



Amendment No. 2
To
Contract No. GS160000001
For
Between
Recorded Books, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 6, 2019 through October 5, 2020. One option will remain.
- 2.0 The City hereby replaces the discontinued Bureau of Labor Statistics index, PCU33461433461426, assigned to the subject contract with index PCU3346103346102.
- 3.0 The total contract amount is increased by \$325,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 10/06/2015 – 10/05/2018	\$975,000.00	\$975,000.00
Amendment No. 1: Option 1 – Extension 10/06/2018 – 10/05/2019	\$325,000.00	\$1,300,000.00
Amendment No. 2: Option 2 – Extension 10/06/2019 – 10/05/2020	\$325,000.00	\$1,625,000.00

- 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:

Handwritten signature of Jim Schmidt in blue ink.

9-19-19

Printed Name: Jim Schmidt
Authorized Representative

Sign/Date:

Handwritten signature of Matthew Duree in blue ink.

9-20-19

Matthew Duree
Procurement Manager

Recorded Books, Inc.
270 Skipjack Road
Prince Frederick, Maryland 20678
(800) 638-1304
cstrickland@recordedbooks.com
rfp@recordedbooks.com

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



Amendment No. 1
to
Contract No. GS160000001
for
Provision of Audiobooks and Downloadable Audiobooks
between
Recorded Books, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 06, 2018 through October 5, 2019. Two options will remain.
- 2.0 The total contract amount is increased by \$325,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: October 6, 2015 through October 5, 2018	\$975,000.00	\$975,000.00
Amendment No. 1: Option 1 – Extension October 06, 2018 through October 5, 2019	\$325,000.00	\$1,300,000.00

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

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

Sign/Date: James A. Schmidt 08-21-18

Printed Name: Jim Schmidt
Authorized Representative

Clayton Strickland
Recorded Books, Inc
270 Skipjack Rd
Prince Frederick, MD, 20678
cstrickland@recordedbooks.com

Sign/Date: Linell Goodin-Brown 9-26-18

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

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Recorded Books, Inc.
For
Provision of Audiobooks and Downloadable Audiobooks**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Recorded Books, Inc. ("Contractor"), having offices at 270 Skipjack Road, Prince Frederick, MD 20678.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Clayton Strickland, Phone: (512) 923-6660, Email Address: Cstrickland@recordedbooks.com. The City's Contract Manager for the engagement shall be Sandra Cannon, (512) 974-7588, Email Address: Sandra.Cannon@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

The City is engaging with Contractor on behalf of the City's Austin Public Library (APL) to purchase a supply of adult and juvenile unabridged spoken word compact discs (audiobooks on CD) and audiobooks in downloadable digital format, to be available in English and other languages. Audiobooks in downloadable digital format shall be made available to APL via Contractor's website using Contractor's Oneclick platform.

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein 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.

2.2 Definitions.

2.2.1 Active Library Card Holder - an APL customer who has an APL borrower card in good standing.

2.2.2 Audiobook - a recording of a reading of a book available to be heard as audio.

2.2.3 CD - abbreviation for compact disk.

- 2.2.4 Compact Disk - a small plastic disk with a metallic surface on which digital information is stored, and from which the information can be heard using a compact disk player.
- 2.2.5 Digital Content Platform - the digital platform that hosts the downloadable publication for and on behalf of a provider company. The content is made available from the hosting platform to be heard via a digital device enabled to access the content.
- 2.2.6 Digital Format - an audiobook that is offered as a download in electronic form.
- 2.2.7 DL - abbreviation for downloadable.
- 2.2.8 Downloadable - a publication in digital format made available online through a digital content platform.
- 2.2.9 Media Type – an audiobook offered in physical or digital format.
- 2.2.10 Physical Format - an audiobook that is offered as a compact disk or CD in physical form.
- 2.2.11 Unabridged - a book or work that is complete and has not been condensed or shortened by using fewer words. An audiobook with a reading of the entire book is an example of an unabridged audiobook.

2.3 **Contractor's Tasks.**

2.3.1 Contractor shall, over a period of thirty-six (36) months, provide quantities of the following items on an as-needed basis (quantities are estimates only and not minimum order quantities):

Description	Qty	Items	Price/Each	Total Price
Unabridged audiobooks	7,500	Audiobooks on CD	\$64.00	\$480,000
Unabridged audiobooks	7,266	Downloadable digital audiobooks	\$64.00	\$465,000
Barcode labeling	7,500	Application of barcode to hub of audiobooks on CD	\$0.50	\$3,750
Cover/labels	7,500	Provision of printed cover, labels and barcodes for audiobooks on CD	\$2.00	\$15,000
Custom records	7,500	Provision of Machine-Readable Cataloging (MARC) record per CD audiobook	\$1.00	\$7,500
Platform subscription	N/A	Platform access after contract expiration		\$3,750
Total Cost				\$975,000

2.3.2 Contractor's pricing cited in this Contract includes use of Contractor's online platform to access the downloadable audio books, access to Contractor's website and/or software and/or other media used to select and place orders for audiobook content, and also includes electronic and hard copy files/records/reports/information requests for the purchased and unpurchased content, shipping and delivery and overall customer support. The platform subscription shown above will allow APL to provide continued access to its customers for APL owned downloadable publications purchased or previously purchased from Contractor.

2.3.3 Upon contract award the contractor shall provide their account numbers for the downloadable and CD audiobook accounts

2.3.4 Contractor shall, upon execution of the Contract, provide a copy of Contractor's return policy and credit memo procedures to the City's Contract Manager.

2.3.5 Contractor shall provide free access to an online unabridged audiobook catalog and to a comprehensive selection list for APL staff to choose materials for ordering. The selection list shall include product availability, author, title, publication date, media type and the library discount price.

2.3.6 Contractor shall offer a pre-release program to supply APL with new audiobooks before the date these items are available for sale to the public.

2.3.7 Contractor shall assign to APL an account, customer service and customer support representative covering both downloadable audiobooks and audiobooks on CD. Contractor shall keep the contact information current and provide a contact sheet to the City's Contract Manager.

2.3.8 Contractor shall allow designated APL staff to enter orders and to request full order and tracking inquiries as needed. Contractor shall provide verifications/confirmations for all City purchase orders at the time of order.

2.3.9 Contractor shall provide cataloging and processing of audiobooks on CD as indicated on the Recorded Books Digital Processing Services – Cataloging and Processing Order Form (see Exhibit D). The cataloging and processing shall consist of MARC records, digital processing, spine labels, library name/logo labels, content labels, security strips, barcodes, hub labels and programming services.

2.3.10 Contractor shall provide custom MARC records which shall include a holding field. Examples of holding codes are shown in Exhibit D. Call numbers will be provided to Contractor in City's electronic data interchange (EDI) transmission.

2.3.11 Contractor shall permit APL to purchase on an "in stock" basis (without back orders) as APL's needs require.

2.3.12 Contractor shall accept orders online via Contractor's proprietary system (CPS) with the 9XX order format that can be used to create a SirsiDynix record, and/or by EDI via SirsiDynix (electronic orders), as well as by fax, by telephone, by e-mail with orders as attachments, by printed City purchase orders and by printed selection lists. Contractor shall provide training to APL for the use of the CPS and/or website within the first thirty (30) calendar days following Contract execution.

2.3.13 Contractor shall catalog and digitally process all City purchase orders for audiobooks on CD unless "no processing" is specified in the purchase order. APL shall separate processing from no processing purchase orders (processing and no processing orders will not be mixed or submitted on the same purchase order).

2.3.14 Contractor shall supply and use in shipment, for audiobooks on CD, a digitally printed cover which shall include an embedded APL name/logo label, spine label with call number and other reference IDs, two barcodes each with the branch library name plus APL name and barcode number, and two disc content labels each with number of items in case (see Exhibit E).

2.3.15 Contractor shall display the bar code label on the left mid-section of the front cover of the audiobook case, and on the top right section of the back cover of the audiobook case (see Exhibit E).

2.3.16 Contractor shall display the APL name/logo centered on the top section of the front cover of the audiobook case (see Exhibit E).

2.3.17 Contractor shall display the disc content label on the top right section of the front cover of the audiobook case and on the top left section of the back cover of the audiobook case (see Exhibit E). The disc content label display is acceptable within the embedded artwork as long as it is clearly visible and readable on the front and back of the audiobook case.

2.3.18 Contractor shall display the spine label on the lower half of spine section of the audiobook case cover (see Exhibit E).

2.3.19 Contractor shall apply RFID Stingray tags (supplied by City, see Exhibit F) on the front of the first disk of each audiobook (see Exhibit E). These tags shall be programmed to the barcode by Contractor.

2.3.20 On all discs for each audiobook the Contractor shall supply and apply a CD hub label with embedded library name and barcode number (see Exhibit E).

2.3.21 Contractor shall apply pre-numbered bar code labels to the front and back of each audiobook case (see Exhibit E).

2.3.22 Contractor shall provide the CD hub labels, audiobook cases and all other materials for the digital processing of audiobooks on CD for shelf ready delivery to APL locations. The audiobook cases for all single and multisc audiobooks on CD shall consist of a durable strong box with two-ring binder.

2.3.23 For all non-processed audiobook purchase requests Contractor shall provide the digitally printed cover with art work and audiobook case.

2.3.24 Contractor shall not split shipments of copies of a title, when more than one copy is ordered. Partial shipments of titles in an order are acceptable.

2.3.25 Contractor shall deliver audiobooks on CD to the address specified by APL at the time of the order. APL may require that the shelf-ready audiobooks be shipped to more than one location. The initial delivery addresses are listed in Exhibit C. All shipments via common carrier shall be delivered inside of the APL facility (no shipments may be left outside). All deliveries shall be made Monday through Friday during the business hours specified in Exhibit C.

2.3.26 All partial processing or non-processed shipments delivered by carrier shall be shipped to Austin Public Library, Attn: ACCS NP, 635 N. Pleasant Valley Rd., Austin, Texas 78702.

2.3.27 APL branch location hours are similar but may vary by location and are subject to change at any time. Several branch locations have limited hours of operation and are closed on certain days. The current hours of operation are specified in Exhibit C. Contractor shall reference the following library web link to verify and update changes to library hours of operation (<http://library.austintexas.gov/locations>).

2.3.28 Contractor shall exceed a delivery average of ninety percent (90%) of the compact discs on any City purchase order within 45 working days of Contractor's receipt of order. Contractor shall deliver pre-release orders within five (5) calendar days of release date. No later than three (3) working days following Contractor's receipt of an order, Contractor shall provide to City a title status/verification report on any titles that cannot be supplied within 45 working days of Contractor's receipt of order.

2.3.29 Contractor shall exceed a delivery average of ninety percent (90%) of the downloadable content specified on any City purchase order within four (4) working days of Contractor's receipt of order. Contractor

shall deliver pre-release orders within five (5) calendar days of release date. No later than three (3) working days following Contractor's receipt of an order, Contractor shall provide to City a title status/verification report on any titles that cannot be supplied within four (4) working days of Contractor's receipt of order.

2.3.30 Contractor shall have the ability to track deliveries and shipments and to provide that information to APL upon request or as needed.

2.3.31 Contractor shall report on the packing lists for CDs, and on the delivery reports for DLs, any titles temporarily out of stock (TOS), publisher out of stock (POS), out of print (OP), not yet published (NYP), or that cannot be supplied with reasons indicated, for all City purchase orders placed with Contractor.

2.3.32 Items damaged in shipment, incorrect items, or defective items shall be returned by City to the Contractor for replacement or credit at no expense to APL. APL prefers no-charge replacements to credits. In the event that no correct or perfect replacement exists, a credit memo shall be issued to APL within thirty (30) calendar days.

2.3.33 If City discovers a defect in items, in whatever format, delivered by Contractor, and such defect is found within the warranty period specified in this Contract and is not caused by City misuse or negligence, Contractor shall replace such item within thirty (30) calendar days of City's request, at no cost to City.

2.3.34 Contractor shall provide to City monthly purchase status reports for purchased/delivered and purchased/undelivered titles with copy quantities and cost information, sorted by City purchase order number and date. If the report is not downloadable, Contractor shall submit reports electronically in Excel format.

2.3.35 Sixty (60) working days after each order date, the Contractor shall provide a purchase order report of any unfilled or delayed orders, including the number of unfilled/delayed titles and copies. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

2.3.36 Contractor shall provide, upon City's request, real-time reports that includes the number of titles, quantities, media type and discount pricing for products available to order, and the number of titles, quantities, media type, and cost for purchases on order. If such report is not downloadable, Contractor shall submit reports electronically in Excel format.

2.3.37 Contractor shall provide, upon City's request, a report of any unfilled, delayed, open and cancelled orders. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

2.3.38 Contractor shall provide, upon City's request, a report of prior year purchases in date order, showing titles and quantities purchased. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

2.3.39 If City schedules any visits to the work site of Contractor or Contractor's Subcontractor during the term of this Contract, then Contractor or Contractor's Subcontractor shall furnish, or cause to be furnished, without additional charge to City, services such as a vendor representative to help coordinate the agenda, to schedule times, dates, meeting locations/sites, to gather statistical data and to bring together the appropriate personnel to expedite the visit and/or discussions of concerns at the vendor site(s).

2.4 City's Tasks.

2.4.1 APL will provide to the Contractor the barcode number sequence which is to be embedded on barcode and hub labels, and to be programmed on the RFID Stingray tags. Contractor shall break out the barcode sequence into barcode ranges for each APL branch.

2.4.2 APL will provide to the Contractor RFID Stingray tags for the digital processing of audiobooks on CD.

2.4.3 APL will review the report provided by Contractor per Paragraph 2.3.35 and will notify Contractor when to cancel open/unfilled orders.

2.4.4 The City may perform site visits during the term of the Contract to verify that the Contractor, or the Contractor's Subcontractor, has the appropriate facilities, equipment, inventory, licenses, permits, and qualified personnel to perform the requirements of the Contract.

2.4.5 City reserves the right, at its sole discretion, to add or remove library locations as needed during the term of this Contract.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$1,950,000 for all fees and expenses. Pricing is shown in Exhibit B (pricing is annual except for Part 3 of Exhibit B, which amount is allocated over the life of the contract).

3.2 Economic Price Adjustment.

3.2.1 **Price Adjustment.** Prices shown in this Contract shall remain firm for the first twelve (12) month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor 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 as of the Contract effective date and the most recent, non-preliminary data at the time the price adjustment is requested. 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.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary of the effective date of the Contract and will remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **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.

3.2.4 **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.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price.

3.2.4.1.2 **Base Price.** Initial period quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.

3.2.4.2. **Adjustment-Requested Review.** Each adjustment request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.**

Weight % or \$ of Base Price: 100%	
Database Name:	
Producer Price Index	
Series ID:	
PCU33461433461426	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: United States	
Description of Series ID:	
Software and other prerecorded compact disc, tape, and record reproducing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

3.2.5 **Calculation.** Price adjustment will be calculated as follows:

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

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

3.2.6 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.

3.3 **Invoices.**

3.3.1 Contractor and APL shall arrange for the method of Contractor's invoice submittal to APL. Invoices may be mailed and/or e-mailed to APL. Regardless of invoicing method Contractor shall submit invoices to APL electronically to SirsiDynix via X12.

3.3.2 If invoices are mailed Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.3.3 Any invoices, packing lists, delivery reports and credit memos that are e-mailed by Contractor shall be e-mailed to Library.ACCSAccountsPayable@austintexas.gov.

3.3.4 When emailing an invoice for downloadable audiobook purchases, Contractor shall provide a single copy of the invoice and delivery report at the time of delivery, to the following email address: Library.ACCSAccountsPayable@austintexas.gov.

3.3.5 When emailing an invoice for audiobook on CD purchases, the contractor shall provide a single copy of the invoice at the time of delivery to the following email address: Library.ACCSAccountsPayable@austintexas.gov.

3.3.6 Invoices and credit memos shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, Contractor's order number, item number, item title(s), applicable International Standard Book Number (ISBN), media type, number of copies, unit list prices, discount rate, extended discount prices, total quantity of copies on invoice, processing fees, bill-to name and address, applicable ship-to and remit-to addresses, the Department's Name, and the name of the point of contact for the Department. Invoices and credit memos shall be itemized, and shall list all processing or other service fees corresponding to the material being shipped/credited. Invoicing for downloadable audiobook purchases shall consist of an original and a duplicate and shall include a delivery report documenting the date/time that City downloaded the audiobook. Invoicing for audiobook on CD purchases shall consist of an original and a duplicate. The Contractor's name and, if applicable, the tax identification number on the invoice or credit memo must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received that are incorrect or that do not include all required information cannot be processed and will be returned to the Contractor for reissuance. 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. Invoices and credit memos shall be mailed to the below address:

	City of Austin
Department	Austin Public Library
Attn:	ACCS Accounts Payable
Address	P. O. Box 2287
City, State, Zip Code	Austin, TX 78768

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

3.3.8 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 **Payment.**

3.4.1 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.

3.4.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.4.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

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

3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

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

3.4.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.4.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

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

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

3.4.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.4.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.5 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

3.6.1 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.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of thirty-six (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.

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

4.1.2 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 this paragraph. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

4.1.3 This is a thirty-six (36) month Contract. Prices are firm for the first twelve (12) months.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. 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.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Contractor To Package Deliverables.** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list inside each shipping container showing the title of each item,

unit price, quantity ordered, quantity shipped, quantity on back order, item number, City purchase order number, Contractor's order number and street date for those items shipped prior to release date. 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) Contractor's order number, (d) Container number and total number of containers, e.g. box 1 of 4 boxes, and (e) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5.2 **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.

5.3 **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.

5.4 **Right Of Inspection And Rejection.** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.5 **No Replacement Of Defective Tender.** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.6 **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.

5.7 **Equal Opportunity.**

5.7.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit A. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

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

5.8 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of

the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.9 Delays.

5.9.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the 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 herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.9.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion 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.

5.10 Ownership And Use Of Deliverables. The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.10.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

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

5.10.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.11 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.12 **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.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

6.1.2 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.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to 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.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 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 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.

6.2.3 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.

SECTION 7. MISCELLANEOUS

7.1 **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.

7.2 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.2.1 disposal of major assets;

7.2.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.2.3 any significant termination or addition of provider contracts;

7.2.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.2.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.2.6 reorganization, reduction and/or relocation in key personnel;

7.2.7 known or anticipated sale, merger, or acquisition;

7.2.8 known, planned or anticipated stock sales;

7.2.9 any litigation against the Contractor; or

7.2.10 significant change in market share or product focus.

7.3 **Right To Audit.**

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

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

7.4 **Indemnity.**

7.4.1 Definitions:

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

7.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

7.4.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS 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.

7.5 **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 effect 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.

7.6 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Roger Stricklin, Corporate Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Recorded Books, Inc.

ATTN: Clayton Strickland, Contract Manager

270 Skipjack Road

Prince Frederick, MD 20678

7.7 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly

notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.8 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.9 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.10 **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 with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.11 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.12 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.13 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.14 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.15 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.16 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.17 **Dispute Resolution.**

7.17.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.17.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's 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.

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

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

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

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

shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.19 Subcontractors.

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

7.19.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

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

7.19.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.19.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.19.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

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

7.19.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.19.4 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.

7.20 Jurisdiction And Venue. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be

construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

7.22 **Holidays.** The following holidays are observed by the City:

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

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

7.23 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

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

7.25 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

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

RECORDED BOOKS, INC.

By: [Signature]

Signature

Name: Edward Longo

Printed Name

Title: COO

Date: 9/24/15

CITY OF AUSTIN.

By: [Signature]

Signature

Name: Erin Vincent

Printed Name

Title: Senior Project Specialist

Date: 9/24/15

List of Exhibits

Exhibit A	Non Discrimination Certification, Section 0800
Exhibit B	Recorded Books, Inc. Proposal dated 08/06/15 ("Contractor's Proposal")
Exhibit C	Branch Library Addresses
Exhibit D	Digital Print Processing Order Form
Exhibit E	Sample Digital Processing Visual
Exhibit F	RFID Stingray Tag

EXHIBIT A

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

**City of Austin, Texas
Human Rights Commission**

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

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

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

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

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

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

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

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

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

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

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

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

Sanctions:

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

Term:

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

Dated this 24th day of September 2015

CONTRACTOR
Authorized
Signature

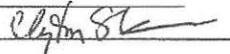
Title

Receivable Books Inc.
SA
COO

EXHIBIT B

BID SHEET (Sole Source) CITY OF AUSTIN AUDIOBOOKS ON CD INCLUDES DIGITAL PROCESSING/DROPSHIP & DOWNLOADABLE AUDIOBOOKS FROM RECORDED BOOKS INC.					
DATE: August 6, 2015					
BUYER: Roger Stricklin					
Copies of Bid: Vendor must submit two signed copies - one original and one copy.					
Special Instructions: A bid of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to bid on that item. Failure to respond to each section of this bid sheet may result in disqualification of your bid. 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. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide, actual purchases may be more or less.					
MATERIALS PRICING, PART 1 Bidder shall provide percent DISCOUNT from Publisher's List Price. Bidder shall calculate the Extended Price with this mathematical equation: (Publisher's List Price after applied %Discount x Estimated Average List Price x Estimated Quantity) = Extended Price for Item 1 and 2					
ITEM No.	ITEM DESCRIPTION	% DISCOUNT FROM LIST PRICE	ESTIMATED AVERAGE LIST PRICE	ESTIMATED QUANTITY	EXTENDED PRICE
1	Audiobooks on CD	20%	\$80	2,500	\$160,000.00
2	Downloadable Audiobooks	20%	\$80	2,422	\$155,000.00
TOTAL PART 1					315,000.00
MATERIALS PROCESSING PRICING, PART 2 PROCESSING COSTS: For MARC Record, Digital Print Cover with embedded Library Logo/Spine Label/Barcode Label/Content Label, and applying CD Hub Labels & RFID Stingray Tags					
ITEM No.	PROCESSING DESCRIPTION	ITEM DESCRIPTION	PROCESSING COST	ESTIMATED QUANTITY	EXTENDED PRICE
3	Custom MARC record to include holding field	Audiobook on CD	1.00	2,500	2,500.00
4	Digitally Printed Cover with embedded Library Logo, Spine Label, 2 Barcodes and 2 Content Labels - supplied by vendor	Audiobook on CD	2.00	2,500	5,000.00
5	Library Supplied RFID Stingray Tag 1st disc (programmed to bar code by vendor)	Audiobook on CD	0.00	2,500	0.00
6	Vendor Supplied CD Hub Label with Barcode Number on all discs in Audiobook	Audiobook on CD	0.50	2,500	1,250.00
TOTAL PART 2					8,750.00
PLATFORM SUBSCRIPTION PRICING, PART 3 (Platform Service for Purchased and Owned eAudio Digital Content)					
7	Platform Subscription for Eighteen Months of Service after Expiration or Non-renewal of Contract				7,500.00
TOTAL PART 3					7,500.00
TOTAL BID PRICE PARTS 1, 2 AND 3					331,250.00
8	PERCENT DISCOUNT FROM LIST PRICE FOR THE PURCHASE OF THE AUDIOBOOK BUNDLE (AUDIOBOOK ON CD & DOWNLOADABLE AUDIOBOOK)				42%
Delivery Terms: Delivery is to be FOB destination, prepaid and allowed.					
Offerors best delivery is 1 day digital version. 5 days for CD version. _____ business days after receipt of order.					
Note Delivery Method _____ Digital or UPS shipping _____					

COMPANY NAME: Recorded Books, INC.

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

PRINTED NAME: Clayton Strickland

EMAIL ADDRESS: cstrickland@recordedbooks.com

TELEPHONE: 512-923-6660

Exhibit C

Includes Processing	Austin Public Library Branches & Address		Branch Acronym	Branch Library Hours of Operation
Yes	1	Faulk Central Library 635 N. Pleasant Valley Rd., Austin, TX 78702 512-974-7400	ACE	Sunday: 12:00 pm - 6:00 pm Monday - Thursday: 11:00 am - 8:00 pm Friday - Saturday: 10:00 am - 6:00 pm
Yes	2	Austin History Center 810 Guadalupe St., Austin TX 78701 512-974-7480	AHC	Sunday: 12:00 pm - 6:00 pm Monday: Closed Tuesday - Saturday: 10:00 am - 6:00 pm
Yes	3	Carver Branch Library 1161 Angelina St., Austin, TX 78702 512-974-1010	ACB	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	4	Cepeda Branch Library 651 N. Pleasant Valley Rd., Austin, TX 78702 512-974-7372	ACP	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	5	Hampton Branch at Oak Hill Library 5125 Convict Hill Rd., Austin, TX 78749 512-974-9900	AOK	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	6	Howson Branch Library 2500 Exposition Blvd., Austin, TX 78703 512-974-8800	AHQ	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	7	Little Walnut Creek Branch 835 W. Rundberg Ln., Austin, TX 78758 512-974-9860	ALW	Sunday: 2:00 pm - 6:00 pm Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	8	Manchaca Road Branch Library 5500 Manchaca Rd., Austin, TX 78745 512-974-8700	AMR	Sunday: 2:00 pm - 6:00 pm Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	9	Milwood Branch Library 12500 Amherst Dr., Austin, TX 78727 512-974-9880	AMI	Sunday: Closed Monday - Thursday: 10:00 am - 7:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	10	North Village Branch 2505 Steck Ave., Austin, TX 78757 512-974-9960	ANV	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	11	Old Quarry Branch Library 7051 Village Center Dr., Austin TX 78731 512-974-8860	AOQ	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	12	Pleasant Hill Branch Library 211 E. William Cannon Dr., Austin, TX 78745 512-974-3940	APH	Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	13	Ruiz Branch Library 1600 Grove Blvd., Austin, TX 78741 512-974-7500	ARZ	Sunday: 2:00 pm - 6:00 pm Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm

Exhibit C

Includes Processing	Austin Public Library Branches & Address		Branch Acronym	Branch Library Hours of Operation
		St. John Branch Library 7500 Blessing Ave., Austin, TX 78752		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 4:00 pm
Yes	14	512-974-7570	ASJ	
		Southeast Branch Library 5803 Nuckols Crossing Rd., Austin, TX 78744		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	15	512-974-8840	ASE	
		Spicewood Springs Branch Library 8637 Spicewood Springs Rd., Austin, TX 78759		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	16	512-974-3800	ASR	
		Terrazas Branch Library 1105 E. Cesar Chavez St., Austin, TX 78702		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	17	512-974-3625	ATB	
		Twin Oaks Branch Library 1800 S. First St., Austin, TX 78704		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	18	512-974-9980	ATO	
		University Hills Branch Library 4721 Loyola Ln., Austin, TX 78723		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	19	512-974-9940	AUH	
		Willie Mae Kirk Branch Library 3101 Oak Springs Dr., Austin, TX 78702		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	20	512-974-9920	AWK	
		Windsor Park Branch Library 5833 Westminster Dr., Austin, TX 78723		Sunday: Closed Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	21	512-974-9840	AWP	
		Yarborough Branch Library 2200 Hancock Dr., Austin, TX 78756		Sunday: 2:00 pm - 6:00 pm Monday - Thursday: 10:00 am - 9:00 pm Friday: 1:00 pm - 6:00 pm Saturday: 10:00 am - 5:00 pm
Yes	22	512-974-8820	AYB	
		Austin Public Library Attn: Materials Processing 635 N. Pleasant Valley Rd., Austin, TX 78702	ACCS	Sunday: Closed Monday - Friday: 7:30 am - 1:30 pm Saturday: Closed
Yes	23			
		Austin Public Library Attn: ACCS NP 635 N. Pleasant Valley Rd., Austin, TX 78702	ACCS NP	Sunday: Closed Monday - Friday: 7:30 am - 1:30 pm Saturday: Closed
No	24			

Recorded Books Cataloging and Processing Order Form

Name of library Austin Public Library

Customer number(s) 254577

Contact name Sandra Cannon

Telephone 512-974-7588 Fax _____

E-mail sandra.cannon@austintexas.gov

Please indicate which services you require:

MARC records:

Note: MARC records are available at no charge on www.recordedbooks.com.

CD-ROM _____

E-mail _____

Custom cataloging specifications:
Please attach a sample.

USMARC/852 holdings: _____

USMARC/other holdings: X - 949 field 949 \1\$a Call number \$w DEWEY \$h Hold code \$i Barcode \$ \$price \$r Y \$s Y
hold code i.e. ACB_CDFIC, AHO_CDNF

Catalog cards: _____

Shelf list cards: _____

Edit sheets: _____

Digital processing X

Please e-mail your library logo to sworham@recordedbooks.com in a bitmap image file (.bmp) or a 300 dpi jpeg (.jpg) file.

	CD	Playaway	DVD	MP3 CD
Spine label	<u>X</u>	_____	_____	_____
Property or library name/logo label	<u>X</u>	_____	_____	_____
Content label	<u>X</u>	_____	_____	_____
Card and pocket	_____	_____	_____	_____
Security strips	<u>RFID X</u>	_____	_____	_____
Bar codes	<u>X</u>	_____	_____	_____
Other	_____	_____	_____	_____

For more information or for pricing options, call Processing Services at 1-800-638-1304, x1160 today!

RecordedBooks

Processing

Labels

Example: CD
FIC
AUTHOR

SPINE LABEL: Please specify your requirements.

Example: CD FIC AUTHOR	FICTION Call number taken from EDI transmission CD FIC 1ST 4 Letters 1ST Word Main Entry	NONFICTION Call number taken from EDI transmission CD DEWEY 1ST 2 Letters 1ST Word Main Entry	BIOGRAPHY Call number taken from EDI transmission CD DEWEY CUTTER Taken from Cutter Sanborn Four-Figure Table
J= YA/Y= (Please specify age range and prefix).	JUVENILE FICTION ** Call number taken from EDI transmission CD J/Y FIC 1ST 4 Letters 1ST Word Main Entry	JUVENILE NONFICTION ** Call number taken from EDI transmission CD J/Y DEWEY 1ST 2 Letters 1ST Word Main Entry	JUVENILE BIOGRAPHY** Call number taken from EDI transmission CD J/Y DEWEY CUTTER Taken from the 1ST 2 Letters Biogrphee's last name
PLAYAWAY:	FICTION	NONFICTION	BIOGRAPHY
PLAYAWAY: J= YA/Y= (Please specify age range and prefix).	JUVENILE FICTION	JUVENILE NONFICTION	JUVENILE BIOGRAPHY
DVD:	FICTION	NONFICTION	BIOGRAPHY
MP3 CD:	FICTION	NONFICTION	BIOGRAPHY
MP3 CD: J= YA/Y= (Please specify age range and prefix).	JUVENILE FICTION	JUVENILE NONFICTION	JUVENILE BIOGRAPHY

** Homework/Readalong pack processing is available. Please call for more information.

For more information or for pricing options, call Processing Services at 1-800-638-1304, x1160 today!

EXHIBIT D

Recorded Books Processing (continued)

Custom Cataloging Specifications: *Please attach a sample.*

Please indicate proper placement of labels on the chart below. Please indicate if the label is to have horizontal or vertical placement.

Back Cover	Spine	Front Cover

Property Labels or Library Name/Logos: *Please write information as you wish it to appear on the label.*

Name of library/school AUSTIN PUBLIC LIBRARY

Label Content label (Front & Back Cover) & Hub label with barcode number all discs (provided by Vendor)

Other RFID 1ST disc (supplied by APL) programed to barcode

CONTENT LABEL: Number of items in case <u>X</u> Circulation card and pocket _____	RFID: Checkpoint _____ Bibliotheca _____ 3M _____
SECURITY STRIPS: Checkpoint _____ 3M _____ CD 3M overlay _____	BOOK DESCRIPTION LABELS: Title, author, and spine information

Bar Codes:

Range _____

Symbology Code 39 - 13 digit - last digit check digit - human readable **Supplied by** Vendor

Library name to appear on bar code BRANCH Library sent in EDI order information above barcode
& Austin Public Library below barcode

Check one: _____ Label supplied by library
 _____ X _____ Label created by Recorded Books

6 DISCS

FAULK CENTRAL LIBRARY

0000100819571

AUSTIN PUBLIC LIBRARY

"Maya Banks... I'm ready for the next step!" —Lisa Taylor

When Sherrill Jones, the author of the best-selling novel *Maya Banks*, found the manuscript of *Taking It All*, she knew she was in for a real treat. In *Taking It All*, Jones tells the story of a woman who is ready for the next step in her life. The book is a masterpiece of storytelling, and it's a book that will stay with you for a long time.

TAKING IT ALL

When Sherrill Jones, the author of the best-selling novel *Maya Banks*, found the manuscript of *Taking It All*, she knew she was in for a real treat. In *Taking It All*, Jones tells the story of a woman who is ready for the next step in her life. The book is a masterpiece of storytelling, and it's a book that will stay with you for a long time.

PERFORMED BY ALIX DALE

Produced for this series by Maya Banks

"Maya Banks writes the kind of books I love to read!" —Lisa Taylor, *NY Times* Bestselling Author

From Maya Banks and Sherrill Jones

MATURE AUDIENCE

PERFORMED BY ALIX DALE

Produced on 6 discs, 7 hours, 22 minutes

Directed by Sherrill Jones

Visit the www.mayabanks.com

Maya Banks (CIP) 2011. All rights reserved. This recording may not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without prior written permission from the publisher.

ISBN 978-1-4805-0919-5

9 781480 668186

6 DISCS

AUSTIN PUBLIC LIBRARY

0000100819571

AUSTIN PUBLIC LIBRARY

BrillianceAudio on Compact Disc Unabridged

IT WAS HERE THAT THE AUTHOR OF THE BESTSELLING TRILOGY

MAYA BANKS

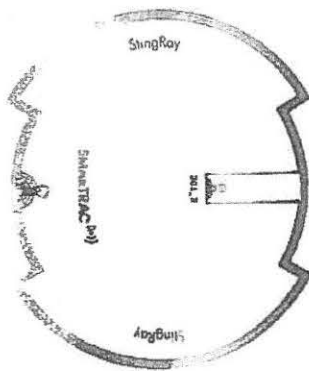
PERFORMED BY ALIX DALE

TAKING IT ALL



EXHIBIT E

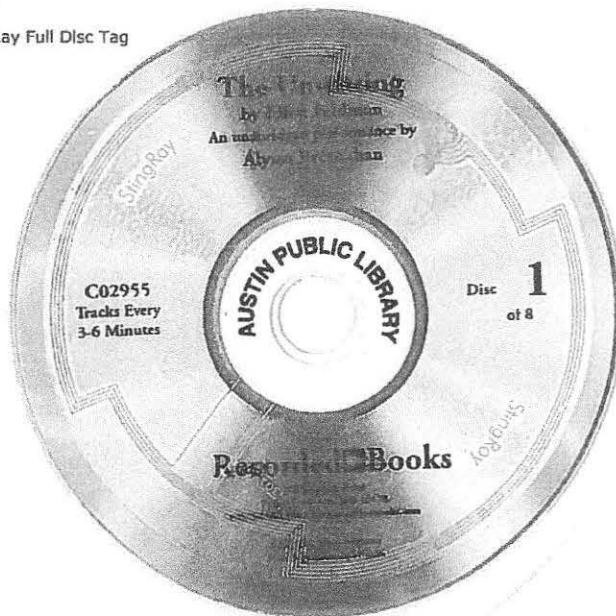
StingRay Full Disc RFID Tag



The StingRay Full Disc RFID tag by SMARTRAC was developed for libraries that desire a single solution for productivity and security. These tags were designed to provide an enhanced read range with DVDs. This RFID full disc overlay tag also works well with the 3M™ SelfCheck™ System, Staff Workstations and RFID Detection Systems.

- One-step application
- Provides more security for CD, DVD, or Blu-ray media
- Longer read range for security and optimum productivity
- Age tested for longevity and read range reliability
- Can be deactivated and reactivated
- Archival quality adhesive
- Label is applied directly on CD or DVD disc

StingRay Full Disc Tag



CITY OF AUSTIN, TEXAS

AUSTIN PUBLIC LIBRARY

PURCHASING SPECIFICATIONS FOR

Unabridged Audiobooks on Compact Disks (CD) and Downloadable Digital Format (DL)

1.0 Purpose

The purpose of this contract is for Recorded Books Inc., a sole source independent publisher of unabridged audiobooks and provider of digital content to libraries, to supply adult and juvenile unabridged spoken compact disks (audiobooks on CD) and audiobooks in downloadable digital format in English and other languages, to the Austin Public Library (APL).

2.0 Background

APL consists of the John Henry Faulk Central Library, twenty Branch Libraries, a Virtual Library, and the Austin History Center. No new branches are currently planned. The City has broken ground on a new Central Library which is planned to open in 2016. During the term of this contract, the City reserves the right to add or remove library locations as needed and without prior written notice to the Contractor.

APL's service population is approximately 1 million with close to 500,000 registered borrowers. All APL customers may borrow (check out) library materials for free from APL provided the customer has an active library borrower card.

APL uses the SirsiDynix Symphony, Integrated Library System (ILS) for acquisitions, cataloging, circulation, and online public access catalog.

APL acquires a variety of published resources for circulation in various formats and languages annually for its APL collection. APL includes audiobooks as part of the circulating materials collection.

2.2 All audiobooks published by Recorded Books Inc. are under copyright and are only available from Recorded Books Inc. Publishers bid books or series of books, collections to be placed as "audiobooks". The publications offered by Recorded Books Inc. are only available from their firm in the "unabridged" form. The company owns an exclusive catalog of over 15,000 audiobook titles narrated by professional, award-winning actors.

Recorded Books Inc. is the sole supplier of these products on compact disk (CD) and on downloadable digital format. Recorded Books Inc. provides its digital format to libraries through its proprietary Oneclick digital platform.

The company was founded in 1979 and is headquartered in Prince Frederick, MD.

3.0 Definitions

3.1 Unabridged - A book or work that is complete and has not been condensed or shortened by using fewer words. An audiobook with a reading of the entire book is an example of an unabridged audiobook.

3.2 Audiobook - A recording of a reading of a book available to be heard as audio.

3.3 CD - Abbreviation for compact disk.

3.4 Compact Disk - a small plastic disk with a metallic surface on which digital information is stored, and from which the information can be heard using a compact disk player.

3.5 DL - Abbreviation for downloadable.

3.6 Downloadable - a publication in digital format made available online through a digital content platform.

3.7 Digital Content Platform - The digital platform hosts the downloadable publication for and on behalf of a provider company. The content is made available to be heard from the host to a digital device that has permission to access the content.

3.8 Digital Format - An audiobook that is offered as a download in electronic form.

3.9 Physical Format - An audiobook that is offered as a compact disk or CD in physical form.

3.10 Active Library Card Holder - An APL customer who has an APL borrower card in good standing.

3.11 Media Type – an audiobook offered in physical or digital format.

4.0 **Contract Terms**

4.1 This invitation for bid shall be a thirty-six month sole source supply agreement with three annual renewal extension options; plus an eighteen month extension option for a platform only subscription, available to commence at the time of the contract expiration date or the non-renewal date of the contract. The eighteen month extension option for the platform only subscription will allow APL to provide continued access to its customers for APL owned downloadable publications purchased or previously purchased from Recorded Books Inc.

5.0 **Contractor Qualifications**

5.1 The Contractor shall be currently supplying unabridged spoken compact disks (audiobooks on CD) and audiobooks in downloadable digital format on a contractual basis with three or more public libraries serving communities with populations of 250,000 or more. Customer references including two Texas Libraries shall be submitted as required in Section 0700 of the solicitation.

5.2 The Contractor shall be actively engaged in regular wholesale business for a period of five (5) years or more, and shall be able to provide a general stock of Unabridged Audiobooks on Compact Disks and Downloadable Format for adults and children in English, Spanish and other languages.

6.0 **Value of Agreement**

6.1 The City reserves the right to purchase more or less of the quantities as may be required during the Contract term. Orders shall be as-needed and specified by the City on each order. Quantities stated on Section 0600, Bid Sheet, are annual estimates and not a guarantee of actual volume. Quantities are provided as a guide to historical and or estimated future usage. There are no minimum order quantities and actual purchased quantities may vary.

7.0 **Discount from List Price**

7.1 The contractor shall bid a flat rate discount for all of the audiobook content. Bids are to be made on the basis of percentage discount from Recorded Books' list price.

7.2 The pricing for the audiobook content shall include the use of the platform to access the downloadable audio books, access to website and or software and or other medium used to select and place orders for audiobook content, the electronic and hard copy files/records/reports/information requests for the purchased and unpurchased content, shipping and delivery, and overall customer support.

7.3 The contractor shall also bid a subscription amount to access only the platform, an option which may be required by APL to provide ongoing access to purchased downloadable materials, at the time of the contract expiration date or contract non-renewal date.

8.0 **Ordering**

8.1 The contractor shall provide free access to the unabridged audiobook catalog and a comprehensive selection list and aids that indicate product availability for APL staff to select materials for the library collection. The list shall include availability, author, title, publication date, media type and the library discount price.

8.2 The contractor shall provide real-time information that includes the number of titles, quantities, media type and discount pricing available on hand to order, and the number of titles, quantities, media type, and cost for purchases on order.

8.3 The contractor shall allow designated APL staff to enter orders and to request full order and tracking inquiries as needed.

8.4 The contractor shall accept orders via contractor's proprietary system (CPS) and or web site (electronic orders), by fax, by telephone, and by e-mail with orders as attachments, accept printed purchase orders, and accept printed selection lists. The contractor shall provide training for the use of the CPS and or web site within the first thirty days from the start of the contract.

8.5 The contractor shall deliver an average of 90% of the compact disks on any purchase order within 45 working days of receipt of order. Contractor shall deliver pre-release orders within 5 calendar days of release date. Upon receipt of order but no later than three working days, the Contractor shall provide a title status/verification report on any titles that cannot be supplied within the 45 working days of the receipt of order.

8.5 The contractor shall deliver an average of 90% of the downloadable content on any purchase order within 4 working days of receipt of order. Contractor shall deliver pre-release orders within 5 calendar days of release date. Upon receipt of order but no later than three working days, the Contractor shall provide a title status/verification report on any titles that cannot be supplied within the 4 working days of receipt of order.

8.6 The contractor shall report on the packing lists for CDs, and on the delivery reports for DLs, any titles temporarily out of stock (TOS), publisher out of stock (POS), out of print (OP), not yet published (NYP), or cannot be supplied with reasons indicated, for all purchase orders placed with the contractor.

8.7 The contractor shall provide monthly purchase status reports for purchased/delivered titles with copy quantities and cost information by purchase order number and date. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

8.8 The contractor shall provide monthly purchase status reports for purchased/undelivered titles with copy quantities and cost information by purchase order number and date. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

8.9 The Contractor shall offer a pre-release program to supply the APL with new audiobooks before the date these items are available for sale to the public.

8.10 The contractor shall provide verifications/confirmations for all purchase orders placed with the contractor, at the date of order.

8.11 For collection development, the contractor shall provide historical prior year statistical information by date order of titles and quantities purchased upon request. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

9.0 **Physical Processing**

9.1 The APL shall provide the contractor pre-numbered bar code labels for the processing of the audiobooks on CD.

9.2 The APL shall provide the contractor RFID Stingray tags for the processing of audiobooks on CD.

9.3 The contractor will apply pre-numbered bar code labels and RFID Stingray tags to audiobooks on CD. All purchase requests for audiobooks on CD will be processed unless "no processing" is requested in the purchase request submitted to the contractor. The APL shall separate processing from no processing purchase requests (processing and no processing orders will not be mixed or ordered on the same purchase order).

9.4 The contractor shall place a bar code label on the front and back of the audiobook case (see appendix 1).

9.5 The contractor shall place an RFID Stingray tag on the front of the first disk of the audiobook (see appendix 2).

9.6 All processing or other service fees shall be itemized on the invoice and correspond to the material it is being charged to.

10.0 **Shipping and Delivery**

10.1 The contractor shall not split shipments of copies of a title, when more than one copy is ordered. Partial shipments of titles in an order are acceptable.

10.2 At the end of 60 working days after order date, the Contractor shall provide a purchase order report of any unfilled or delayed orders, including the number of unfilled/delayed titles and copies. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

10.3 The APL will review report in number 10.2 and shall notify the contractor when to cancel open/unfilled orders. The contractor shall provide a cancellation report as necessary or upon request. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

10.4 The Contractor shall provide a report of any unfilled, delayed, open and cancelled orders upon request or as needed. If the report is not downloadable, the City shall require reports to be submitted electronically in Excel format.

10.5 The Contractor shall have the ability to track deliveries and shipments and provide the information to APL upon request or as needed.

10.6 Fill rate for each year of the contract shall meet or exceed 90 percent for all items ordered.

10.7 Packing list shall include quantity on order, quantity shipped, quantity on backorder, title, item number, purchase order number, contractor order number, and street date when product is shipped prior to release date.

10.8 Contractor shall indicate box number and total number of boxes within shipment by marking number on the exterior of each box; i.e. 1 of 3, 2 of 3, and 3 of 3.

10.9 The shipping label on each carton shall list the contractor order number, and the APL purchase order number(s).

10.10 The same discount shall be extended on materials regardless of the warehouse/facility from which they are shipped.

10.11 All shipping and handling charges shall be incorporated in the cost of the material bid and not charged as a separate line item on the invoice.

10.12 All Shipments that are delivered by carrier will be shipped to Austin Public Library, Attn: ACCS, 635 N. Pleasant Valley Rd., Austin, Texas 78702-3944. All shipments delivered by carrier shall be delivered inside of the library facility (no shipments may be delivered and left outside).

11.0 **Returns and Customer Support**

11.1 Unless otherwise specified, all items shall be guaranteed for a minimum period of 180 days against defects in material and workmanship. During this period, if a defect is determined not to be caused by misuse, the Contractor shall replace the item free of charge within 30 days of the request.

11.2 Items damaged in shipment, incorrect items, or defective items shall be returned to the Contractor for replacement or credit at no expense to APL. APL prefers no-charge replacement to receive credit. In the event that no correct or perfect replacement exists, a credit memo shall be issued to APL within 30-calendar days.

11.3 The Contractor shall assign to APL an account and customer service representative. The contractor shall keep the contact information current and provide a contact sheet to the APL contract administrator.

11.4 The contractor shall provide a copy of the return policy and credit memo procedures to the contract administrator.

12.0 **Invoicing Services**

12.1 The contractor shall provide an invoice by purchase order number for all audiobook orders.

12.2 The contractor shall mail an original invoice and duplicate copy of invoice including a delivery report at the time of delivery for downloadable audiobook purchases.

12.3 The contractor shall include an original invoice, duplicate copy of invoice, and packing list along with each shipment of audiobooks on CD.

12.4 The contractor invoice shall reference the contractor order number, invoice number, APL purchase order number, item number, title, ISBN, media type, number of copies, unit list price, discount rate, extended discount price, processing fees, bill to address, ship to address, and remit to address.

12.5 Invoices sent by US mail, shall be mailed to the Austin Public Library, Attn: ACCS Accounts Payable, P.O. Box 2287, Austin, Texas 78768.

12.6 All credit memos shall be sent by US mail to the Austin Public Library, Attn: ACCS Accounts Payable, P.O. Box 2287, Austin, Texas 78768.

12.7 In the event an invoice is incorrect, the Library cannot make corrections to an invoice. The contractor shall issue a corrected invoice.

13.0 **Post Award Requirement**

13.1 The City may perform site visits during the term of the Contract to verify that the Contractor, or the Contractor's Subcontractor, has the appropriate facilities, equipment, inventory, licenses, permits, and qualified personnel to perform the terms of the contract. The Contractor or the Contractor's Subcontractor shall furnish, or cause to be furnished, without additional charge, services such as a vendor representative to help coordinate the agenda, times, dates, meeting locations/sites, gather statistical data, bring together the managing employees to expedite the visit and or discussions of concern at the vendor site(s).

DRAFT

BID SHEET (Sole Source)
CITY OF AUSTIN
AUDIOBOOKS ON CD & DOWNLOADABLE AUDIOBOOKS
FROM RECORDED BOOKS INC.

DATE: February 5, 2015

BUYER: Erin D'Vincent

Copies of Bid: Vendor must submit two signed copies - one original and one copy.

Special Instructions:

A bid of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to bid on that item. Failure to respond to each section of this bid sheet may result in disqualification of your bid. 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. The City does not guarantee the purchase of the quantities listed. Quantities are provided as a guide, actual purchases may be more or less.

MATERIALS PRICING, PART 1

Bidder shall provide percent DISCOUNT from Publisher's List Price. Bidder shall calculate the Extended Price with this mathematical equation.
(Publisher's List Price after applied %Discount x Estimated Average List Price x Estimated Quantity) = Extended Price for item 1 and 2

ITEM No.	ITEM DESCRIPTION	% DISCOUNT FROM LIST PRICE	ESTIMATED AVERAGE LIST PRICE	ESTIMATED QUANTITY	EXTENDED PRICE
1	Audiobooks on CD	20%	\$80	2,500	\$160,000.00
2	Downloadable Audiobooks	20%	\$80	2,500	160,000.00
TOTAL PART 1					320,000.00

(MATERIALS PROCESSING PRICING, PART 2)

PROCESSING COSTS: For applying labels & Library supplied RFID Stingray tags

ITEM No.	ITEM DESCRIPTION	PROCESSING DESCRIPTION	PROCESSING COST	ESTIMATED QUANTITY	EXTENDED PRICE
3	Audiobook on CD	Library Supplied Bar Code	0.75	2,500	1,875.00
4	Audiobook on CD	Library Supplied RFID Stingray	0.75	2,500	1,875.00
TOTAL PART 2					\$3,750.00

PLATFORM SUBSCRIPTION PRICING, PART 3
(Platform Service for Purchased and Owned eAudio Digital Content)

5	Platform Subscription for Eighteen Months of Service after Expiration or Non-renewal of Contract	7,500.00
TOTAL PART 3		7,500.00
TOTAL BID PRICE PARTS 1, 2 AND 3		331,250.00

6	PERCENT DISCOUNT FROM LIST PRICE FOR THE PURCHASE OF THE AUDIOBOOK BUNDLE (AUDIOBOOK ON CD & DOWNLOADABLE AUDIOBOOK)				0.42
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Delivery Terms: Delivery is to be FOB destination, prepaid and allowed.

Offerors best delivery is __1 day digital version. 5 days for CD version. _____ business days after receipt of order.

Note Delivery Method _____ Digital or UPS shipping _____

COMPANY NAME: __Recorded Books , INC. _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

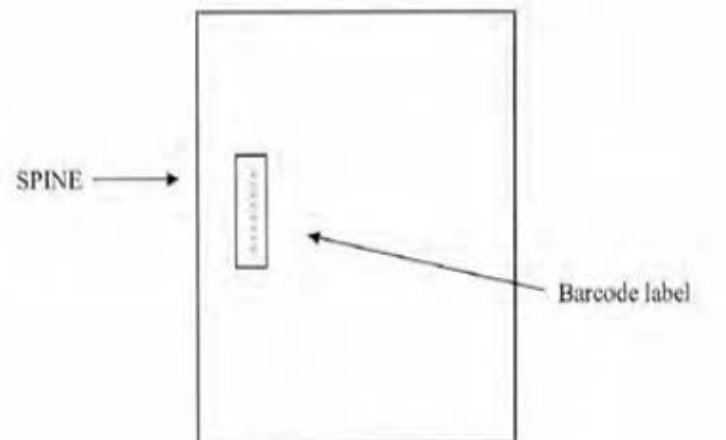
PRINTED NAME: _____ Clayton Strickland _____

EMAIL ADDRESS: _cstrickland@recordedbooks.com _____

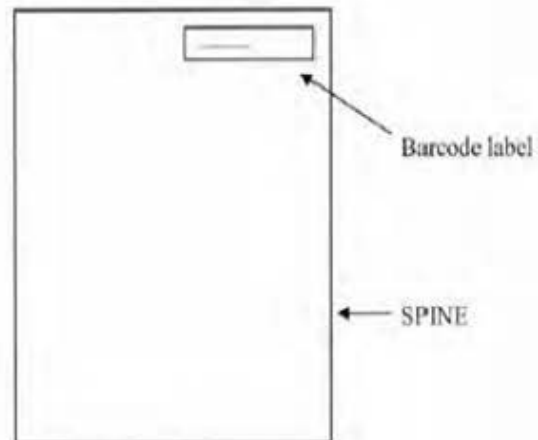
TELEPHONE: _____ 512-923-6660 _____

CD SETS

Appendix 1

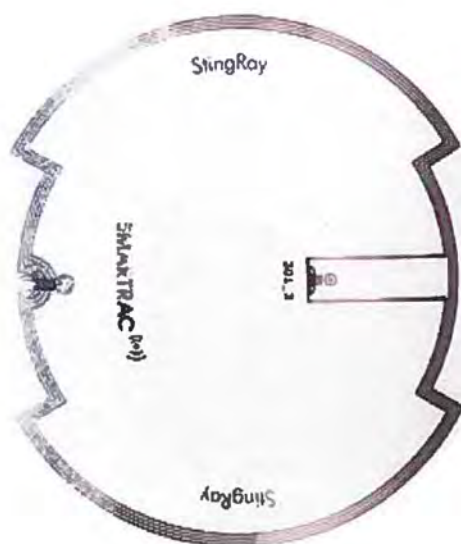


FRONT OF CONTAINER



BACK OF CONTAINER

StingRay Full Disc RFID Tag

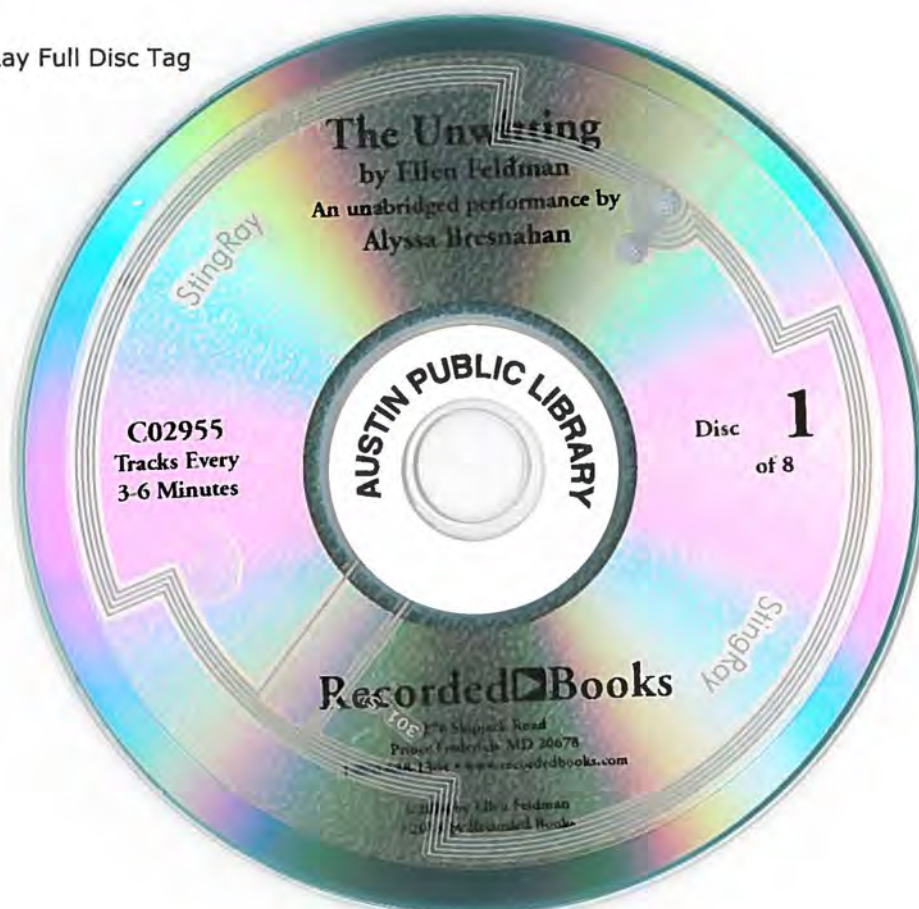


The StingRay Full Disc RFID tag by SMARTRAC was developed for libraries that desire a single solution for productivity and security. These tags were designed to provide an enhanced read range with DVDs. This RFID full disc overlay tag also works well with the 3M™ SelfCheck™ System, Staff Workstations and RFID Detection Systems.

- One-step application
- Provides more security for CD, DVD, or Blu-ray media
- Longer read range for security and optimum productivity
- Age tested for longevity and read range reliability
- Can be deactivated and reactivated
- Archival quality adhesive
- Label is applied directly on CD or DVD disc



StingRay Full Disc Tag





City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/02/2015

DEPT: Library

TO: Purchasing Officer or Designee

FROM: Sandra Cannon/Xavier Ramirez

BUYER: Erin D'Vincent (512) 972-4017

PHONE: (512) 974-7477

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

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

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

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

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

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

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

Attached is a signed letter on company letterhead supporting the sole source exemption for the purchase of audio books (books on CD) and downloadable audio books. Recorded Books Inc. is the sole source independent publisher of approximately 15,000 unabridged audiobooks available on compact disk and downloadable formats. All audiobooks published by Recorded Books Inc. are under copyright and are only available from Recorded Books Inc. Publishers bid books and or series of books, collections to be placed as audiobooks. The publications offered by Recorded Books Inc. are only available from their firm in the unabridged form. The company owns an exclusive catalog of audiobook titles narrated by professional, award winning actors.

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

There are many book titles in the abridged and unabridged form that are also available as audiobooks from a variety of vendors. The unabridged book publications offered as unabridged audiobooks from Recorded Books Inc. are only available from Recorded Books Inc.

The Library is requesting a three year contract with three annual renewal extension options in the annual average amount of \$325,000, for the purchase of audiobooks on CD and downloadable audiobooks from Recorded Books Inc. The total cost includes the cost for audiobooks on CD, downloadable audiobook content, processing cost for RFID security tag and barcode placement, platform access, and customer support.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Recorded Books Inc.
which will cost approximately \$ 1,950,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Sandra Cannon 03/18/2015 KR
Originator Date

Approved
Certification

Celene McFee for Brenda Brandt 3/19/15
Department Director or designee Date

[Signature] 03/23/15
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

[Signature] 3-30-15 Gu
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

[Signature] 4/1/15
Purchasing Officer or designee Date

02/26/2013