 831
Winnie, TX 77665
Chad Chambliss
Chad.chambliss@rrsi.com

Sign/Date:

Diana McIntosh

Digitally signed by Diana
McIntosh
Date: 2020.04.01 13:19:51 -05'00'

Date: April 1, 2020

Diana McIntosh
Procurement Specialist II

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




**Amendment No. 7
To
Contract No. GA150000057
For
Mojave 70 EG 5 lb. Bag
Between
SiteOne Landscape Supply, LLC
and the
City of Austin**

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be April 13, 2020, through April 12, 2021. No options remain.
- 2.0 The above-referenced contract is amended to accept a price increase for the Mojave 70 EG 5LB bags herbicide from \$47.43 to \$49.95 per bag.
- 3.0 The above-referenced contract incorporates a correction to Amendment 4 and Amendment 5 which contained erroneous data. Total Action Amount posted in alternate Amendment 6 was in error and has been revised. Combining two vendors into Amendment 6 also in error. This amendment corrects all previous mistakes.
- 4.0 The total contract amount is increased by \$8,880.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/13/2015 – 04/12/2018	\$26,640.00	\$26,640.00
Amendment No. 1: Vendor Change 12/17/2015	\$0.00	\$26,640.00
Amendment No. 2: Price Increase of 2.32% 04/13/2017	\$0.00	\$26,640.00
Amendment No. 3: Administrative Increase 04/21/2017	\$6,660.00	\$33,300.00
Amendment No. 4: Option 1 – Extension 04/13/2018 – 04/12/2019	\$8,880.00	\$42,180.00
Amendment No. 5: Option 2 – Extension 04/13/2019 – 04/12/2020	\$8,880.00	\$51,060.00
Amendment No. 6: Administrative Increase 08/14/2019	\$8,906.56	\$59,966.56
Amendment No. 7: Option 3 – Extension 04/13/2020 – 04/12/2021 Increase for the Mojave 70 EG 5LB bags herbicide from \$47.43 to \$49.95 per bag Correction: Amendment 4 & 5 contained erroneous data. Total Action Amount posted in alternate Amendment 6 was in error and has been revised. Combining both vendors into Amendment 6 also in error. This amendment corrects all previous mistakes.	\$8,880.00	\$68,846.56

- 5.0 MBE/WBE goals do not apply to this contract.
- 6.0 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.
- 7.0 All other terms and conditions remain the same.

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

Signature: 

Date: April 1, 2020

Printed Name: Keith McGinty

Authorized Representative

SiteOne Landscape Supply LLC

1385 East 36th St

Cleveland, TX 744114

bids@siteone.com

Keith McGinty

Diana
Signature: McIntosh

Date: April 1, 2020

Diana McIntosh

Procurement Specialist II

City of Austin

Purchasing Office

124 W. 8th Street, Ste. 310

Austin, Texas 78701

Digitally signed by Diana
McIntosh
Date: 2020.04.01 14:14:12
+05'00'



March 31, 2020
David Woznicki
SiteOne Landscape
1385 E. 36th Street
Cleveland, OH 44114

Per your request I am writing this letter to document a price change on the following product. Mojave 70EG has incurred an approximate price increase of 4% from February 2018 through March 2020. Many factors have driven this cost increase including, but not limited to, raw material, transportation and labor increases.

Should you need any further information on this matter, please contact me directly.

Thank you for your continued support and business.

Best Regards,

Paul Fox
Quali-Pro Florida Area and Key Account Manager
paul.fox@controlsolutionsinc.com
(727) 423-9280



Amendment No. 6
to
Contract No. MA 8100 GA 150000057
for
Herbicide & QuickPro Roundup Liquid
Between
Siteone Landscape Supply LLC
and
Red River Specialties, Inc.
and the
City of Austin

- 1.0 The City hereby exercises an administrative increase for the subject contract in the amount of \$8,906.56 for Quickpro Roundup Liquid.
- 2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Basic Term: 04/13/2015 - 04/12/2018	\$15,600.00	\$15,600.00
Amendment No. 1: Administrative Increase 4/21/2017	\$3,900.00	\$19,500.00
Amendment No. 2: Extension Option No. 1 04/13/2018 - 04/12/2019	\$5,200.00	\$24,700.00
Amendment No. 3: Extension Option No. 2 04/13/2019 - 04/12/2020 and 8.72% price increase	\$5,653.44	\$30,353.44
Amendments No. 4 and 5 were created referencing the contract portion for Siteone Landscape Supply LLC only	\$0.00	\$81,413.44
Amendment No. 6: Administrative increase of \$8,906.56 increasing the total contract amount for both vendors to \$90,320.00.	\$8,906.56	\$90,320.00

- 3.0 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.


DeJuan Brown
Procurement Specialist II

Date:

08/14/2019



Amendment No. 5
to
Contract No. MA 8100 GA 150000057
for
Mojave 70 EG 5 lb. Bag
between
SiteOne Landscape Supply LLC
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective April 13, 2019 through April 12, 2020. One 12 month-extension option will remain.
- 2.0 The total contract amount is increased by \$8,880.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 04/13/2015 through 04/12/2018	\$26,640.00	\$26,640.00
Amendment No. 1: Vendor Name Change 10/19/2015	\$0.00	\$26,640.00
Amendment No. 2: Price Increase 4/13/2017	\$0.00	\$26,640.00
Amendment No. 3: Administrative Increase 4/21/2017	\$6,660.00	\$33,300.00
Amendment No. 4: Extension Option No. 1 04/13/2018 - 04/12/2019	\$8,880.00	\$42,180.00
Amendment No. 5: Extension Option No. 2 04/13/2019 through 04/12/2020	\$8,880.00	\$51,060.00

- 3.0 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.

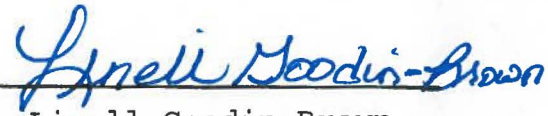
4.0 All other terms and conditions remain the same.

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

Sign/Date:  1-24-19

Printed Name: Keith McGinty, Director
Authorized Representative

SiteOne Landscape Supply LLC.
1385 East 36th St
Cleveland, TX 44114
bids@johndeere landscapes.com
Keith McGinty

Sign/Date: 

Printed Name: Linell Goodin-Brown
Title: Contract Management Supervisor II

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



Amendment No. 3
to
Contract No. MA 8100 GA 150000057
for
Weed Killer, Roundup Quickpro, 6.8 lb Container Liquid
between
Red River Specialties, Inc.
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the subject contract. This extension option will be effective April 13, 2019 through April 12, 2020. One 12 month-extension option will remain.
- 2.0 The above referenced contract is also amended to accept an Economic Price Adjustment Increase of 8.72% on all Roundup QuikPRO herbicide 6.8# containers. This price increase is effective April 13, 2019.
- 3.0 The total contract amount is increased by \$5,653.44 for this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Basic Term: 04/13/2015 - 04/12/2018	\$15,600.00	\$15,600.00
Amendment No. 1: Administrative Increase 4/21/2017	\$3,900.00	\$19,500.00
Amendment No. 2: Extension Option No. 1 04/13/2018 - 04/12/2019	\$5,200.00	\$24,700.00
Amendment No. 3: Extension Option No. 2 04/13/2019 - 04/12/2020 and 8.72% price increase	\$5,653.44	\$30,353.44

- 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:  2/12/19

Printed Name: Chad Chambliss

Title: Bid Manager

Red River Specialties, Inc.
PO Box 931
Winnie, TX 77665

Sign/Date:  2-13-19

Printed Name: Lynell Goodin-Brown

Title: Contract Manager Supervisor II

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



Seamless Control LLC

Date – 1-31-2019

To : Chad Chambliss- Red River Specialties, LLC – City of Austin, Texas herbicide bid award

To whom it may concern: City of Austin Roundup QuikPRO herbicide – 6.8# container

This is to advise that pricing on Roundup QuikPRO herbicide 6.8# containers has increased by approximately 9.85% to our authorized distributors from 2015 pricing to current 2019 prices.

Respectfully,

Tim Ford – National Account Manager

Seamless Control, LLC



Amendment No. 2
to
Contract No. GA150000057
for
Weed Killer, Roundup Quickpro, 6.8 lb Container Liquid
between
Red River Specialiteis, Inc.
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective April 13, 2018, to April 12, 2019. Two options remaining.
- 2.0 The total Contract amount is increased by \$5,200.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 04/13/15 – 04/12/18	\$15,600.00	\$15,600.00
Amendment No. 1: Administrative Increase 4/21/17	\$3,900.00	\$19,500.00
Amendment No. 2: Extension No. 1 04/13/18 – 04/12/19	\$5,200.00	\$24,700.00

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

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

Signature & Date: 3/23/18 

Printed Name: Chad Chambliss
Authorized Representative

Signature & Date: Beatrice Washington 3-29-18 

Beatrice Washington, Contract Management Specialist III
City of Austin
Purchasing Office

Red River Specialiteis, Inc.
PO Box 245036
Milwaukee, WI 53224-9536

tiffany.meguess@rrsi.com

TIFFANY MEGUESS



Amendment No. 4
to
Contract No. GA150000057
for
Mojave 70 EG 5 lb. Bag
between
SiteOne Landscape Supply LLC.
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective April 13, 2018, to April 12, 2019. Two options remaining.
- 2.0 The price increase submitted by SiteOne Landscape Supply LLC., is acceptable. The price increase will include a 4.4% increase changing the current unit price from \$45.43 to \$47.43.
- 3.0 The total Contract amount is increased by \$8,880.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 04/13/15 – 04/12/18	\$26,640.00	\$26,640.00
Amendment No. 1: Vendor Name Change 10/19/15	\$0.00	\$26,640.00
Amendment No. 2: Price Increase 4/13/17	\$0.00	\$26,640.00
Amendment No. 3: Administrative Increase 4/21/17	\$6,660.00	\$33,300.00
Amendment No. 4: Extension No. 1 04/13/18 – 04/12/19	\$8,880.00	\$42,180.00

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

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

Signature & Date:

Printed Name:

Authorized Representative

[Signature] 4/4/18
Keith McGinty

Signature & Date:

[Signature] 4-10-18
Beatrice Washington, Contract Management Specialist III
City of Austin
Purchasing Office

SiteOne Landscape Supply LLC.
1385 East 36th St
Cleveland, TX 44114

bids@johndeereLandscapes.com
Keith McGinty



**Amendment No. 3
to
Contract No. GA150000057
for
Golf Course Supplies
between
SiteOne Landscape Supply, LLC
and the
City of Austin, Texas**

1.0 The City hereby amends the above-referenced contract to administratively increase available funding in an amount not to exceed \$6,660.00 effective 4/21/17.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/13/15 – 4/12/18	\$26,640.00	\$26,640.00
Amendment No. 1: Vendor Name Change	\$0.00	\$26,640.00
Amendment No. 2-Price Increase	\$0.00	\$26,640.00
Amendment No. 3-Administrative Increase 04/21/17	\$6,660.00	\$33,300.00

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

4.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.


Signature & Date:



Printed Name: Molly M. Vorous
Authorized Representative

SiteOne Landscape Supply, LLC
10805 Metric Blvd.
Austin, Texas 78758-4524

Signature & Date:



Monica McClure, 5/9/2017
Contract Management Specialist IV
City of Austin Purchasing Office



Amendment No. 1
to
Contract No. GA150000057
for
Weed Killer, Roundup Quickpro, 6.8 lb Container Liquid
between
Red River Specialties, Inc.
and the
City of Austin, Texas

1.0 The City hereby amends the above-referenced contract to administratively increase available funding in an amount not to exceed \$3,900.00 effective 4/21/17.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/13/15 – 4/12/18	\$15,600.00	\$15,600.00
Amendment No. 1: Administrative Increase	\$3,900.00	\$19,500.00

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

4.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:



Printed Name: Chad Chambliss
Authorized Representative

Red River Specialties, LLC
P.O. Box 931
Winnie, Texas 77665

Signature & Date:



Monica McClure,
Contract Management Specialist IV
City of Austin Purchasing Office

9/16/2017



Amendment No. 2
to
Contract No. GA150000057
for
Golf Course Supplies
between
SiteOne Landscape Supply, LLC
and the
City of Austin, Texas

- 1.0 The City hereby amends the above-referenced contract to accept a justified price increase as described in Section 0400-Supplemental Purchase Provisions, Article 9-Economic Price Adjustment, Paragraph C of the above referenced contract.

Bid Sheet Item 1: Mojave 70Eg Herb 5 lb. bag (EPA#81927-25) is revised from awarded price of \$44.40 per 5 lb. bag to price increase amount of 2.32% to a new price of \$45.43

- 2.0 In accordance with Section 0400-Supplemental Purchase Provisions, Article 9-Economic Price Adjustment, Paragraph C of the above referenced contract: The accepted price increase shall become effective on the anniversary date of the contract: April 13, 2017.

- 3.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 4/13/15 – 4/12/18	\$26,640.00	\$26,640.00
Amendment No. 1: Vendor Name Change	\$0.00	\$26,640.00
Amendment No. 2-Price Increase	\$0.00	\$26,640.00

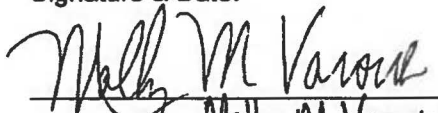
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement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

- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

Amendment No. 2

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

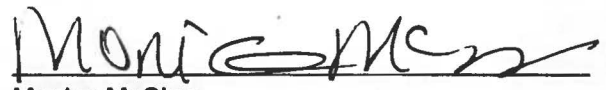
Signature & Date:



Printed Name: Molly M. Vorous
Authorized Representative

SiteOne Landscape Supply, LLC
10805 Metric Blvd.
Austin, Texas 78758-4524

Signature & Date:



Monica McClure,
Contract Management Specialist IV
City of Austin Purchasing Office
3/31/2017



1385 East 36th St.
Cleveland, OH 44114
bids@siteone.com
216-706-9250 ex. 2550

City of Austin
Purchasing Office – Municipal Bldg.
124 W 8th St. Room 308
Austin TX 78701

In Reference to: Contract No. GA150000057, Bid PAX0059, Herbicide & Weed killer

We have received a cost increases since this contract went into effect in March of 2015. Please see below.

Item #	Item Desc	Awarded Price	Updated Renewal Price
83080035	Mojave 70Eg Herb 5Lb	\$44.40	\$49.71

If you have any questions, feel free to contact us.

We appreciate your business.

Regards,


Molly M Vorous
Senior Bid Representative



**Amendment No. GA150000057
to
Contract No. 1
For
Golf Course Supplies
Between
JOHN DEERE LANDSCAPES LLC
dba JOHN DEERE LANDSCAPES
and the
City of Austin, Texas**

- 1.0 The Contract is hereby amended as follows: Change the Contractor's "name" as requested by the Contractor on: October 19, 2015

	From	To
Vendor Name	John Deere Landscapes LLC/ dba John Deere Landscapes	SiteOne Landscape Supply, LLC.
Vendor Code (for City use only)	JOH8304511	JOH8304511
Vendor Federal Tax ID (FEIN)	██████████	██████████

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

Beatrice Washington
Beatrice Washington
Contract Compliance Specialist Senior
City of Austin, Purchasing Office

12/17/15
Date

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
John Deere Landscapes, Inc. (“Contractor”)
for
Mojave 70 EG 5 lb. Bag
MA 8100 GA150000057**

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

This Contract is between John Deere Landscapes, Inc. having offices at Cleveland, TX 44114 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number PAX0059.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City’s Solicitation, Invitation for Bid (IFB), PAX0059 including all documents incorporated by reference
- 1.1.3 John Deere Landscapes, Inc.’s Offer, dated 03/23/2015, including subsequent clarifications

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

- 1.2.1 This Contract
- 1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$26,640.00 for the initial Contract term and \$8,880 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

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

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

CITY OF AUSTIN

Sai Purcell

Printed Name of Authorized Person



Signature

Senior Buyer Specialist

Title:

04/13/2013

Date:



CITY OF AUSTIN, TEXAS
Purchasing Office
INVITATION FOR BID (IFB)
OFFER SHEET

SOLICITATION NO: PAX0059

COMMODITY/SERVICE DESCRIPTION: Herbicide and Weed Killer

DATE ISSUED: 03/02/2015

REQUISITION NO.: 15020300174

BID DUE PRIOR TO: 03/18/2015, 2:00 pm, local time

COMMODITY CODE: 67585
**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

BID OPENING TIME AND DATE: 03/18/2015, 2:15 pm, local time

Sai Xoomsai Purcell
Senior Buyer Specialist
Phone: (512) 972-4016
E-Mail: sai.xoomsai@austintexas.gov

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

LIVE BID OPENING ONLINE:

For information on how to attend the Bid Opening online, please select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # PAX0059	Purchasing Office-Response Enclosed for Solicitation # PAX0059
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

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

The Vendor agrees, if this Offer is accepted within 120 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.

Submit one (1) single-sided original and one (1) electronic (CD or USB) version of the complete proposal. The electronic version must be in PDF format.

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	
0500	SPECIFICATION	
0600	BID SHEET – Must be completed and returned with Offer	
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	1
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1

*** Documents 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 located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. 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.

I agree to abide by the City's MBE/WBE Procurement Program Ordinance and Rules. In cases where the City has established that there are no M/WBE subcontracting goals for a solicitation, I agree that by submitting this offer my firm is completing all the work for the project and not subcontracting any portion. If any service is needed to perform the contract that my firm does not perform with its own workforce or supplies, I agree to 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 and am including the completed No Goals Utilization Plan with my submittal. This form can be found Under the Standard Bid Document Tab on the Vendor Connection Website:

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If I am awarded the contract I agree to continue complying with the City's MBE/WBE Procurement Program Ordinance and Rules including contacting SMBR if any subcontracting is later identified.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: John Deere Landscapes
Company Address: 1385 East 36th Street
Cleveland, Ohio 44114
City, State, Zip: _____
Federal Tax ID No. [REDACTED]
Printed Name of Officer or Authorized Representative: Molly M. Vorons
Title: Senior Bid Rep.
Signature of Officer or Authorized Representative: Molly M. Vorons
Date: 3/23/15
Email Address: bids@johndeerelandscapes.com
Phone Number: 800-321-5325 ex: 2550

*** Completed Bid Sheet, section 0600 must be submitted with this Offer Sheet to be considered for award**

Section 0605: Local Business Presence Identification

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) TO BE CONSIDERED FOR LOCAL PRESENCE.

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	John Deere Landscapes					
Physical Address	Local Branch: 10805 Metric Blvd., Austin TX 78758					
Is Firm located in the Corporate City Limits? (circle one)	<input checked="" type="radio"/> Yes			No		
In business at this location for past 5 yrs?	<input checked="" type="radio"/> Yes			No		
Location Type:	Headquarters	Yes	<input checked="" type="radio"/> No	Branch	<input checked="" type="radio"/> Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A - no subcontractors will be used					
Physical 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

SUBCONTRACTOR(S):

Name of Local Firm						
Physical 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

Section 0700: Reference Sheet

Please include the following information if required in solicitation:

Responding Company Name **John Deere Landscapes**

1. Company's Name See attached
- Name and Title of Contact _____
- Present Address _____
- City, State, Zip Code _____
- Telephone Number (____) _____ Fax Number (____) _____
- Email Address _____
-
2. Company's Name _____
- Name and Title of Contact _____
- Present Address _____
- City, State, Zip Code _____
- Telephone Number (____) _____ Fax Number (____) _____
- Email Address _____
-
3. Company's Name _____
- Name and Title of Contact _____
- Present Address _____
- City, State, Zip Code _____
- Telephone Number (____) _____ Fax Number (____) _____
- Email Address _____

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

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

JOHN DEERE LANDSCAPES REFERENCE PAGE

1 Pinellas County		Mike Guild	
Company Name		Contact Person	
P.O. Box 2942	Largo	FL	33779
Street Address	City	State	Zip
(727) 638-2645			
Telephone	Fax	Email	
Supply and deliver landscaping & Irrigation supplies			
Products or Services Purchased by the above Reference			
2 East Baton Rouge – Recreation & Park Commission		Clark Lovett	
Company Name		Contact Person	
P.O. Box 15887	Baton Rouge	LA	70895
Street Address	City	State	Zip
(225) 413-5571			
Telephone	Fax	Email	
Supply and deliver landscaping supplies			
Products or Services Purchased by the above Reference			
3 City of Fort Walton Beach		Michael Tatum	
Company Name		Contact Person	
143 Hollywood Blvd. N.W. Fort Walton Beach		FL	32549
Street Address	City	State	Zip
(850) 833-9523			
Telephone	Fax	Email	
Supply and deliver landscaping & Irrigation supplies			
Products or Services Purchased by the above Reference			
4 City of Sioux Falls		Scott Rust	
Company Name		Contact Person	
224 West 9 th Street	City of Sioux Falls	SD	57104
Street Address	City	State	Zip
(605) 367-7016			
Telephone	Fax	Email	
Supply and deliver landscaping & Irrigation supplies			
Products or Services Purchased by the above Reference			
5 City of Roanoke		Robert Partridge	
Company Name		Contact Person	
108 S. Oak St.	Roanoke	TX	76262
Street Address	City	State	Zip
(817) 491-2411			
Telephone	Fax	Email	
Supply and deliver landscaping & Irrigation supplies			
Products or Services Purchased by the above Reference			

Government Agencies That Your Firm Has Done Business With:

All the above

Section 0835: Non-Resident Bidder Provisions

Company Name John Deere Landscapes

- 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"?

Answer: Non-Resident Bidder

(1) Texas Resident Bidder- A Bidder whose principle 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.

(2) Nonresident Bidder- A Bidder who is not a Texas 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?

Answer: 0-1. (No) Which State: Georgia

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

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SUPPLEMENTAL PURCHASE PROVISIONS**

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STANDARD PURCHASE TERMS AND CONDITIONS**

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

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

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

10. WORKFORCE:

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

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

12. INVOICES:

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

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13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. RIGHT TO AUDIT:

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

18. SUBCONTRACTORS:

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

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

19. WARRANTY – PRICE:

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

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

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

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

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

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

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

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

31. INDEMNITY:

A. Definitions:

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

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

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

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

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, email, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the

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Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **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.
39. **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.
40. **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.
41. **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.
42. **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

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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.

43. **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.
44. **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.
45. **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.
46. **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.
47. **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.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the

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mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **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.
50. **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.
51. **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.

52. **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.
53. **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.

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54. EQUAL OPPORTUNITY

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

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

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

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by five business days prior to the bid closing date to Sai.Xoomsai@austintexas.gov

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. 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 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. 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.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

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

B. **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.

- i. **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.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **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 Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

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- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **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.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- C. **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.

Note: If delivery is made by common carrier, then the requirements for Workers Compensation and Business Automobile insurance listed in Sections 3.B.i and 3.B.iii do not apply. The selected vendor must submit a statement on the planned method of shipment.

3. TERM OF CONTRACT:

- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to three additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

- 4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5. DELIVERY REQUIREMENTS

Location:

City of Austin-Department of Aviation

ABIA Warehouse

9400A Freight Lane

Days:

Monday-Friday

7:00 a.m. – 5:00 p.m.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

Austin, Texas 78719

- A. Delivery is to be made within 5 calendar days after the order is placed (either verbally or in writing). **In emergency situations, the Contractor shall have products on site within 24 hours after order is placed.** All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.
- D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 52 in Section 0300).

6. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Aviation
Attn:	Accounts Payable
Address	3600 Presidential Blvd., Suite 411
City, State Zip Code	Austin, TX 78719

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. **HAZARDOUS MATERIALS:**

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

8. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

9. **ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve months 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 on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty percent (20%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - i. The following definitions apply:
 - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.

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PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Chemicals & Allied Products/Lawn & Garden Pesticides & Chemicals	
Series ID: 06530107	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: United States (National)	
Description of Series ID: Chemicals & Allied Products/Lawn & Garden Pesticides & Chemicals	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.
10. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
 - B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
12. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Chris Carter

512-530-6352

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

Chris.Carter@austintexas.gov

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

QUOTE SHEET
CITY OF AUSTIN
SAHARA DG HERBICIDE

Solicitation PAX0059

Special Instructions:

A bid of '0' (zero) and/or "no bid" will be interpreted by the City that the bidder does not wish to bid on that item.

The City may award the contract for any item or group of items on the solicitation, or any combination deemed most advantageous to the City. The quantities noted below are annual estimates and not a guarantee of actual volume.

FOB Destination, freight prepaid and allowed and to be included on the bid price.

ITEM NO.	ITEM DESCRIPTION	EST ANNUAL QTY	UNIT	UNIT PRICE	EXTENDED PRICE
1	SAHARA DG HERBICIDE, 10LB BAGS, BARE GROUND VEGETATION CONTROL ON SPECIFIED NON CROP AREAS. OR APPROVED EQUIVALENT WITH MSDS SHEET <i>*Mojave 70EG 5lb. bag</i>	<i>200</i> 100	BAGS	<i>\$ 44.40/5lb. bag</i>	<i>\$ 8,880.00</i>
2	WEED KILLER, ROUNDUP QUICKPRO, 6.8LB CONTAINER LIQUID	100	BAGS	<i>\$ 71.45/jug</i>	<i>\$ 7,145.00</i>
TOTAL PRICE					<i>\$ 16,025.00</i>

OFFERORS BEST DELIVERY IS 2-14 CALENDAR DAYS AFTER RECEIPT OF ORDER

DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED

DELIVERY METHOD: BEST



**ADDENDUM
INVITATION FOR BID
CITY OF AUSTIN, TEXAS**

IFB: PAX0059

Addendum No: 1

Date of Addendum: March 17, 2015

This addendum is incorporating the following changes to the above-referenced IFB.

- 1.0 **BID DUE PRIOR TO has been extended to : 03/25/2015, 2:00 pm, local time**
BID OPENING TIME AND DATE has been extended to: 03/25/2015, 2:15 pm, local time

- 2.0 **ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:


Sai Xoomsai, Senior Buyer Specialist
Purchasing Office

03/17/2015

Date

ACKNOWLEDGED BY:
John Deere Landscapes

Vendor Name


Authorized Signature

Date

RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.
Failure to do so may constitute grounds for rejection of your offer.



MOJAVE 70 EG

BAREGROUND VEGETATION CONTROL

Specimen Label

ACTIVE INGREDIENTS:

Imazapyr (2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid)	7.78%
Diuron (3-[3,4-dichlorophenyl]-1, 1-dimethylurea)	62.22%
OTHER INGREDIENTS:	30.00%
TOTAL:	100.00%

EPA Reg. No. 81927-25

ST EPA Est. No. 39578-TX-001

BT EPA Est. No. 37429-GA-001

CSI EPA Est. No. 53883-TX-002

KEEP OUT OF REACH OF CHILDREN CAUTION! / ¡PRECAUCIÓN!

PRECAUCION AL USUARIO: Si usted no lee ingles, no use este producto hasta que la etiqueta le haya sido explicada ampliamente.

FIRST AID	
If swallowed:	<ul style="list-style-type: none">• Call a poison control center or doctor immediately for treatment advice.• Have person sip a glass of water if able to swallow.• DO NOT induce vomiting unless told to do so by a poison control center or doctor.• DO NOT give anything by mouth to an unconscious person.
If in eyes:	<ul style="list-style-type: none">• Hold eye open and rinse slowly and gently with water for 15-20 minutes.• Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye.• Call a poison control center or doctor for treatment advice.
If on skin or clothing:	<ul style="list-style-type: none">• Take off contaminated clothing.• Rinse skin immediately with plenty of water for 15-20 minutes.• Call a poison control center or doctor for treatment advice.
If inhaled:	<ul style="list-style-type: none">• Move person to fresh air.• If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible.• Call a poison control center or doctor for further treatment advice.
HOT LINE NUMBER	
Have the product container or label with you when calling a poison control center or doctor, or going for treatment. You may also contact 1-800-424-9300 for emergency medical treatment information.	

Manufactured for:
Alligare, LLC
13 N. 8th Street
Opelika, AL 36801

PRECAUTIONARY STATEMENTS HAZARDS TO HUMANS

CAUTION! Harmful if swallowed or absorbed through skin. Causes moderate eye irritation. Avoid contact with skin, eyes or clothing. Avoid breathing spray mist. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco. Remove and wash contaminated clothing and wash before reuse.

PERSONAL PROTECTIVE EQUIPMENT (PPE):

Some materials that are chemical-resistant to this product are listed below. If you want more options, follow the instructions for category A on an EPA chemical-resistance category selection chart.

All pilots, flaggers, and groundboom applicators must wear:

- Long-sleeved shirt and long pants and,
- Shoes plus socks

All mixers, loaders, other applicators, and other handlers must wear:

- Long-sleeved shirt and long pants,
- Shoes plus socks
- Chemical-resistant gloves, made of any waterproof material, such as barrier laminate, butyl rubber or polyethylene
- A NIOSH-approved dust/mist filtering respirator with any N⁹, R, P, or HE filter or a NIOSH approved dust/mist filtering respirator with approval number prefix TC-21C
- Chemical-resistant apron when mixing, loading, or cleaning equipment or spills

See engineering controls for additional requirements.

Follow manufacturer's instructions for cleaning and maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

ENGINEERING CONTROLS

Pilots must use an enclosed cockpit that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240(d)(6)].

Flaggers supporting aerial applications must use an enclosed cab that meets the definition in the Worker Protection Standard for Agricultural Pesticides [40 CFR 170.240(d)(5)] for dermal protection. In addition, flaggers must wear long-sleeved shirt, long pants, shoes, and socks.

ENVIRONMENTAL HAZARDS

For terrestrial uses, **DO NOT** apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark. **DO NOT** contaminate water when cleaning equipment or disposing of equipment washwaters.

PHYSICAL AND CHEMICAL HAZARDS

Spray solutions of **Alligare Mojave 70 EG** should be mixed, stored and applied only in stainless steel, fiberglass, plastic and plastic-lined steel containers.

DO NOT mix, store or apply **Alligare Mojave 70 EG** or spray solutions of **Alligare Mojave 70 EG** in unlined steel (except stainless steel) containers or spray tanks.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

DO NOT apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.

For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

GENERAL INFORMATION

Alligare Mojave 70 EG is a dispersible granule intended to be mixed with water and surfactant(s) for application to non-cropland areas such as railroad, utility, pipeline and highway rights-of-way, utility plant sites, petroleum tank farms, pumping installations, fence rows, storage areas, farmyards and around farm buildings, non-irrigation ditchbanks and other similar areas where bare ground is desired. **Alligare Mojave 70 EG** may also be used for weed control under paved surfaces.

When applied either preemergence or postemergence to weeds, **Alligare Mojave 70 EG** will control most annual and perennial grasses and broadleaf weeds in addition to many brush and vine species and **Alligare Mojave 70 EG** will provide residual control of labeled weeds which germinate in the treated areas. For annual weed control, preferably apply **Alligare Mojave 70 EG** either at late preemergence-to-early postemergence for best results. For perennial weed control, **Alligare Mojave 70 EG** must be applied postemergence to the target weeds, since it will not control un-emerged perennial weeds. For maximum effect, weeds should be growing vigorously at the time of postemergence application and the spray solution should include a surfactant (See **ADJUVANTS** Section for recommendations.) **Alligare Mojave 70 EG** solutions may be broadcast by using ground or aerial equipment, or may be applied as a spot treatment by using low-volume techniques.

PRECAUTIONS FOR AVOIDING INJURY TO NON-TARGET PLANTS

Alligare Mojave 70 EG can occasionally affect non-target or untreated plants by root uptake of the herbicide. Injury or loss of non-target plants may result if **Alligare Mojave 70 EG** is applied onto or near desirable plants, or to areas where their roots extend, or in areas where treated soil may be washed or moved within their drip line.

Alligare Mojave 70 EG may injure or kill most desirable plants and crops. Avoid applications of **Alligare Mojave 70 EG** to powdery-dry soil or sand soils when there is little likelihood of rainfall soon after treatment, since subsequent off-target movement of treated soil by water and/or wind may cause damage to adjacent desirable plants or crops.

IMPORTANT

DO NOT use on food or feed crops. **DO NOT** treat irrigation ditches or water used for crop irrigation or for domestic purposes. Keep away from fertilizers, insecticides, fungicides and seeds. **DO NOT** drain or flush equipment on or near desirable plants, or on areas where their roots may extend, or in locations where the chemical may be washed or moved within their drip line. **DO NOT** use on lawns, walks, driveways, tennis courts or similar areas. **DO NOT** side trim desirable vegetation with this product. Exercise precautions to prevent spray drift onto desirable plants.

The maximum application rate per application in areas of high rainfall or dense vegetation is 12.0 pounds diuron active ingredient per acre. This is equivalent to 19.0 pounds **Alligare Mojave 70 EG** per acre. For all other areas, the maximum application rate per acre is 8.0 pounds diuron active ingredient per acre. This is equivalent to 13 pounds **Alligare Mojave 70 EG** per acre. Apply a maximum of two applications per year. Allow a minimum of 90 days between applications.

This product is **NOT** registered for use in California.

Clean application equipment after using this product by thoroughly flushing with water.

NON-AGRICULTURAL USE REQUIREMENTS

The requirements in this box apply to uses of this product that are NOT within the scope of the Worker Protection Standard (WPS) for agricultural pesticides (40 CFR Part 170). The WPS applies when this product is used to produce agricultural plants on farms, forests, nurseries, or greenhouses.

Noncrop weed control is not within the scope of the Worker Protection Standard. See the GENERAL INFORMATION section of this label for a description of noncrop sites.

DO NOT enter treated areas without protective clothing until sprays have dried.

SPRAY DRIFT MANAGEMENT

The following information is provided as general guidance for managing spray drift. Specific use recommendations for Alligare Mojave 70 EG may differ, depending on the application technique used and the vegetation management objective.

Avoiding spray drift at the application site is the responsibility of the applicator. The interaction of many equipment-and-weather-related factors determine the potential for spray drift. The applicator and the grower are responsible for considering all these factors when making decisions.

Spray drift from applying this product may result in damage to sensitive plants adjacent to the treatment area. Only apply this product when the potential for drift to these and other adjacent sensitive areas (e.g. residential areas, bodies of water, known habitat for threatened or endangered species, or non-target crops) is minimal. **DO NOT** apply when the following conditions exist that increase the likelihood of spray drift from intended targets: high or gusty winds, high temperatures, low humidity, temperature inversions.

To minimize spray drift, the applicator should be familiar with and take into account the following drift reduction advisory information. Additional information may be available from state enforcement agencies or the Cooperative Extension on the application of this product.

The best drift management strategy and most effective way to reduce drift potential are to apply large droplets that provide sufficient coverage and control. Applying larger droplets reduces drift potential, but will not prevent drift if applications are made improperly, or under unfavorable environmental conditions (see **WIND, TEMPERATURE AND HUMIDITY, AND TEMPERATURE INVERSIONS**, below).

Controlling Droplet Size:

- Volume** - Use high flow rate nozzles to apply the highest practical spray volume. Nozzles with higher rated flows produce larger droplets.
- Pressure** - **DO NOT** exceed the nozzle manufacturer's recommended pressures. For many nozzle types, lower pressure produces larger droplets. When higher flow rates are needed, use higher flow rate nozzles instead of increasing pressure.
- Number of Nozzles** - Use the minimum number of nozzles that provide uniform coverage.
- Nozzle Orientation** - Orienting nozzles so that the spray is released parallel to the airstream produces larger droplets than other orientations and is recommended practice. Significant deflection from the horizontal will reduce droplet size and increase drift potential.
- Nozzle Type** - Use a nozzle type that is designed for the intended application. With most nozzle types, narrower spray angles produce larger droplets. Consider using low-drift nozzles. Solid stream nozzles oriented straight back produce the largest droplets and the lowest drift. **DO NOT** use nozzles producing a mist droplet spray.

Application Height: Making applications at the lowest possible height (aircraft, ground driven spray boom) that is safe and practical reduces exposure of droplets to evaporation and wind.

Swath Adjustment: When applications are made with a crosswind, the swath will be displaced downwind. Therefore, on the up and downwind edges of the field, the applicator must compensate for this displacement by adjusting the path of the application equipment (e.g. aircraft, ground) upwind. Swath adjustment distance should increase with increasing drift potential (higher wind, smaller droplets, etc.).

Wind: Drift potential is lowest between wind speeds of 3-10 mph. However, many factors, including droplet size and equipment type, determine drift potential at any given speed. Application should be avoided below 3 mph due to variable wind direction and high inversion potential. **NOTE:** Local terrain can influence wind patterns. Every applicator should be familiar with local wind patterns and how they affect spray drift.

Temperature and Humidity: When making applications in low relative humidity, set up equipment to produce larger droplets to compensate for evaporation. Droplet evaporation is most severe when conditions are both hot and dry.

Temperature Inversions: Drift potential is high during a temperature inversion. Temperature inversions restrict vertical air mixing, which causes small suspended droplets to remain in a concentrated cloud, which can move in unpredictable directions due to the light variable winds common during inversion. Temperature inversions are characterized by increasing temperatures with altitude and are common on nights with limited cloud cover and light to no wind. They begin to form as the sun sets and often continue into the morning. Their presence can be indicated by ground fog; however, if fog is not present, inversions can also be identified by the movement of smoke from a ground source or an aircraft smoke generator. Smoke that layers and moves laterally in a concentrated cloud (under low wind conditions) indicates an inversion, while smoke that moves upward and rapidly dissipates indicates good vertical air mixing.

Wind Erosion: Avoid treating powdery dry or light sandy soils when conditions are favorable for wind erosion. Under these conditions, the soil surface should first be settled by rainfall or irrigation.

Aerial Application Methods and Equipment: Use 2 or more gallons of water per acre. The actual minimum spray volume per acre is determined by the spray equipment used. Use adequate spray volume to provide accurate and uniform distribution of spray particles over the treated areas and to avoid spray drift.

Managing spray drift from aerial applications: Applicators must follow these requirements to avoid off-target drift movement: 1) boom length – the distance of the outermost nozzles on the boom must not exceed 3/4 the length of the wingspan or rotor, 2) nozzle orientation – nozzles must always point backward parallel with the air stream and never be pointed downward more than 45 degrees, and 3) application height – without compromising aircraft safety, applications should be made at a height of 10 feet or less above the crop canopy or tallest plants. Applicators must follow the most restrictive use cautions to avoid drift hazards, including those found in this labeling as well as applicable state and local regulations and ordinances.

Ground Application (Broadcast): Use 5 or more gallons of water per acre. The actual minimum spray volume per acre is determined by the spray equipment used. Use adequate spray volume to provide accurate and uniform distribution of spray particles over the treated area and to avoid spray drift.

WEEDS CONTROLLED BY ALLIGARE MOJAVE 70 EG

When used as directed, Alligare Mojave 70 EG provides preemergence or postemergence control with residual control of the weed species listed below. Annual weeds may be controlled by preemergence or postemergence applications of Alligare Mojave 70 EG. For established biennial and perennial vegetation control, postemergence treatments of Alligare Mojave 70 EG are recommended.

The length of residual weed control is dependent upon the weed spectrum present, the rate applied, and weather conditions. Residual control can be extended in areas with susceptible weed species, higher Alligare Mojave 70 EG use rates, lower precipitation and cooler soil temperatures. Residual control may be diminished when higher than average rainfall occurs.

Resistant Biotypes: Some weeds listed below may have naturally-occurring biotypes (plants within a given species that have a slightly different but distinct genetic makeup from other plants of that species) that are not effectively controlled by this and/or other herbicides (Oust®) with the ALS/AHAS enzyme-inhibiting mode of action. If naturally-occurring ALS/AHAS-resistant biotypes are present in an area, Alligare Mojave 70 EG should be tank-mixed or applied sequentially with a registered herbicide that depends on a different mode of action to ensure control.

WEEDS CONTROLLED¹

GRASSES

COMMON NAME	SPECIES	GROWTH HABIT ²
Annual bluegrass	(<i>Poa annua</i>)	A
Annual ryegrass	(<i>Lolium multiflorum</i>)	A
Annual sweet vernalgrass	(<i>Anthoxanthum odoratum</i>)	A
Bahiagrass ³	(<i>Paspalum notatum</i>)	P
Barnyardgrass	(<i>Echinochloa crusgalli</i>)	A
Beardgrass	(<i>Andropogon</i> spp.)	P
Bermudagrass ^{4,5}	(<i>Cynodon dactylon</i>)	P
Big bluestem ⁶	(<i>Andropogon gerardii</i>)	P
Broadleaf signalgrass	(<i>Brachiaria platyphylla</i>)	A
Canada bluegrass	(<i>Poa compressa</i>)	P
Cattail	(<i>Typha</i> spp.)	P
Cheat	(<i>Bromus secalinus</i>)	A
Cogongrass	(<i>Imperata cylindrica</i>)	P
Crabgrass	(<i>Digitaria</i> spp.)	A
Dallisgrass ⁷	(<i>Paspalum dilatatum</i>)	P
Downy brome	(<i>Bromus tectorum</i>)	A
Fall panicum	(<i>Panicum dichotomiflorum</i>)	A
Feathertop	(<i>Pennisetum villosum</i>)	P
Fescue	(<i>Festuca</i> spp.)	A/P
Foxtail	(<i>Setaria</i> spp.)	A
Goosegrass	(<i>Eleusine indica</i>)	A
Guineagrass	(<i>Panicum maximum</i>)	P
Italian ryegrass	(<i>Lolium multiflorum</i>)	A
Johnsongrass	(<i>Sorghum halepense</i>)	P
Kentucky bluegrass	(<i>Poa pratensis</i>)	P
Kyllinga	(<i>Cyperus brevifolius</i>)	A
Lovegrass	(<i>Eragrostis</i> spp.)	A/P
Maidencane	(<i>Arundinaria amabilis</i>)	P
Orchardgrass	(<i>Dactylis glomerata</i>)	P
Paragrass	(<i>Brachiaria mutica</i>)	P
Peppergrass	(<i>Lepidium virginicum</i>)	A
Phragmites	(<i>Phragmites australis</i>)	P
Prairie cordgrass	(<i>Spartina pectinata</i>)	P
Prairie threeawn	(<i>Aristida oligantha</i>)	P
Quackgrass	(<i>Agropyron repens</i>)	P
Rattail fescue	(<i>Vulpia myuros</i>)	A
Reed canarygrass	(<i>Phalaris arundinacea</i>)	P
Ricegrass	(<i>Oryzopsis hymenoides</i>)	A
Saltgrass ^{8,9}	(<i>Distichlis stricta</i>)	P
Sand dropseed ¹⁰	(<i>Sporobolus cryptandrus</i>)	P
Sandbur	(<i>Cenchrus</i> spp.)	A
Smooth brome	(<i>Bromus inermis</i>)	P
Sprangletop ¹¹	(<i>Leptochloa</i> spp.)	A
Timothy	(<i>Phleum pratense</i>)	P
Torpedograss	(<i>Panicum repens</i>)	P
Vaseygrass	(<i>Paspalum urvillei</i>)	P
Velvetgrass	(<i>Holcus lanatus</i>)	A
Wild barley	(<i>Hordeum</i> spp.)	A

MOJAVE 70 EG

Wild oats	(<i>Avena fatua</i>)	A
Wirestem muhly	(<i>Muhlenbergia frondosa</i>)	P
Witchgrass	(<i>Panicum capillare</i>)	A

BROADLEAF WEEDS¹

COMMON NAME	SPECIES	GROWTH HABIT ²
Arrowwood	(<i>Pluchea sericea</i>)	A
Ageratum	(<i>Asteraceae houstonianum</i>)	P
Broom snakeweed ³	(<i>Gutierrezia sarothrae</i>)	P
Bull thistle	(<i>Cirsium vulgare</i>)	B
Burdock	(<i>Arctium</i> spp.)	B
Canada thistle ²	(<i>Cirsium arvense</i>)	P
Carolina geranium	(<i>Geranium carolinianum</i>)	A
Carpetweed	(<i>Mollugo verticillata</i>)	A
Clover	(<i>Trifolium</i> spp.)	A/P
Cocklebur	(<i>Xanthium strumarium</i>)	A
Common chickweed	(<i>Stellaria media</i>)	A
Common ragweed	(<i>Ambrosia artemisiifolia</i>)	A
Corn spurry	(<i>Spergula arvensis</i>)	P
Dandelion	(<i>Taraxacum officinale</i>)	P
Dayflower	(<i>Commelina</i> spp.)	A/P
Desert Camelthorn	(<i>Alhagi pseudalhagi</i>)	P
Diffuse knapweed	(<i>Centaurea diffusa</i>)	A
Dock	(<i>Rumex</i> spp.)	P
Dogfennel	(<i>Eupatorium capillifolium</i>)	A
Filaree	(<i>Erodium</i> spp.)	A
Fleabane	(<i>Erigeron</i> spp.)	A
Giant ragweed ⁴	(<i>Ambrosia trifida</i>)	A
Goldenrod	(<i>Solidago</i> spp.)	P
Grey rabbitbrush	(<i>Chrysothamnus nauseosus</i>)	P
Gromwell	(<i>Lithospermum</i> spp.)	A
Groundcherry	(<i>Physalis</i> spp.)	A/P
Hawksbeard	(<i>Crepis</i> spp.)	A
Hoary vervain	(<i>Verbena stricta</i>)	P
Horse-nettle	(<i>Solanum carolinense</i>)	P
Horseweed	(<i>Conyza canadensis</i>)	A
Indian mustard	(<i>Brassica juncea</i>)	A
Japanese bamboo	(<i>Polygonum cuspidatum</i>)	P
Knawel	(<i>Scleranthus annuus</i>)	A
Kochia ⁵	(<i>Kochia scoparia</i>)	A
Lambquarters	(<i>Chenopodium album</i>)	A
Lespedeza	(<i>Lespedeza</i> spp.)	P
Little mallow	(<i>Malva parviflora</i>)	B
Marigold	(<i>Tagetes</i> spp.)	P
Milkweed	(<i>Asclepias</i> spp.)	P
Miners lettuce	(<i>Montia perfoliata</i>)	A
Morningglory	(<i>Ipomoea</i> spp.)	A/P
Mullein	(<i>Verbascum</i> spp.)	B
Nettleleaf goosefoot	(<i>Chenopodium murale</i>)	A
Oxeye daisy	(<i>Chrysanthemum leucanthemum</i>)	P
Pennycress	(<i>Thlaspi</i> spp.)	A
Pepperweed	(<i>Lapidium</i> spp.)	A
Pigweed ⁶	(<i>Amaranthus</i> spp.)	A
Pineapple weed	(<i>Meliricaria meliricarioides</i>)	P
Plantain	(<i>Plantago</i> spp.)	P
Pokeweed	(<i>Phytolacca americana</i>)	P
Prickly sida	(<i>Sida spinosa</i>)	A
Primrose	(<i>Oenothera kunthiana</i>)	P
Puncturevine	(<i>Tribulus terrestris</i>)	A
Purple loosestrife ⁷	(<i>Lythrum salicaria</i>)	P
Purslane	(<i>Portulaca</i> spp.)	A
Ragweed	(<i>Ambrosia</i> spp.)	A
Rush skeletonweed ⁸	(<i>Chondrilla juncea</i>)	B
Russian knapweed	(<i>Centaurea repens</i>)	P
Russian thistle ⁹	(<i>Salsola kali</i>)	A
Saltbush	(<i>Atriplex</i> spp.)	A
Sesbania	(<i>Sesbania</i> spp.)	A
Sicklepod	(<i>Cassia obtusifolia</i>)	A
Silverleaf nightshade	(<i>Solanum elaeagnifolium</i>)	P
Shepherd's-purse	(<i>Capsella bursa-pastoris</i>)	A
Smartweed	(<i>Polygonum</i> spp.)	A/P
Sorrell	(<i>Rumex</i> spp.)	P
Sowthistle	(<i>Sonchus</i> spp.)	A
Speedwell	(<i>Veronica</i> spp.)	A
Stinging nettle ¹⁰	(<i>Urtica dioica</i>)	P
Sunflower	(<i>Helianthus</i> spp.)	A
Sweet clover	(<i>Melilotus</i> spp.)	A/B
Tansymustard	(<i>Descurainia pinnata</i>)	A
Texas thistle	(<i>Cirsium texanum</i>)	P
Velvetleaf	(<i>Abutilon theophrasti</i>)	A
Western ragweed	(<i>Ambrosia psilostachya</i>)	P
Wild buckwheat	(<i>Polygonum convolvulus</i>)	A
Wild carrot	(<i>Daucus carota</i>)	B
Wild lettuce	(<i>Lactuca</i> spp.)	A/B
Wild parsnip	(<i>Pastinaca sativa</i>)	B
Wild radish	(<i>Raphanus raphanistrum</i>)	B
Wild turnip	(<i>Brassica campestris</i>)	B
Woollyleaf bursage	(<i>Franseria tomentosa</i>)	P
Yellow starthistle	(<i>Centaurea solstitialis</i>)	A
Yellow woodsorrel	(<i>Oxalis stricta</i>)	P

Specimen Label

VINES AND BRAMBLES¹

COMMON NAME	SPECIES	GROWTH HABIT ²
Blackberry ³	(<i>Rubus</i> spp.)	P
Dewberry ⁴	(<i>Rubus</i> spp.)	P
Field bindweed	(<i>Convolvulus arvensis</i>)	P
Greenbriar	(<i>Smilax</i> spp.)	P
Hedge bindweed	(<i>Calystegia sepium</i>)	A
Honeysuckle	(<i>Lonicera</i> spp.)	P
Kudzu ⁵	(<i>Pueraria lobata</i>)	P
Morningglory	(<i>Ipomoea</i> spp.)	A/P
Poison ivy	(<i>Rhus radicans</i>)	P
Redvine	(<i>Brunnichia cirrhosa</i>)	P
Trumpet creeper ⁶	(<i>Campsis radicans</i>)	P
Virginia creeper ⁷	(<i>Parthenocissus quinquefolia</i>)	P
Wild buckwheat	(<i>Polygonum convolvulus</i>)	P
Wild grape	(<i>Vitis</i> spp.)	P
Wild rose	(<i>Rosa</i> spp.)	P

BRUSH SPECIES¹

Alligare Mojave 70 EG controls more than 30 species of brush.

¹ The higher rates should be used where heavy or well established infestations occur.

² Growth Habit – A = Annual, B = Biennial, P = Perennial.

³ For best results, early postemergence applications are required.

⁴ Control is species dependent. Some *Rubus* species may not be completely controlled.

⁵ Use a minimum of 75 GPA – Control of established stands may require repeat applications.

⁶ Control is species dependent. A tank-mix with PENDULUM herbicide for preemergence control and/or a postemergence application of a labeled herbicide may be required.

⁷ Use at least 13 pounds Alligare Mojave 70 EG per acre.

⁸ For best results, tank-mix with Oust.

⁹ Control of established stands may require repeat applications.

ADJUVANTS

Always use a spray adjuvant for postemergence applications of Alligare Mojave 70 EG.

Nonionic Surfactants: Use a nonionic surfactant at the rate of 0.25% v/v or higher of the total spray volume (0.25% v/v is equivalent to 1 quart in 100 gallons) in accordance with the surfactant labeling. For best results, select a nonionic surfactant with a HLB (hydrophilic to lipophilic balance) ratio between 12 and 17 with at least 70% surfactant in the formulated product. Alcohols, fatty acids, horticultural spray oils, ethylene glycol or diethylene glycol should not be considered as surfactants to meet these requirements.

Methylated Seed Oils or Vegetable Oil Concentrates: To aid in Alligare Mojave 70 EG deposition and uptake by plants under moisture or temperature stress, methylated seed oil or vegetable oil concentrate may be used at 1.5 to 2 pints per acre. When using spray volumes greater than 30 gallons per acre, mix methylated seed oil or vegetable oil concentrate at a rate of 1% of the total spray volume or alternatively use a nonionic surfactant as described above. Methylated seed oil is the adjuvant of choice for enhanced control of perennial weeds.

Silicone-Based Surfactants: Silicone-based surfactants allow greater spreading of the spray droplet on the leaf surface, compared to conventional nonionic surfactants. However, some silicone-based surfactants may dry too quickly, limiting herbicide uptake. Refer to the surfactant manufacturer's label for specific recommendations.

Fertilizer/Surfactant Blends: Nitrogen-based liquid fertilizers such as 28% N, 32% N, 10-34-0, or ammonium sulfate may be used with Alligare Mojave 70 EG at 2 to 3 pints per acre in combination with the recommended rate of nonionic surfactant, methylated seed oil or vegetable oil concentrate. Tank mixes with nitrogen-based fertilizers without a nonionic surfactant, methylated seed oil or vegetable oil concentrate is not recommended.

APPLICATION INSTRUCTIONS

Alligare Mojave 70 EG effectively controls many annual weeds when applied either pre-emergence or postemergence, as well as many perennial weeds when applied postemergence (See the WEEDS CONTROLLED Section for a list of susceptible weeds).

Mix Alligare Mojave 70 EG as described above and apply with properly calibrated equipment to uniformly deliver the desired spray volume to the treatment area. Maintain adequate agitation during application to keep Alligare Mojave 70 EG suspended in spray mixture.

Apply Alligare Mojave 70 EG at 7 to 19 pounds of product per acre. Rates as low as 5 pounds of Alligare Mojave 70 EG per acre may be used, but must be tank mixed with another herbicide (see TANK MIXES Section below). For retreatment within the same growing season, use less than 7 pounds Alligare Mojave 70 EG per acre. DO NOT apply more than a total of 19 pounds Alligare Mojave 70 EG per acre in a 12-month period.

The maximum application rate per application in areas of high rainfall or dense vegetation is 12.0 pounds diuron active ingredient per acre. This is equivalent to 19.0 pounds Alligare Mojave 70 EG per acre. For all other areas, the maximum application rate per acre is 8.0 pounds diuron active ingredient per acre. This is equivalent to 13 pounds Alligare Mojave 70 EG per acre. Apply a maximum of two applications per year. Allow a minimum of 90 days between applications.

The length of residual weed control achieved with Alligare Mojave 70 EG may be significantly affected by rainfall amounts. To achieve the desired residual control with increasing rainfall amounts, higher rates of Alligare Mojave 70 EG should be applied. As a general guideline the Alligare Mojave 70 EG rates listed below are recommended for different annual rainfall amounts. Actual use rates will vary depending upon the length of residual control desired, weed pressure and environmental conditions.

MOJAVE 70 EG

**Average Annual Rainfall
in Inches**
Less than 15 inches
Between 15 and 35 inches
Greater than 35 inches

**Rate of Alligare
Mojave 70 EG / Acre**
*7-10 pounds of product
8-13 pounds of product
13-19 pounds of product

*For initial applications, apply Alligare Mojave 70 EG at 5 to 6 pounds per acre in combination with another herbicide (see TANK MIXES Section below).

Postemergence Applications: Always use a spray adjuvant (See ADJUVANTS Section of this label) in postemergence applications. For optimum performance on hard-to-control perennial weeds, apply 100 gallons per acre or less in combination with 1 quart per acre of methylated seed oil. For quicker burndown of target weeds, tank mix Alligare Mojave 70 EG with products such as Roundup™ or Finale™ (See TANK MIXES Section below for other product recommendations).

Spot Treatments: Alligare Mojave 70 EG may be used as a follow-up treatment to control escapes or weed encroachment in a bareground situation. To prepare the spray solution, thoroughly mix 0.5 to 1 pound of Alligare Mojave 70 EG plus an adjuvant in each gallon of water. **DO NOT** exceed 19 pounds Alligare Mojave 70 EG per acre in a 12-month period. For increased burndown, tank mix with Roundup™, Finale™, or similar products (See TANK MIXES Section below for other product recommendations).

TANK MIXES

Alligare Mojave 70 EG may be tank-mixed with Roundup, Karmex™ (Diuron), Oust™, Garlon™, Finale, MSMA, Banvel®, Vanquish®, PENDULUM®, PLATEAU® or ARSENAL®. Tank-mixes with 2,4-D or products that contain 2,4-D, may reduce perennial weed control.

Consult manufacturer's labels for specific rates and weeds controlled. Always follow the more restrictive label when making an application involving tank-mixes.

FOR CONTROL OF UNDESIRABLE WEEDS UNDER PAVED SURFACES

Alligare Mojave 70 EG can be used under asphalt, pond liners and other paved areas, but **ONLY** in industrial sites or where the pavement has a suitable barrier along the perimeter that prevents encroachment of roots of desirable plants.

Alligare Mojave 70 EG should only be used where the area to be treated has been prepared according to good construction practices. Before application of Alligare Mojave 70 EG, rhizomes, stolons, tubers or other vegetative plant parts should be removed from the treatment site by scalping with a grader blade to a depth sufficient to insure their complete removal.

IMPORTANT: Paving should follow Alligare Mojave 70 EG applications as soon as possible. **DO NOT** apply where the chemical may contact the roots of desirable trees or other plants.

This product is not recommended for use under pavement on residential properties such as driveways or parking lots, nor in recreational areas such as under bike or jogging paths, golf cart paths, or tennis courts, or where landscape plantings could be anticipated. Injury or death of desirable plants may result if this product is applied where roots are present or where they may extend into the treated area. **NOTE** that roots of trees and shrubs may extend a considerable distance beyond the branch extremities; i.e., drip line.

APPLICATION DIRECTIONS FOR PAVED SURFACES:

Applications should be made to the soil surface only when final grade is established. **DO NOT** move soil following Alligare Mojave 70 EG application.

The maximum application rate per application in areas of high rainfall or dense vegetation is 12.0 pounds diuron active ingredient per acre. This is equivalent to 19.0 pounds Alligare Mojave 70 EG per acre. For all other areas, the maximum application rate per acre is 8.0 pounds diuron active ingredient per acre. This is equivalent to 13 pounds Alligare Mojave 70 EG per acre. Apply a maximum of two applications per year. Allow a minimum of 90 days between applications.

Apply Alligare Mojave 70 EG in at least 100 gal. water per acre to ensure thorough and uniform wetting of the soil surface, including the shoulder areas. Prepare spray solution by thoroughly mixing Alligare Mojave 70 EG into clean water in the spray tank and agitate solution to maintain product suspension.

If the soil is not moist before treatment, Alligare Mojave 70 EG should be incorporated into the soil to a depth of 4 to 6 inches using a rototiller or disc. Rainfall or irrigation of 1 inch will also provide adequate incorporation. **DO NOT** allow treated soil to wash or move from treated areas into untreated areas.

STORAGE AND DISPOSAL

DO NOT contaminate water, food, or feed by storage or disposal.

PESTICIDE STORAGE: **DO NOT** store below 10°F.

PESTICIDE DISPOSAL: Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility.

CONTAINER DISPOSAL: Nonrefillable container. Do not reuse or refill this container. Completely empty bag into application equipment. Then offer for recycling if available or dispose of empty bag in a sanitary landfill or by incineration, or, if allowed by state and local authorities, by burning. If burned, stay out of smoke.

Use of this product in certain portions of California, Oregon, and Washington is subject to the January 22, 2004 Order for injunctive relief in *Washington Toxics Coalition et al vs. EPA*, C01-132C (W.D. WA.) For information, please refer to www.epa.gov/espp/wtca/.

Specimen Label

CONDITION OF SALE AND LIMITATION OF WARRANTY AND LIABILITY

To the extent consistent with applicable law, upon purchase or use of this product, purchaser and user agree to the following terms:

Warranty: Alligare, LLC (the Company) warrants that this product conforms to the chemical description on the label in all material respects and is reasonably fit for the purpose referred to in the directions for use, subject to the exceptions noted below, which are beyond the Company's control. To the extent consistent with applicable law, the Company makes no other representation or warranty, express or implied, concerning the product, including no implied warranty of merchantability or fitness for a particular purpose. No such warranty shall be implied by law, and no agent or representative is authorized to make any such warranty on the Company's behalf.

Terms of Sale: The Company's directions for use of this product must be followed carefully. It is impossible to eliminate all risks inherently associated with use of this product. Crop injury, ineffectiveness or other unintended consequences may result because of such factors as weather conditions, presence of other materials, and the manner of use or application (including failure to adhere to label directions), all of which are beyond the Company's control. To the extent consistent with applicable law, all such risks are assumed by the user.

Limitation of Liability: To the extent consistent with applicable law, the exclusive remedy against the Company for any cause of action relating to the handling or use of this product is a claim for damages, and in no event shall damages or any other recovery of any kind exceed the price of the product which caused the alleged loss, damage, injury or other claim. To the extent consistent with applicable law, under no circumstances shall the Company be liable for any special, indirect, incidental or consequential damages of any kind, including loss of profits or income, and any such claims are hereby waived. Some states do not allow the exclusion or limitation of incidental or consequential damages.

The Company and the seller offer this product, and the purchaser and user accept this product, subject to the foregoing warranty, terms of sale and limitation of liability, which may be varied or modified only by an agreement in writing signed on behalf of the Company by an authorized representative.

™ Roundup is a trademark of Monsanto Company.

™ Finale is a trademark of Hoechst AG.

™ Karmex and Oust are trademarks of E.I. DuPont de Nemours and Company.

™ Garlon is a trademark of Dow AgroSciences Company.

* Arsenal, Banvel, Pendulum, Plateau, and Vanquish are Registered Trademarks of BASF.

EPA 20081013

MATERIAL SAFETY DATA SHEET

Emergency Call: 1-800-308-5391

Effective Date: October 17, 2008

1. PRODUCT AND COMPANY IDENTIFICATION

PRODUCT NAME: Alligare MOJAVE 70 EG
DESCRIPTION: A dispersible granule herbicide.
EPA Reg. No.: 81927-25

COMPANY IDENTIFICATION:

Alligare, LLC
13 North 8th Street
Opelika, AL 36801

2. COMPOSITION / INFORMATION ON INGREDIENTS

Ingredient	Chemical Name	Formula	CAS #	Composition
Imazapyr	(±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid	C ₁₃ H ₁₅ N ₃ O ₃	81334-34-1	7.78%
Diuron	N ² -(3,4-dichlorophenyl)-N,N-dimethylurea	C ₉ H ₁₀ Cl ₂ N ₂ O	330-54-1	62.22%

3. HAZARD IDENTIFICATION

In case of an emergency that endangers life or property and involves this product, call 800-434-9300 day or night.

HAZARDS TO HUMANS AND DOMESTIC ANIMALS: Causes moderate eye irritation. Avoid contact with skin, eyes or clothing. Avoid breathing spray mist.

ENVIRONMENTAL HAZARDS: This product is toxic to plants. Drift and run-off may be hazardous to plants in water adjacent to treated areas.

4. FIRST AID

Have the product container or label with you when calling a poison control center or doctor, or going for treatment. For medical emergencies involving this product, call 1-800-308-5391.

IF ON SKIN OR CLOTHING: Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice.

IF IN EYES: Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice.

IF INHALED: Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth if possible. Call a poison control center or doctor for treatment advice.

IF SWALLOWED: Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person.

5. FIRE-FIGHTING MEASURES

Flash point: N/A

Flammable Limits (LFL-UFL): N/D

Fire and Explosion Hazards: May thermally decompose in fire releasing irritating and toxic fumes.

Extinguishing Medium: Foam, CO₂, dry chemical, or water spray.

Fire Fighting Equipment: Firefighters should be equipped with self-contained positive pressure breathing apparatus and turnout gear.

Fire Fighting Instructions: Evacuate area of all unnecessary personnel and fight fire from a safe distance upwind. Contain contaminated water / firefighting water; do not allow to enter drains or waterways. Foam or dry chemical fire extinguishing systems are preferred to prevent environmental damage from excessive water runoff.

NFPA Ratings: Health – 1 / Flammability – 1 / Reactivity - 0

6. ACCIDENTAL RELEASE MEASURES

Clean up spills immediately observing the precautions in Section 8 of this MSDS. Isolate the hazard area and keep unnecessary and unprotected personnel from entering. Prevent material from contaminating soil or from entering sewage and drainage systems and bodies of water.

Large Spill: Prevent spills from entering sewers, waterways or low areas. Diuron and imazapyr are injurious to plants at extremely low concentrations. Non-target plants may be adversely affected from drift and run-off. Call CHEMTREC at (800) 424-9300.

Small Spills: Avoid dust formation and avoid breathing dust. Use recommended protective equipment and carefully sweep up spilled material, placing it in a covered container for reuse or disposal. Scrub the contaminated area with soap and water followed by a water rinse. Use dry absorbent material to absorb and collect wash solution for proper disposal. Contaminated soil may have to be removed and disposed.

7. HANDLING AND STORAGE

Avoid breathing dust or vapor. Avoid contact with skin, eyes and clothing. Remove and wash contaminated clothing before reuse. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco.

Store in a cool, dry place and in such a manner as to prevent cross contamination with other pesticides, fertilizers, food, and feed. Store in original container and out of the reach of children, preferably in a locked storage area.

8. EXPOSURE CONTROLS / PERSONAL PROTECTION

Engineering Controls: To avoid exceeding exposure limits, handle only with adequate ventilation. Facilities storing or utilizing this material should be equipped with an eyewash station and a safety shower.

Protective Clothing: Chemical resistant gloves made of any waterproof material \geq 14 mils. Long-sleeved shirt, long pants and shoes plus socks. A NIOSH approved particulate filtering respirator equipped with N, R, or P class filter media. The respirator should have a NIOSH approval number prefix "TC-84A".

General: Wash thoroughly with soap and water after handling. Discard clothing and other absorbent materials that have been heavily contaminated with this product; do not reuse them. Follow the manufacturer's instructions for cleaning and maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

9. PHYSICAL AND CHEMICAL PROPERTIES

Physical State: Off-white pellets

Odor: Faint Odor

pH: 3.1 – 3.4

Bulk Density (Pour): 0.578 g/ml (36.083 lbs/ft³)

Bulk Density (Tap): 0.638 g/ml (39.829 lbs/ft³)

Solubility: Fully soluble

10. STABILITY AND REACTIVITY

CONDITIONS TO AVOID: Extreme Temperatures and prolonged exposure to extreme heat. All sources of ignition. Electro-static discharges.

CHEMICAL STABILITY: Stable but may decompose if heated.

HAZARDOUS DECOMPOSITION PRODUCTS: None when stored and handled as prescribed / indicated. Refer to Section 5 for hazardous combustion products.

INCOMPATIBILITY WITH OTHER MATERIALS: Liquid solutions containing this product must not be stored in unlined steel (except stainless steel) containers or tanks.

POLYMERIZATION: Will not occur.

11. TOXICOLOGICAL INFORMATION

ACUTE ORAL TOXICITY

LD₅₀ (rat): > 2,000 mg/kg

ACUTE DERMAL TOXICITY

LD₅₀ (rat): > 2,000 mg/kg

ACUTE INHALATION TOXICITY

LC₅₀ (rat): > 5.1 mg/L

EYE IRRITATION: Mildly Irritating

SKIN IRRITATION: Mildly irritating

SKIN SENSITIZATION: Not a contact sensitizer

CARCINOGENICITY:

ACGIH: Not Listed

IARC: Not Listed

NTP: Not Listed

OSHA: Not Listed

MUTAGENIC TOXICITY: No evidence of mutagenic effects during *in vivo* and *in vitro* assays.

REPRODUCTIVE TOXICITY: No evidence in animal studies.

12. ECOLOGICAL INFORMATION

This product is toxic to plants. For terrestrial use only. Do not apply directly to water, or where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters or rinsate. Apply this product only as specified on this label.

TOXICOLOGICAL INFORMATION FOR ACTIVE INGREDIENT DIURON

Rainbow Trout (LC₅₀): 5.6 mg/L

Mysid Shrimp (LC₅₀): 1.1 mg/L

Green Algae (EC₅₀): 0.0233 mg/L

Swollen Duckweed (EC₅₀): 0.018 mg/L

Bobwhite Quail (LC₅₀): 1,730 mg/kg

Japanese Quail (LC₅₀): > 5,000 mg/kg

Mallard Duck (LC₅₀): > 5,000 mg/kg

Honey Bee (LD₅₀): Not toxic

TOXICOLOGICAL INFORMATION FOR ACTIVE INGREDIENT IMAZAPYR

Rainbow Trout (LC₅₀): > 100 mg/L

Daphnia Magna (EC₅₀): > 100 mg/L

Green Algae (EC₅₀): 71 mg/L

Mallard Duck (LC₅₀): > 5,000 ppm

Honey Bee (LD₅₀): > 100 ug / bee

13. DISPOSAL CONSIDERATIONS

Do not contaminate water, food or feed by disposal.

PESTICIDE DISPOSAL: Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by the use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility.

CONTAINER DISPOSAL: Completely empty bag, then dispose of in an approved sanitary landfill or by incineration or, if allowed by state and local authorities, by burning. If burned, stay out of smoke.

14. TRANSPORT INFORMATION

DOT PROPER SHIPPING NAME: Not Regulated by DOT

REPORTABLE QUANTITY: 100 lbs.

MARINE POLLUTANT: Not a marine pollutant

15. REGULATORY INFORMATION

FIFRA –

All pesticides are governed under the Federal Insecticide, Fungicide, and Rodenticide Act. The regulatory information presented below is pertinent only when this product is handled outside of the normal use and application as a pesticide.

SARA Title III – Section 302 Extremely Hazardous Substances

Not listed

SARA Title III – Section 311/312 Hazard Categories

Immediate

SARA Title III – Section 312 Threshold Planning Quantity

N/A

SARA Title III – Section 313 Reportable Ingredients

Diuron (62.22%) - CAS No. 330-54-1

CERCLA –

<u>Chemical Name</u>	<u>CAS Number</u>	<u>RQ</u>
Diuron	330-54-1	100 lbs.

CALIFORNIA PROP 65 STATUS –

This product contains a chemical (Diuron) known to the State of California to cause cancer.

16. OTHER INFORMATION

This product has been classified in accordance with the hazard criteria of the Controlled Products Regulations (CPR) and the MSDS contains all of the information required by CPR.

DISCLAIMER:

THE INFORMATION IN THIS MSDS IS BASED ON DATA AVAILABLE AS OF THE REVISION DATE GIVEN HEREIN, AND BELIEVED TO BE CORRECT. CONTACT ALLIGARE, LLC TO CONFIRM IF YOU HAVE THE MOST CURRENT MSDS. JUDGMENTS AS TO THE SUITABILITY OF THE INFORMATION HEREIN FOR THE INDIVIDUAL'S OWN USE OR PURPOSES IS NECESSARILY THE INDIVIDUAL'S OWN RESPONSIBILITY. ALTHOUGH REASONABLE CARE HAS BEEN TAKEN IN THE PREPARATION OF SUCH INFORMATION, ALLIGARE, LLC EXTENDS NO WARRANTIES, MAKES NO REPRESENTATIONS, AND ASSUMES NO RESPONSIBILITY AS TO THE ACCURACY OR SUITABILITY OF SUCH INFORMATION FOR APPLICATION TO THE INDIVIDUAL'S PURPOSES OR THE CONSEQUENCES OF ITS USE. This Material Safety Data Sheet (MSDS) serves different purposes than and DOES NOT REPLACE OR MODIFY THE EPA-APPROVED PRODUCT LABELING (attached to and accompanying the product container). This MSDS provides important health, safety, and environmental information for employers, employees, emergency responders and others handling large quantities of the product in activities generally other than product use, while the labeling provides that information specifically for product use in the ordinary course.

CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Red River Specialties, Inc. ("Contractor")
for
Weed Killer, Roundup Quickpro, 6.8 lb Container Liquid
MA 8100 GA150000057

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

This Contract is between Red River Specialties, Inc. having offices at Winnie, TX 77665 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number PAX0059.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Invitation for Bid (IFB), PAX0059 including all documents incorporated by reference
- 1.1.3 Red River Specialties, Inc.'s Offer, dated 03/23/2015, including subsequent clarifications

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

- 1.2.1 This Contract
- 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$15,600 for the initial Contract term and \$5,200 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

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

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

CITY OF AUSTIN

Sai Purcell

Printed Name of Authorized Person



Signature

Senior Buyer Specialist

Title:

04/13/2013

Date:



**ADDENDUM
INVITATION FOR BID
CITY OF AUSTIN, TEXAS**

IFB: PAX0059

Addendum No: 1

Date of Addendum: March 17, 2015

This addendum is incorporating the following changes to the above-referenced IFB.

- 1.0 **BID DUE PRIOR TO has been extended to : 03/25/2015, 2:00 pm, local time**
BID OPENING TIME AND DATE has been extended to: 03/25/2015, 2:15 pm, local time
- 2.0 **ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:


Sai Xoomsai, Senior Buyer Specialist
Purchasing Office

03/17/2015
Date

ACKNOWLEDGED BY:

Red River Specialties, Inc.
Vendor Name


Authorized Signature

03/23/2015
Date

RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.
Failure to do so may constitute grounds for rejection of your offer.



CITY OF AUSTIN, TEXAS

Purchasing Office INVITATION FOR BID (IFB) OFFER SHEET

SOLICITATION NO: PAX0059

COMMODITY/SERVICE DESCRIPTION: Herbicide and Weed Killer

DATE ISSUED: 03/02/2015

REQUISITION NO.: 15020300174

BID DUE PRIOR TO: 03/18/2015, 2:00 pm, local time

COMMODITY CODE: 67585

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

BID OPENING TIME AND DATE: 03/18/2015, 2:15 pm, local time

Sai Xoomsai Purcell

Senior Buyer Specialist

Phone: (512) 972-4016

E-Mail: sai.xoomsai@austintexas.gov

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

LIVE BID OPENING ONLINE:

For information on how to attend the Bid Opening online, please select this link:

<http://www.austintexas.gov/departments/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # PAX0059	Purchasing Office-Response Enclosed for Solicitation # PAX0059
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

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

The Vendor agrees, if this Offer is accepted within 120 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.

Submit one (1) single-sided original and one (1) electronic (CD or USB) version of the complete proposal. The electronic version must be in PDF format.

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	
0500	SPECIFICATION	
0600	BID SHEET – Must be completed and returned with Offer	
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	1
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1

*** Documents 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 located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. 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.

I agree to abide by the City's MBE/WBE Procurement Program Ordinance and Rules. In cases where the City has established that there are no M/WBE subcontracting goals for a solicitation, I agree that by submitting this offer my firm is completing all the work for the project and not subcontracting any portion. If any service is needed to perform the contract that my firm does not perform with its own workforce or supplies, I agree to 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 and am including the completed No Goals Utilization Plan with my submittal. This form can be found Under the Standard Bid Document Tab on the Vendor Connection Website:

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If I am awarded the contract I agree to continue complying with the City's MBE/WBE Procurement Program Ordinance and Rules including contacting SMBR if any subcontracting is later identified.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Red River Specialties, Inc.

Company Address: 1324 North Hearne Avenue - Suite 120

City, State, Zip: Shreveport, LA 71107

Federal Tax ID No. [REDACTED]

Printed Name of Officer or Authorized Representative: Jesse Culbertson

Title: Bid Manager

Signature of Officer or Authorized Representative: 

Date: 03/23/2015

Email Address: Bid.Clerk@rrsi.com

Phone Number: 318-425-5944

*** Completed Bid Sheet, section 0600 must be submitted with this Offer Sheet to be considered for award**

Area Sales Manager: Daryl Evans
Address: PO Box 41268
Houston, TX 77241
Phone: 713-924-6929
Mobile: 713-302-8703
Email: Daryl.Evans@rrsi.com

Bid Correspondence: Jesse Culbertson
Address: 1324 North Hearne Avenue
Suite 120
Shreveport, LA 71107
Phone: 318-425-5944
Email: Bid.Clerk@rrsi.com

Orders: Tiffany Meguess
Address: PO Box 931
Winnie, TX 77665
Phone: 409-296-4097
Email: Tiffany.Meguess@rrsi.com

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

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

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

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

10. WORKFORCE:

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

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

12. INVOICES:

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

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13. PAYMENT:

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. RIGHT TO AUDIT:

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

18. SUBCONTRACTORS:

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

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

19. WARRANTY – PRICE:

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

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

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

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

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

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

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

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

31. INDEMNITY:

A. Definitions:

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

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

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

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

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

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, email, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the

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Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **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.
39. **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.
40. **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.
41. **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.
42. **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

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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.

43. **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.
44. **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.
45. **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.
46. **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.
47. **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.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the

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mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **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.
50. **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.
51. **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.

52. **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.
53. **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.

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54. EQUAL OPPORTUNITY

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

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

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

Section 0605: Local Business Presence Identification

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) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN. RRSI does not wish to be considered for local preference as our principal place of business is not located in Texas. We do, however, have 5 locations in the state of Texas to serve your needs.

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm						
Physical 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

SUBCONTRACTOR(S):

Name of Local Firm						
Physical 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

SUBCONTRACTOR(S):

Name of Local Firm						
Physical 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

Section 0700: Reference Sheet

Please include the following information if required in solicitation:

Responding Company Name Red River Specialties, Inc.

1. Company's Name Coastal Spray Company
Name and Title of Contact Jose Chavez
Present Address 1321 West Jackson Street
City, State, Zip Code Pasadena, TX 77501
Telephone Number (713) 473-1191 Fax Number (713) 920-1143
Email Address _____

2. Company's Name Angleton Drainage District
Name and Title of Contact Greg Rickaway - General Manager
Present Address PO Box 2469
City, State, Zip Code Angleton, TX 77516
Telephone Number (979) 849-2414 Fax Number (979) 848-8160
Email Address _____

3. Company's Name DBG Services, Inc.
Name and Title of Contact David Grissom - President
Present Address PO Box 1512
City, State, Zip Code Texas City, TX 77592
Telephone Number (281) 381-7863 Fax Number (409) 965-0205
Email Address _____

4. Company's Name City of Houston, Texas
Name and Title of Contact Joe Jerez
Present Address 2999 South Wayside
City, State, Zip Code Houston, TX 77023
Telephone Number (713) 859-1062 Fax Number (832) 393-8755
Email Address _____

5. Company's Name Brazos County
Name and Title of Contact Leslie Williams - Assistant Purchasing Agent
Present Address 200 South Texas Avenue - Suite 352
City, State, Zip Code Bryan, TX 77803
Telephone Number (979) 361-4292 Fax Number (_____)
Email Address lwilliams@co.brazos.tx.us

Section 0835: Non-Resident Bidder Provisions

Company Name Red River Specialties, Inc.

- 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"?

Answer: Non-Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle 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.
(2) Nonresident Bidder- A Bidder who is not a Texas 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?

Answer: No Which State: Louisiana

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: N/A

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by five business days prior to the bid closing date to Sai.Xoomsai@austintexas.gov

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. 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 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. 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.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

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

B. **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.

- i. **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.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **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 Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

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- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. **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.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- C. **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.

Note: If delivery is made by common carrier, then the requirements for Workers Compensation and Business Automobile insurance listed in Sections 3.B.i and 3.B.iii do not apply. The selected vendor must submit a statement on the planned method of shipment.

3. **TERM OF CONTRACT:**

- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to three additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to resolicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5. **DELIVERY REQUIREMENTS**

Location:	Days:
City of Austin-Department of Aviation	Monday-Friday
ABIA Warehouse	7:00 a.m. – 5:00 p.m.
9400A Freight Lane	

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SUPPLEMENTAL PURCHASE PROVISIONS**

Austin, Texas 78719

- A. Delivery is to be made within 5 calendar days after the order is placed (either verbally or in writing). **In emergency situations, the Contractor shall have products on site within 24 hours after order is placed.** All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.
- D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 52 in Section 0300).

6. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Aviation
Attn:	Accounts Payable
Address	3600 Presidential Blvd., Suite 411
City, State Zip Code	Austin, TX 78719

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. **HAZARDOUS MATERIALS:**

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

8. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

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- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

9. **ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve months 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 on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty percent (20%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
 - i. The following definitions apply:
 - (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.

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- (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Chemicals & Allied Products/Lawn & Garden Pesticides & Chemicals	
Series ID: 06530107	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: United States (National)	
Description of Series ID: Chemicals & Allied Products/Lawn & Garden Pesticides & Chemicals	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

10. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

12. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Chris Carter

512-530-6352

CITY OF AUSTIN
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Chris.Carter@austintexas.gov

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**QUOTE SHEET
CITY OF AUSTIN
SAHARA DG HERBICIDE**

Solicitation PAX0059

Special Instructions:

A bid of '0' (zero) and/or "no bid" will be interpreted by the City that the bidder does not wish to bid on that item.

The City may award the contract for any item or group of items on the solicitation, or any combination deemed most advantageous to the City. The quantities noted below are annual estimates and not a guarantee of actual volume.

FOB Destination, freight prepaid and allowed and to be included on the bid price.

ITEM NO.	ITEM DESCRIPTION	EST ANNUAL QTY	UNIT	UNIT PRICE	EXTENDED PRICE
1	SAHARA DG HERBICIDE, 10LB BAGS, BARE GROUND VEGETATION CONTROL ON SPECIFIED NON CROP AREAS. OR APPROVED EQUIVALENT WITH MSDS SHEET	100	BAGS	\$96.40 / BAG	9,640.00
2	WEED KILLER, ROUNDUP QUICKPRO, 6.8LB CONTAINER LIQUID	100	BAGS	\$52.00 / EACH	5,200.00
				TOTAL PRICE	14,840.00

OFFERORS BEST DELIVERY IS 5 CALENDAR DAYS AFTER RECEIPT OF ORDER

DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED

DELIVERY METHOD: Common Carrier



RECEIVED

2015 FEB 24 AM 8:44

CITY OF AUSTIN, TEXAS

TO: Veronica Lara, Director
Department of Small and Minority Business Resources

FROM: Sai Xoomsai Purcell, Senior Buyer Specialist
DATE: 02/23/2015

SUBJECT: Request for Determination of Goals for Solicitation No. PAX0059

Project Name: Herbicide and Weed Killer

Commodity

Code(s): 67585

Estimated Value: \$ 10,000

Below are scopes of work for this project as determined by the Purchasing Office and Department that are contained in this solicitation

Commodity Purchase

The Departmental Point of Contact is: Marsha Wells at Phone: 512-530-6655

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 512-972-4016

☐ Approved w/ Goals

☒ Approved, w/out Goals

Recommend the use of the following goals based on the below reasons:

a. Goals: ☐ % MBE ☐ % WBE

b. Subgoals ☐ % African American ☐ % Hispanic

☐ % Native/Asian American ☐ % WBE

This determination is based on the following reasons:

This is a Commodity purchase. There are no MBE/WBEs availability listed for this scope of purchase.


Veronica Lara, Director

Date: 2-24-15