

Amendment No. 5
to
Contract No. GC100000003
for
Safety Shoes
between
Red Wing Brands of America, Inc.
and the
City of Austin

1.0 The City hereby exercises the hold over provision of the above referenced contract for a period of 240 days in accordance with the hold over language in the "Term of Contract" provision which reads as follows:

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

- 2.0 Effective 09/30/2017, the term for the hold over will be October 1, 2017 to May 31, 2018.
- 3.0 The total Contract amount is unchanged for the hold over period. The total Contract authorization is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 12/21/09 - 09/30/12	\$993,750.00	\$993,750.00
Amendment No. 1: Name Change	\$0.00	\$993,750.00
Amendment No. 2: Holdover 10/01/12 – 12/30/12	\$0.00	\$993,750.00
Amendment No. 3: Extended contract by 45 months and add funding	\$1,213,245.00	\$2,206,995.00
Amendment No. 4: Extend contract to match TXMAS	\$0.00	\$2,206,995.00

Cooperative end date		
Amendment No. 5: 240 Day Holdover 10/01/2017 – 05/31/2018	\$0.00	\$2,206,995.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

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

Signature & Date:

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Signature & Date:

Printed Name:

Authorized Representative -

Matthew Duree, Procurement Supervisor City of Austin Purchasing Office

Red Wing Brands of America, Inc. 31 Main St Red Win, MN 55066



Amendment No. 4
to
Contract No. GC100000003
for
Safety Shoes
between
Red Wing Brands of America, Inc.
and the
City of Austin, Texas

1.0 The City hereby extends the end date of the contract in order to match the contract end date of TXMAS contract # TXMAS-9-84090. Effective 09/29/16, the term for the extension will be September 30, 2016 to September 30, 2017.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 12/21/09 - 09/30/12	\$993,750.00	\$993,750.00
Amendment No. 1: Name Change	\$0.00	\$0.00
Amendment No. 2: Holdover 10/01/12 – 12/30/12	\$0.00	\$993,750.00
Amendment No. 3: Extend contract by 45 months and add funding	\$1,213,245.00	\$2,206,995.00
Amendment No. 4: Extend contract to match TXMAS Cooperative end date	\$0.00	\$2,206,995.00

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

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

Signature & Date:

Signature & Date:

Red Wing Brands of America, Inc.

314 Main St. Red Win, MN 55066 Printed Name: David Hull onathan Dalchau, Sr. Buyer Specialist

City of Austin

Purchasing Office



Financial and Administrative Service Department Purchasing Office

PO Box 1088, Austin, Texas, 78767

January 13, 2010

Red Wing Brands of America, Inc. dba Red Wing Shoe Company, Inc. Tom Weeks 4203 Treehaven Court Arlington, TX 76016-4616

Dear Mr. Weeks,

The City of Austin has approved the execution of a contract with your company for safety shoes in accordance with TXMAS contract 9-84090.

Responsible Department:	Material Management
Department Contact Person:	Jorge Valle
Department Contact Email:	Jorge.Valle@ci.austin.tx.us Materials Management Department 2001 East 5th Street Austin, Texas 78702
Department Contact Telephone:	(512) 974-1718
Project Name:	Safety Shoes
Contractor Name:	Red Wing Shoe Company, Inc.
Contract Number:	7400 - GC100000003
Contract Period Amount:	\$993,750
Contract Period:	12/21/09 – 09/30/12
Extension Options:	There are no extension options
Requisition Number:	8200-09050500505
Agenda Item Number:	80
Council Approval Date:	December 17, 2009

A copy of the contract/purchase order will be forwarded by U.S. mail or email.

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

Sincerely,

Sharon Patterson Senior Buyer

512-974-4014

CONTRACT BETWEEN THE CITY OF AUSTIN ("City") AND

Red Wing Brands of America, Inc. dba Red Wing Shoe Company, Inc. ("Contractor") for

Safety Shoes GC1000000003

The City accepts the Contractor's Offer (as referenced in Section 1.1 below) for the above requirement and enters into the following Contract.

This Contract is between Red Wing Shoe Company, Inc. having offices at Red Wing, MN 55066 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

- 1.1 This Contract is composed of the following documents:
 - 1.1.1 This Contract
 - 1.1.2 TXMAS Contract 9-84090, Red Wing Shoe Company Offer, dated August 12, 2009, including subsequent clarifications.
 - 1.1.3 The City's Standard Purchase Terms & Conditions, (Section 0300) incorporated by reference with the same force and effect as if they were incorporated by full text (The full text version of this Section is available, on the Internet at the following online address: http://www.ci.austin.tx.us/purchase/standard.htm.)
 - 1.1.4 Exhibit A, The City's Supplemental Purchase Provisions, Section 0400.
- 1.2 <u>Order of Precedence</u>. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - 1.2.1 This Contract
 - 1.2.2 TXMAS Contract 9-84090 and Contractor's Offer, as referenced in Section 1.1.2
 - 1.2.3 The City's Standard Purchase Terms & Conditions, (Section 0300) as referenced in Section 1.1.3
 - 1.2.4 The City's Supplemental Purchase Provision (Section 0400) as referenced in Section 1.14
- 1.3 **Quantity.** Quantity of goods or services will be determined on an as needed basis as specified by the City in each Delivery Order. There are no guaranteed quantities or minimum order quantities.
- 1.4 <u>Term of Contract.</u> The Contract will be in effect for an initial term of 33 months with no extension options.
- 1.5 <u>Compensation</u>. The Contractor shall be paid a total Not-to-Exceed amount of \$933,750.
 Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.
- 1.6 <u>Scope of Work, Clarifications and Additional Agreements.</u> The following are incorporated into the Contract.
 - 1.6.1 Notes taken from November 5, 2009 meeting between the City and Red Wing Shoe Company, Inc.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and

understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

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

RED WING SHOE COMPANY, INC.	CITY OF AUSTIN
Im Weeks	Tharantaterson
Signature	Signature
Tom J. Weeks	Sharon Patterson
Tom Weeks	Sharon Patterson
Regional Anchistial Suborting.	Senior Buyer
Title: Regional Industrial Sales Manager	Title: Senior Buyer
December 21,2009	December 21,2000
Date:	Date:
	Lynn Muller
Exhibit A - The City's Supplemental Purchase Provis	ions, Section 0400.
	(01/13/10

TEXAS COMPTROLLER of Public Accounts

P.O. Box 13.186 + Austin, TX 78711-3186



Texas Comptroller of Public Accounts

August 10, 2009

Jeff J. Marcus Red Wing Brands of America, Inc. 314 Main Street Red Wing, MN 55066

RE: Contract No. TXMAS-9-84090 Contract Period 08/12/09 through 09/30/12

Dear Mr. Marcus:

Your company has been awarded a contract under the Texas Multiple Award Schedule (TXMAS) program. The period of the contract is shown above and will coincide with the contract period of your contract, GS-07F-0027N with the General Services Administration (GSA). As stated in your contract with the State of Texas, Terms and Conditions, you are responsible for notifying the Texas Comptroller of Public Accounts (CPA) within thirty (30) calendar days of any change in the status of your contract with GSA or amendments to the Federal Schedule Contract.

All terms and conditions set forth in the document that you signed as a part of your offer to the State are made a part of this TXMAS contract. Please note that any payment due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Additionally, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the CPA and the contractor to attempt to resolve all disputes arising under this contract.

As set forth in Section 8 of the Contract Terms and Conditions, a Quarterly Sales Report is required under this contract. The reporting requirement will commence for the period June – August 2009. Subsequent reports will follow the calendar quarters (i.e., September – November, December – February, and March – May).

Red Wing Brands of America, Inc. August 10, 2009 Page 2

In order to facilitate catalog access to TXMAS contractor catalogs, the CPA will maintain a web page exclusive to your TXMAS contract. In addition to user instructions and informational details relating to the contractor, a universal resource locator (URL) address is required for the contractor's catalog. The catalog may be the same as the catalog used for the GSA Advantage e-procurement program, but it must have a TXMAS identifying cover and a URL, exclusive to the TXMAS program. It is requested that your catalog web address be established within fourteen (14) calendar days and provided by e-mail to the TXMAS Program Unit at txmas@CPA.state.tx.us. If you have any questions regarding this or any of the other requirements relating to the TXMAS program, please contact Richard San Jose at 512-463-3421 or Jacqueline Klaus at 512-463-8839.

Respectfully,

Martin A. Hubert
Deputy Comptroller

THIS CONTRACT is by and between the STATE OF TEXAS ("State") acting through	ı the
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS ("CPA"), with offices in the LBJ S	State
Office Building, 111 B. 17th Street, Austin, Texas 78774 and KED WING BIAND	<u>) </u>
Of HOUSE 1000 ("Contractor") with offices at 314 MAIAY ST	
RED WING, MN 55066	
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1. BACKGROUND:

The Contractor has entered into a contract with the Federal Government under the Federal Government's Supply Schedule Contract Program administered by the General Services Administration ("GSA"). That program allows a contractor and the GSA to negotiate in advance of actual purchases the terms and conditions under which a contractor will supply goods or services to the Federal Government. Such a Federal schedule contract is not a commitment to purchase any goods or services; it is only a convenient way to do so should a Federal agency so choose during the contract's term.

The Texas Comptroller of Public Accounts has also determined that the Contractor's Federal schedule contract offers goods or services that may be of interest to various state agencies and has therefore decided to use the Contractor's Federal contract as a basis for a state multiple award schedule contract with the Contractor. This state multiple award schedule contract (the "Contract") establishes terms and conditions under which a state agency may acquire the Contractor's goods or services, but it in no manner obligates any state agency to do so.

TERMS & CONDITIONS

2. COMPOSITION OF CONTRACT:

- (a) This Contract consists of the terms of the Contractor's Federal Schedule Contract, Number \$\oldsymbol{C} \oldsymbol{O} \oldsymbol{P} \oldsymbol{O} \oldsymbol{Q} \oldsymbol{N}\$ (the "Federal Schedule Contract" or "Schedule Contract"), as amended by this Contract (see Paragraph 36 "ENTIRE AGREEMENT"). The Contractor's Schedule Contract consists of all the documents and materials incorporated in that agreement with the Federal Government. Those documents include, among possible others, the Federal Government's original solicitation, the Contractor's offer to the Federal Government, with amendments, the Contractor's best and final offer letter, the final award, and the Contractor's most current version of its Authorized Schedule Price List.
- (b) Additionally, all representations, clarifications, and certifications submitted by the Contractor as a part of that contracting process are also included. And it includes any laws, regulations, documents, guidelines, and other materials incorporated by reference in the Contractor's Schedule Contract, including all Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation (DFAR), Federal Information Processing Standards Publication (FIPS PUB), Federal Standards (FED-STD) and

United States Code (USC) provisions, among others. By way of example, such would include all cited FAR and DFAR provisions relating to warranties, liabilities, and rights in data, and the GSA's Price Reduction Clause, among others.

(c) It is recognized that prices reflected on GSA schedule contracts are most favored customer prices and are maximum prices. A State Agency or Local Government may negotiate a lower price for goods and services listed on a schedule contract. CPA operates an online ordering system. A 1.5% administrative fee is charged on all orders. The contractor is authorized to charge up to 1.5228% to recover this charge. The Contractor shall remit this administrative fee to the TexasOnline vendor on a monthly basis, as invoiced.

3. CERTIFICATION OF ACCURACY:

The Contractor hereby certifies that all copies of the Contractor's Authorized Schedule Price List that were submitted to the State as part of the negotiation of this Contract are true, correct, current, and complete copies of that Price List. The Contractor further represents and warrants that all future Price Lists submitted to revise this Contract will also be true, correct, current, and complete copies of the then-current Price List under the Contractor's then-current Federal Contract.

4. FEDERAL REPRESENTATIONS:

The Contractor warrants that all certifications and representations made to the Federal Government as a basis for obtaining or as a part of its GSA Schedule Contract were and still are true and accurate. The Contractor further agrees that such representations are a basis for the State entering into this Contract and that such representation and certifications inure to the State's benefit.

5. FUTURE NOTICE:

The Contractor acknowledges that any continuing obligation to notify the Federal Government of changes affecting its GSA Schedule Contract, including by way of example, notices required under the price reduction provisions of its Schedule Contract, must be provided in the same manner to the State. The State's rights under those notices will be the same as the rights of the Federal Government. Additionally, the Contractor agrees to notify the State within thirty (30) calendar days of all changes in the status of or amendments to its Federal Schedule Contract.

6. PARTIES TO THE CONTRACT:

(a) For purposes of this Contract, all references to "Government," "Federal Government," "GSA," or similar terms meaning the Federal Government in the Contractor's Schedule Contract will mean the "State." And references to the "Contracting Officer" will mean the State representative, or their successor or designee, who signed this Contract on

behalf of the State. Additionally, for purposes of this Contract, all rights and obligations of the Contractor and the Federal Government under the Contractor's Schedule Contract, except to the extent that such would create an absurdity, or are otherwise clearly inappropriate, or would violate state or federal law, will be rights and obligations between the Contractor and the State.

- (b) This Contract may be relied on by any "State Agency" as defined under §2251.001(8), Texas Government Code and any "Local Government" as defined under §271.101, Texas Local Government Code. Whenever a Local Government relies upon this Contract to issue a purchase order, the Local Government will step into the shoes of the State under this Contract. Any order placed by a Local Government under this contract will be between the Contractor and the Local Government. The Contractor will look solely to the Local Government for performance, including but not limited to payment, and will hold the State harmless with regard to such orders. The State, however, will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Local Government.
- (c) Nothing in this Contract requires the Contractor to accept an order from a Local Government where the Contractor reasonably believes that the Local Government is or will be unable to perform its obligations in relation to that order.
- (d) Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing the services under this Contract. Contractor or Contractor's employees, representatives, agents and any subcontractors shall not be employees of the State. Should Contractor subcontract any of the services required in this Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), the State is in no manner liable to any subcontractor(s) of Contractor. In no event shall this provision relieve Contractor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Contract.

7. SPECIFIC CHANGES TO PROVISIONS INCLUDED IN THE CONTRACTOR'S SCHEDULE CONTRACT:

The State and the Contractor agree to the following changes to specific provisions of the Contractor's Federal Schedule Contract, notwithstanding anything to the contrary contained in the Contractor's Federal Contract:

- (a) All equipment will be new and all replacement parts will be new.
- (b) The ordering and payment addresses under this Contract will be those contained in the Contractor's offer letter to the State.

- (c) Payments and invoicing will be in accordance with the terms discussed under Paragraph 12 "PAYMENT; TRAVEL EXPENSES" and Paragraph 13 "INVOICE REQUIREMENTS", below.
- (d) All shipping of equipment under warranty for repairs will be at the Contractor's expense.
- (e) All references to hours of the day will be deemed to be references to Central Standard/Daylight Time.
- (f) The State will not purchase goods or services for overseas delivery, or provide the Contractor with overseas support.
- (g) The Contractor will not offer to the State any products that are not Year 2000 compliant. All such items listed in the Contractor's Authorized Price List are deleted for purposes of the State.
- (h) As this Contract refers to a GSA schedule contract for convenience, orders under this Contract are not orders under the GSA schedule program. Therefore, the federal supply schedules for blanket purchase agreements, contractor team arrangements are not applicable to this contract. However, for administrative convenience and to satisfy a total best value procurement requirement, a purchasing entity may, if the quoted price is determined to be fair and reasonable, purchase incidental items that are not on the GSA contract schedule. The purchase of incidental, off schedule items will be treated as an open market purchase and clearly labeled on the schedule purchase order as open market items.
- (i) Those terms and conditions of the Contractor's offering documentation not specifically referenced by the Amendments delineated under this heading shall remain unchanged.
- (j) The Contractor will provide a Universal Resource Locator (URL) address that is exclusive to the Contractor's TXMAS contract and catalog. The "hot link" must allow users access to the Contractor's TXMAS catalog from the CPA website.

8. CONTRACTOR MONTHLY SALES REPORT:

- (a) The Contractor shall report to the State the monthly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales under this Contract. The dollar value of the sale shall be the price paid by the schedule user for the products and services on a schedule contract task or delivery order, as recorded by the Contractor.
- (b) The Contractor shall report the monthly dollar value of sales electronically in the online format provided by CPA (See Paragraph 8(e), below). If no sales occur, the

Contractor shall report "NO" sales. The report shall be submitted within ten (10) calendar days following the end of the calendar month.

- (c) The Contractor shall remit to the State of Texas a sales rebate which will not exceed the GSA Industrial Funding Fee (IFF) that is in effect at the time of the submission. The sales rebate shall be remitted on a quarterly basis, using the State of Texas Fiscal Calendar, which starts on September 1 and ends on August 31 of each year. The sales rebate will be for the amount of sales under the Contract for the previous quarter.
- (d) The Sales Rebate remittance should be identified as "TXMAS Sales Rebate" and made payable to <u>CPA</u>. The remittance address is: Texas Comptroller of Public Accounts, TPASS, Attn: Accounts Payable, P.O. Box 13186, Austin, TX 78711-3186.
- (e) The Contractor shall also submit a final closeout report within one hundred and twenty (120) calendar days after the expiration or termination of this Contract. The contract shall expire upon the physical completion of the last outstanding task or delivery the final order under the Contract. The closeout report shall include all sales not shown in the final or most recent quarterly report and shall reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor shall report "zero" sales in the closeout report.
- (f) The Monthly Sales Report shall be submitted electronically online at: http://portal.cpa.state.tx.us/txmas/yendor/, (see Attachment A).
- (g) If the Contractor fails to submit sales reports, falsifies sales reports, or fails to submit sales reports in a timely manner, the State may terminate or cancel this Contract in accordance with Paragraph 19 "TERMINATION; SURVIVAL".

9. DEALERS/DISTRIBUTORS:

- (a) Upon approval of CPA, the Contractor may designate one or more dealers or distributors to provide services under this Contract on behalf of the Contractor. To designate a dealer or distributor, the Contractor must provide a Letter of Authorization. The Contractor shall provide a separate Letter of Authorization for each designated dealer or distributor.
- (b) The Letter of Authorization must be submitted on the Contractor's official letterhead, signed by an authorized representative, and addressed to the attention of the Director of the Texas Procurement and Support Services Division at the address set forth in Paragraph 30 (Notices) of this Contract. The Letter of Authorization must include a Letter of Acceptance from the dealer/distributor and all supporting documentation. By submitting a Letter of Authorization, the Contractor represents and warrants the following:

- (1) The dealer/distributor has been given a copy of this Contract, a duly authorized representative of the dealer/distributor has agreed in writing to be bound by the terms and conditions of this Contract, and that such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (2) The Contractor agrees to remain liable under this Contract for any failure of the dealer/distributor to perform and for any breach of the dealer/distributor under this Contract.
- (3) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
- (4) To the extent that there is any liability to the State arising from doing business with a dealer or distributor that has not signed the Letter of Acceptance required under this section with the Contractor, the Contractor will indemnify the State for such liability.
- (5) The Contractor's Letter of Authorization shall remain effective until CPA receives written notification from the Contractor that the authorization to a dealer or distributor is withdrawn.
- (c) The Letter of Acceptance must be submitted on the dealer/distributor's official letterhead, signed by an authorized representative of the dealer/distributor, and addressed to the attention of the Contractor. In the Letter of Acceptance, the dealer or distributor must represent and warrant that it has been given a copy of this Contract, it agrees to be bound by the terms and conditions of this Contract, and such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
 - (1) For a dealer, the Letter of Acceptance must also include the following information:
 - i. the dealer's name and address,
 - ii. the dealer's point of contact name, telephone number, fax number, and email address,
 - iii. the dealer's purchase order, invoice, and payment address(es),
 - iv. the dealer's Federal Employer's Identification number (FEI),
 - v. the dealer's Dun and Bradstreet (DUNS) number, if available,
 - vi. the dealer's completed W9, and
 - vii. the dealer's HUB Certificate, if dealer is a Texas HUB.
 - (2) For a distributor, the Letter of Acceptance must also include the following information:
 - i. the distributor's name and address,
 - ii. the distributor's point of contact name, telephone number, fax number, and email address.
 - iii. the distributor's purchase order, invoice, and payment address(es),
 - iv. the distributor's Federal Employer's Identification number (FEI),
 - v. the distributor's Dun and Bradstreet (DUNS) number, if available, and

- vi. the distributor's HUB Certificate, if distributor is a Texas HUB.
- (d) Prior to CPA's approval of the Contractor's designated dealer or distributor, CPA will review the Letter of Authorization and the required documentation for compliance with this section and applicable state laws and regulations. If the Letter of Authorization is incomplete, e.g. does not include the Letter of Acceptance or other required documentation, then CPA reserves the right to reject the Letter of Authorization and require re-submission by the Contractor of the Letter of Authorization and all required documentation.

10. POLICY ON UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS):

- (a) In accordance with §§2161.181-2161.182, Texas Government Code and 34 Texas Administrative Code (TAC) §20.11, state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services and commodities contracts. The Texas Comptroller of Public Accounts (CPA) HUB Rules, 34 TAC §§20.11-20.28 encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.
- (b) The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:
 - (1) 11.9% for heavy construction other than building contracts;
 - (2) 26.1% for all building construction, including general contractors and operative builders contracts;
 - (3) 57.2% for all special trade construction contracts;
 - (4) 20% for professional services contracts;
 - (5) 33% for all other services contracts; and
 - (6) 12.6% for commodities contracts.
- (c) Each state agency shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year.
- (d) Contractors are urged to utilize Texas Certified HUBs as dealers or distributors whenever possible to promote full and equal business opportunities and assist state agencies in meeting the goals listed above. Instructions for generating a list of Certified Texas HUB Vendors that are registered on the Texas Centralized Master Bidder List (CMBL) for the commodities included in the contract schedule are attached (see Attachment B). Contractors are also strongly encouraged to make a good faith effort within the <u>basic</u> terms of the GSA contract and consider engaging the service of a HUB to meet the contractual obligation in Texas. <u>The attached TXMAS HUB Good Faith</u>

Effort Certification must be completed and returned with this document (see Attachment C).

11. LIMITATION OF LIABILITY:

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE PARTIES AGREE THAT IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAD BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

12. PAYMENT; TRAVEL EXPENSES:

- (a) Payment shall be made in accordance with Chapter 2251, Texas Government Code.
- (b) Except as provided for in §2251.021(b), Texas Government Code payment by a State Agency or Local Government is due within thirty (30) calendar days after the later of:
 - (1) the date the State Agency or Local Government receives the goods under the contract;
 - (2) the date the State Agency or Local Government receives a proper invoice (see Paragraph 13 "INVOICE REQUIREMENTS") for the goods or services; or
 - (3) the date the performance of the service under the contact is completed
- (c) Except as provided for in §2251.021(b), Texas Government Code, a payment will begin to accrue interest at a rate of one percent a month on the 31st day after the later event described by subsections (b)(1) through (3) above. Interest stops accruing on the date the State Agency or Local Government mails (postmark) or electronically transmits the payment.
- (d) Any travel or per diem required by the Contractor to perform its obligations under this Contract will be at the Contractor's expense. All travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with State of Texas Travel Allowance Guide.

13. INVOICE REQUIREMENTS:

- (a) In order to receive payment, the Contractor must submit an original invoice to the office designated in the purchase order as the "Bill To" address. To be a proper invoice, the invoice must include the following information and/or attachments:
 - (1) Name and address of the Contractor as designated in this Contract.
 - (2) The Contractor's Texas Identification Number (TIN) as designated in this Contract.
 - (3) The Contractor's invoice remittance address as designated in this Contract.
 - (4) The purchase order number authorizing the delivery of products or services.
 - (5) A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).
- (b) If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.
- (c) If an invoice does not meet this section's requirements or if the Contractor fails to give proper notice of a price increase (see Paragraph 15 "NOTIFICATION OF PRICE INCREASE"), the State will send the Contractor written notice with the improper invoice to the address designated for receipt of purchase orders within twenty-one (21) calendar days after receipt of the invoice. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice.

14. AUDIT REQUIREMENTS:

In addition to and without limitation on the other audit provisions of this Contract, pursuant to §2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the Contractor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by the Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of §2262.003, Texas Government Code. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirement to cooperate is included in any subcontract it awards.

15. NOTIFICATION OF PRICE INCREASES:

For price increases authorized under this contract, notification of such must be given to the CPA and to the purchase order "bill to" address contained in the applicable purchase order(s) for any orders affected by the increase (e.g., existing leases, licenses, or annual maintenance programs). The Contractor must give these notices no later than thirty (30) calendar days before the effective date of the price increase. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

16. NON-APPROPRIATION OF FUNDS:

This Contract and any order resulting from this Contract is subject to termination or cancellation, without penalty to the State, either in whole or in part, subject to the availability of state funds. If the Texas Legislature fails to continue funding for the payments due under a Purchase Order under this Contract, the Purchase Order will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, the State will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and the State will not be required to give prior notice.

17. PUBLIC INFORMATION; SEARCH ENGINE KEYWORDS:

- (a) Notwithstanding any provisions of this Contract to the contrary, Contractor understands that the State will comply with the Texas Public Information Act (Chapter 552, Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation and other material in connection with this Contract may be subject to public disclosure pursuant to the Texas Public Information Act.
- (b) The CPA maintains a TXMAS-only search engine on the TXMAS Web site. This search engine allows State Agencies and participating Local Government to search TXMAS contractor catalogs. The Contractor may submit to the CPA a list of keywords that directly relate to the Contractor's catalog items/services. The Contractor may update this list of keywords at its discretion during the term of this Contract.

The CPA, at its sole discretion, may review the keywords submitted by the Contractor. If the CPA determines that the keywords submitted do not directly relate to the Contractor's catalog items/services, the CPA may terminate this Contract in accordance with Paragraph 19, TERMINATION; SURVIVAL.

18. TAX EXEMPTION:

The State is exempt from State Sales tax and Federal Excise tax. Ordering entities will furnish Tax Exemption Certificate(s) to the Contractor upon request.

19. TERMINATION; SURVIVAL:

The State or the Contractor may cancel this Contract, in whole or in part, without cause on thirty (30) calendar day's written notice. The Contract shall terminate upon later to occur of (1) the expiration of the Contractor's Federal Schedule Contract or (2) the physical completion of the last outstanding task or delivery of the final order under the Contract. All applicable service agreements that were entered into between the Contractor and the ordering entity under the terms and conditions of the Contract shall survive the cancellation or termination of the Contract.

20. AUTOMATIC RENEWAL:

This contract is automatically renewed on the date that GSA exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods unless modified by mutual agreement.

21. DELIVERIES:

Unless stated otherwise in the Contractor's Federal Schedule Contract, all deliveries will be F.O.B. Destination.

22. EQUAL EMPLOYMENT OPPORTUNITY:

The Contractor shall comply with all Federal and Texas laws regarding equal employment opportunity.

23. DRUG FREE WORKPLACE:

The Contractor shall make a good faith effort to ensure that none of its employees are under the influence of or possess illegal drugs or alcohol or abuse prescription drugs while they are on State property.

24. AMERICANS WITH DISABILITIES ACT:

The Contractor shall comply with the requirements of the Americans with Disabilities Act.

25. IMMIGRATION:

The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract.

26. CONTRACTOR AFFIRMATIONS:

- (a) The Contractor certifies that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted contract.
- (b) The Contractor certifies that, pursuant to 15 U.S.C. Sec. 1, et seq. and Tex. Bus. & Comm. Code Sec. 15.01, et seq., neither the Contractor nor the firm, corporation, partnership, or institution represented by the Contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The Contractor hereby assigns to the ordering entity any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States 15 U.S.C.A. §1, et seq. (1973) as amended, and the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Comm. Code Sec. 15.01, et seq. (1983).
- (c) The Contractor certifies that the Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that the Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that the Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at http://www.epls.gov.
- (d) Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individuals or business entity named in this Contract are not ineligible to receive the specified payment and acknowledges that this Contract may be terminated and payment may be withheld if the certification is inaccurate. Furthermore, any Contractor subject to §231.006, Texas Government Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.
- (e) Pursuant to \$2155.004(a), Texas Government Code, the Contractor certifies that neither it nor any person or entity which will participate financially in the Contract has received compensation for participation in the preparation of specifications for this Contract. Under \$2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and/or payment withheld if this certification is inaccurate.
- (f) THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES,

AND CPA, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM **AND** AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS. PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF THE CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. CONTRACTOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY CPA. THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE THE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OF TEXAS OR CPA FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CPA OR ITS EMPLOYEES.

- (g) The Contractor acknowledges and agrees that, to the extent the Contractor owes any debt, including but not limited to delinquent taxes or child support to the State of Texas, any payments or other amounts the Contractor is otherwise owed under or related to any order resulting from this Contract may be applied by CPA toward any debt the Contractor owes the State of Texas until the debt is paid in full. These provisions are effective at any time the Contractor owes any such debt or delinquency. The Contractor shall comply with rules adopted by CPA under §§403.055, 403.0551, and 2252.903, Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.
- (h) The Contractor certifies that this Contract is in compliance with \$669.003, Texas Government Code, relating to contracting with executive head of a state agency. If \$669.003, Texas Government Code applies, the Contractor will complete the following information in order for the offer to be evaluated:

Name of Former executive:	
Name of State Agency:	
Date of separation from State Agency:	
Position with the Contractor:	<u> </u>
Date of Employment with the Contractor:	

(i) To the extent applicable, in accordance with §2155.4441, Texas Government Code, the Contractor agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

- (j) The Contractor certifies that it has no actual or potential conflicts of interest with CPA in entering into the Contract, and that the Contractor entering into such Contract will not reasonably create an appearance of impropriety.
- (k) The Contractor certifies that payment to the Contractor and the Contractor's receipt of appropriated or other funds under this Contract are not prohibited by §556.005 or §556.008, Texas Government Code.
- (l) Under §2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by §39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under §2155.006, Texas Government Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract and any order resulting from this Contract may be terminated and payment withheld if this certification is inaccurate.
- (m) The Contractor agrees that each of the above referenced affirmations apply to and is for the benefit of the ordering entities. Furthermore, the Contractor agrees that by accepting an order under this Contract the Contractor certifies to the ordering entity that the above listed affirmations are true and correct with respect to the specific ordering entity.

27. PUBLICITY:

The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

28. TRAINING REQUIREMENTS:

The Contractor will send at least one corporate representative and at least one dealer/distributor representative from each authorized dealer/distributor which is new to TXMAS, for training on TXMAS procedures upon receiving award of a TXMAS contract. The TXMAS Program in Austin, Texas will provide training. Training dates, location and times will be coordinated with the TXMAS Program.

29. ASSIGNMENT:

The Contractor will not assign this Contract without the written consent of the State.

30. NOTICES:

Any written notices required under this Contract shall be sent to the party at the respective address indicated below:

- (a) The address for the Contractor shall be the address specified on Page 1 of this Contract.
- (b) The address for CPA shall be as follows:

for hand delivery:

Texas Comptroller of Public Accounts Attn: Director of Texas Procurement and Support Services Division 1711 San Jacinto Blvd., Room 104 Austin, TX 78701

for U.S. mail:

Texas Comptroller of Public Accounts Attn: Director of Texas Procurement and Support Services Division P.O. Box 13186 Austin, TX 78711-3186

Notices will be by either hand delivery or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. The Contractor and CPA agree that either party may change the designated notice address in this Paragraph by written notification to the other party.

31. DISPUTE RESOLUTION:

(a) Chapter 2260, Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, CPA has adopted rules under Chapter 2260 for CPA's Texas Procurement and Support Services Division, codified at 34 Texas Administrative Code §20.384, and may adopt revisions to these rules throughout the term of this Contract, including any extensions. The Contractor and CPA shall comply with such rules.

(b) Disputes arising between an ordering entity and the Contractor shall be resolved in accordance with the dispute resolution process of the ordering entity that is not inconsistent with Chapter 2260. CPA shall not be a party to any such dispute unless CPA, the ordering entity, and the Contractor agree in writing.

32. AMENDMENT:

- (a) This Contract may be amended only upon written agreement between CPA and the Contractor, but in no case shall this Contract be amended so as to make it conflict with the laws of the State of Texas.
- (b) No additional term or condition in a purchase order issued by an ordering entity may weaken a term or condition of this Contract. However, additional terms and conditions that do not weaken the terms or conditions of this Contract and are acceptable to the Contractor may be added to the purchase order and given effect.

33. NO WAIVER:

No provision of the Contract will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the Contract or otherwise available to the State by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

34. HEADINGS:

The headings used in this Contract are for convenience only and will not be used in interpreting this Contract.

35. ORDER OF PRIORITY:

If there is any inconsistency or conflict between this document and any provision of any document incorporated by reference, this document will prevail.

36. ENTIRE AGREEMENT:

This Contract consists of the Contractor's Schedule Contract (see Paragraph 2 "COMPOSITION OF CONTRACT"), this Contract document together with Attachments A, B, and C (which are incorporated herein by this reference), the Contractor's State Offer Letter, and, if applicable, the Contractor's letter(s) designating dealers and/or distributors, and any price lists or catalogs specifically mentioned elsewhere in this Contract. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

37. GOVERNING LAW, VENUE:

This Contract is governed by and will be construed under and in accordance with the laws of the State of Texas, and venue for any dispute will be in a court of competent jurisdiction in Travis County, Texas.

38. SEVERABILITY:

In the event that any term, provision, covenant, or condition of this Contract is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

TO SHOW THEIR AGREEMENT, the parties have caused this Contract to be executed by their undersigned, duly authorized representatives on the date(s) below and this Contract is effective as of the date of signature by the State.

State of Texas,	Contractor
Texas Companyeller of Public Accounts	\mathcal{A}
BY HOUND FAMIL	BY / / M farcus
NAME Martin A. Hubert	NAME JEFF J. MARCUS
TITLE Deputy Comptroller	TITLE 9/000 Mgr. Contracts
DATE 8//2/09	DATE 8/4/09

To Prospective Texas Multiple Award Schedule (TXMAS) Vendors

Subject: Historically Underutilized Business (HUB)
Good Faith Effort Certification

As addressed in the basic Contract Terms and Conditions, contractors are strongly encouraged to engage the services of Texas Certified HUBs as distributors or dealers whenever possible to promote full and equal business opportunities and to assist state agencies in meeting the goals specified in the State of Texas Disparity Study. The decision to utilize the services of a currently Certified Texas HUB must be based on a good faith effort and as a potential contractor you are required to show documented evidence that an active participatory role for a HUB entity was considered. Should you elect to use the services of a Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) that may be eligible for Texas Hub certification, arrangements can be made to expedite the application process.

Please answer the following questions by selecting the response that applies to your good faith effort decision. Check the appropriate response(s).

- YES \(\text{NO X} \) 1. Are the services of a Certified Texas HUB being utilized to perform the contract referred to in the Terms and Conditions? **
- YES
 NO X 2. Are the services of a MBE/DBE or equivalent that may be eligible for Texas HUB certification being utilized to perform the contract referred to in the Terms and Conditions?
- YES [] NO X 3. Will a Small Business, as defined by regulations of the Small Business Administration (SBA) in 13 C.F.R., Section 121.201, perform the basic contract as awarded by the General Services Administration (GSA)?
- YES

 NO X 4. Will the contract be performed by a company, under existing agreements approved by GSA, that includes Small Business/MBE/DBE/HUB participation?

Note: This document will become an attachment to the Contract Terms and Conditions and is affirmed by the signature on the Contract Terms and Conditions.

** The attached randomly selected list of Certified Texas HUBs dealing in the goods and services included in this multiple award schedule contract opportunity should be considered in the selection/decision process.

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

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

the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property.
 - use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.
- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. Proper Invoices must include a non duplicated invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

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

13. PAYMENT:

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

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC

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

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.
- 16. <u>SPECIAL TOOLS & TEST EQUIPMENT</u>: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **RIGHT TO AUDIT**:

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

18. **SUBCONTRACTORS**:

A. If an MBE/WBE Program Compliance Plan is required by the Solicitation and the Contractor has identified Subcontractors, 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 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.

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

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 20. <u>WARRANTY TITLE</u>: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.
- 21. <u>WARRANTY DELIVERABLES</u>: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples

furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
- C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
- E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
- 22. WARRANTY SERVICES: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
 - A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from acceptance of the services. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

- 23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
- 24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 25. <u>STOP WORK NOTICE</u>: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
- 26. <u>DEFAULT</u>: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 29. **FRAUD**: Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must

assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 32. **INSURANCE**: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disgualification from consideration for award. The

Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

Attn: (Add Buyer's Name)

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

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

- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. <u>Specific Coverage Requirements: Specific insurance requirements are contained in Section</u> 0400, Supplemental Purchase Provisions
- 33. <u>CLAIMS</u>: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 34. NOTICES: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
- 35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.
- NO WARRANTY BY CITY AGAINST INFRINGEMENTS: The Contractor represents and warrants to the 36. City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations

under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

- **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
 - A. <u>Patents</u>. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
 - B. <u>Copyrights</u>. 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 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
 - C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such

deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

- 39. <u>PUBLICATIONS</u>: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
- 40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 41. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 46. WAIVER: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

- 47. MODIFICATIONS: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 48. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. **DISPUTE RESOLUTION**:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.
- 50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 51. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. **HOLIDAYS:** The following holidays are observed by the City:

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

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

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

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

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

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

- A. Definitions. As used in this paragraph
 - i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a dutyfree entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

The following Supplemental Purchasing Provisions apply to this contract:

- PURPOSE The Terms and Conditions listed in Section 0300 and this document are supplemental to the Texas Multiple Award Schedule (TMAXS) cooperative contract 9-84090 with Red Wing Brands of America, Inc. dba Red Wing Shoe Company, Inc. for services and products provided to the City of Austin ("City").
- 2. **INSURANCE** Insurance is required for this solicitation.
 - A. <u>General Requirements</u>. See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
 - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
 - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
 - iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

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

- B. <u>Specific Coverage Requirements.</u> The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
 - Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

- ii. <u>Commercial General Liability Insurance</u>. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).
 - (1) The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Independent Contractor's Coverage.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. <u>Business Automobile Liability Insurance</u>. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- C. <u>Endorsements</u>. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
- D. <u>Certificate</u>: The following statement must be shown on the Certificate of Insurance.

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

3. TERM OF CONTRACT

- A. The term of this contract shall be in accordance with TXMAS contract 9-84090 and shall be in effect for an initial term of 33 months and with no extension options.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably

necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. 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.

THIS IS A 33-MONTH CONTRACT.

4. **QUANTITIES**

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

- 5. **INVOICES and PAYMENT** (reference paragraphs 12 and 13 in Section 0300)
 - A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.
 - Invoices shall be mailed to each City department participating in this contract. Addresses will vary.
 - B. The Contractor agrees to accept payment by either credit card or bank draft for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)

- A. Contractor personnel will be required to check in at the security desk when entering or leaving a City building or property. Security or visitor badges must be on display at all times when on City property. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- B. The City reserves the right to deny a security or visitor badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial.
- C. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- D. The Contractor shall comply with all other security requirements imposed by City departments and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

7. **CERTIFICATIONS AND AFFIDAVITS**

A. The Contractor agrees to provide the following City certification and affidavits:

- 1. COOPERATIVE PURCHASE MBE/WBE UTILIZATION FORM
- 2. SWEATSHOP ORDINANACE, FORM 825

8. **CONTRACT MANAGER**

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

Matt Samaripa	
matt.samaripa@ci.austin.tx.us Materials Management Department 2001 East 5th Street Austin, Texas 78702	
(512) 974-1714	

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

SEP-23-2009 12:29

R W SHOE

6513051796 P.03

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE) COOPERATIVE PURCHASES MBE/WBE UTILIZATION FORM

The City of Austin is participating in a cooperative purchase. The City is not the contract administrator, and for this reason, there are no City MBE/WBE purchasing goals established for this expenditure.

Even though no goals have been established for this contract, the Offeror is invited to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

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

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

Yes______ If yes, contact SMBR at (512) 974-7600 to obtain an availability list.

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

Red Wing Brands of America, Inc.

Company Name

Jeff Marcus, Global Manager, Contracts and Agreements.

Name and Title of Authorized Representative (Print or Type)

Signature

For Small and Minority Business Resources Department USE ONLY:

Approval is Hereby Granted to use cooperative.

Approval is Hereby Granted to use cooperative.

CITY OF AUSTIN WORKPLACE CONDITIONS AFFIDAVIT FOR ALL FACILITIES INVOLVED IN THE PERFORMANCE OF THIS CONTRACT SOLICITATION NO. (cooperative purchase through State of Texas)

For

TXMAS-9-84090 Contract for Red Wing Safety Shoes

	ite of Texas unty of Travis
,	Tom J. Weeks being first duly sworn, depose and say:
1.	The following are the names of any country of production and the names, physical addresses and phone numbers of each facility involved in the production of goods or provision of services covered by this code, which I shall update to indicate any changes to this list of subcontractors, or facilities during the term of the contract:
	Description of goods or
	services
	Country of Production
	Name of Facility
	Physical
	Address
	City, State,
	Zip Code
	Phone Number
	[List as necessary, attach additional sheet if needed]
	standard payroll records, including the minimum base hourly wage of non-supervisory production employees, percent of wage level paid as health benefit, other benefits, regular deductions from paychecks, normal working hours per day and week, actual working hours per day and week, and overtime policy if any. I shall update this attachment to indicate any change to this information and these standards and policies during the term of this contract. Contractor's Name: Red Wings Shoes
	Printed Name: Tom J. Weeks
	Name: Tom J. Weeks Title Regional Industrial Sales Manager nature of Officer or Authorized Representative: Jam Mech
Sig	nature of Officer or Authorized Representative:
	oscribed and sworn to before me this aday of <u>Sanuary</u> 20 10.
	ALMA ARGUIJO Notary Public STATE OF TEXAS My Comm. Exp. Aug. 27, 2011 My Commission Expires Aug. 27, 2011
No	tary Public

Red Wing Meeting Notes

November 5, 2009

Timing of contract set-up and approval

- The Request for Council Action (RCA) is currently scheduled for the December 10th Council agenda.
 - Once approved, Sharon will send a note to all Departments notifying them of the Contract number and any other important details
- Due to Christmas Holidays and End-of-Year meetings, a Kick-Off meeting will be held after the New Year.
 - Departments will be able to begin use of the contract prior to the Kick-Off meeting.
 - Kick-Off meeting will cover other details such as contact names/ numbers, what products and services can and can not be purchased.
 - o All using Departments, Red Wing, and Materials Management will be invited.
 - After the Kick-Off meeting, Materials Management will take over the management of the contract.
- The City-wide contract will be set up for credit card payments (P-Card).
 - In order to use this contract, each Department will be issued a credit card, similar to other City-wide contracts.
 - This will help to keep execution of the contract consistent across using Departments.

Current contracts between City Departments and Red Wing

- Currently, Red Wing has contracts with Watershed, Street and Bridge, Austin Water Utility, and Planning and Development Review Departments.
 - These existing contracts will NOT be replaced with the proposed City-wide contract.
 - Departments can use existing contracts; the City-wide contract will offer another option.
 - o The proposed City-wide contract may have different pricing.

<u>Products and Services offered under TXMAS contract and subsequently the proposed City-wide contract</u>

- The only brand allowed to be purchased under the contract is Red Wing.
 - Mostly steel-toe shoes are available; however soft-toe shoes are also available.
 - Red Wing will have steel and soft-toe designations on the TXMAS price list when their TXMAS web-based portal is released.
- Red Wing stores also offer a lifetime tune-up for laces, oiling, re-stitching, and waterproofing.
 - Employees can go to the Red Wing store for this service. Most everything can be done in the store while the Employee waits. Re-stitching requires several days as the boot or shoe is sent to Houston.
 - A flyer of this service will be included in the packet of information provided at the Kick-Off meeting.

- A Red Wing shoe-van is available for on-site shoe fittings and purchase.
 - o The van can be on site for one to two hours, as scheduled with Red Wing.
 - The van will carry the most popular Red Wing styles.
 - Red Wing will create a profile sheet for each site. The profile sheet will have the shoe style and size preferences of that site.
 - A Department may ask for a particular style/ size to be brought out on a scheduled site visit by the van.
 - Only steel-toe shoes will be on the van. A special request will need to be made for soft-toe shoes.
 - The requesting Department will need to coordinate the number of employees sent to the shoe-van.
 - Three employees at one time should be scheduled to visit the van. Example, the van is scheduled to be on site from 10am to 1pm. The using Department schedules three employees in half-hour increments, allowing for 18-21 employees in total.
 - The Department should provide Red Wing with a list of names of employees who will be visiting the van. Red Wing will check-off the names of the employees as they get fitted for shoes.
 - To be cost effective, Red Wing encourages a minimum purchase of 10 pairs of shoes per on-site visit.
 - The Department should schedule the van when ~10+ employees are intending to purchase.
 - If the van does not have the size/ style needed, Red Wing can order the shoes for the employee and have the order shipped to the work address of the employee.
 - Red Wing will measure the foot of the employee, write up a sales ticket and ship to the work address.
 - The inventory on the van will be limited; the stores will offer a much wider selection of Red Wing brand shoes.

Miscellaneous items

- Returns or exchanges are allowed.
 - o The employee will need their receipt to make a return or exchange.
 - Returns and exchanges can be done in store, or when the van is due to be in area of the employee's work.
 - If the employee looses their receipt, Red Wing does have the ability to look up past purchases for confirmation. However, this may cause some minor delays.
 - Red Wing provides a five-part sales ticket. A copy of the sales ticket will go to: COA Department, invoice, shoe van or store, employee, and Red Wing Corporate.
- The employees will be taxed when they pay the difference between the cost of the shoes and the City voucher. For example; the Department gives the employee a \$100 voucher to buy safety shoes. The employee buys a \$150 pair of safety shoes. The City will pay \$100 with no tax, and the employee pays the \$50 difference with tax.

\$150 shoes

- \$100 City voucher/allowance

\$ 50 difference

+ \$ 4.13 (8.25% tax)

\$54.13 Employee pays

• The average cost of safety shoes, is ~\$150. The Departments will be encouraged to allow for \$150/pair allowance.

Date:11/9/0

Sharon Patterson, Senior Buyer

Window on State Government

Susan Combs Texas Comptroller of Public Accounts

Search TXMAS Contracts:

Search

Rebates: Pursuant to Texas Government Code § 2155.510(b), rebates generated from TXMAS contract purchases made using federal funds must be reported to the federal funding agency for reporting and reconciliation purchases. Each quarter of the State's fiscal year, TXMAS contractors rebate .75% of their TXMAS sales to the State of Texas via the Texas Comptroller of Public Accounts (CPA). It is the purchasing entity's responsibility to report the amount of rebate using the above percent based on the total dollar value of the TXMAS purchase order.

Example: A purchasing entity receives and uses federal funds of \$50,000 to purchase items/services on a TXMAS contract. The purchasing entity must report to the federal fund-provider that a sales rebate of \$375 (\$50,000 * .75% = \$375) will be paid to the State of Texas by the TXMAS contractor.



RED WING SHOE INDUSTRIAL Contract TXMAS-9-84090

On-Line Catalog/Order Processing

SHOES

Delivery:

45 DAYS ARO

EXPEDITED: NEXT DAY

DESTINATION

Corporate Office:

RED WING BRANDS OF AMERICA,

INC.

314 MAIN STREET

RED WING MN 55066

USA

USA

Terms:

FOB Point:

NET 30 DAYS

Remit To:

RED WING SHOE

INDUSTRIAL

ROAD

DALLAS TX 75224-1623

2517 SOUTH HAMPTON

USA

Vendor ID:

Vendor ID:

14119751940

Invoice From:

Send PO to:

RED WING SHOE INDUSTRIAL 2517 SOUTH HAMPTON ROAD

RED WING SHOE INDUSTRIAL

2517 SOUTH HAMPTON ROAD

DALLAS TX 75224-1623

DALLAS TX 75224-1623

Vendor ID: 14119751940

USA

Vendor ID:

Business

Type:

Large

DUNS #:

143405871

Effective:

8/12/2009

Expires:

9/30/2012

CONTACT: TOM WEEKS

Phone 817-903-2590

TOM.WEEKS@REDWINGSHOE.COM

Effective Date: This Texas Multiple Award Schedule (TXMAS) contract is effective beginning 8/12/2009 through 9/30/2012 and is automatically renewed on the date that the General Services Administration (GSA) exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods by mutual agreement. The contractor has certified that the prices reflected in the contractor's catalog are the same as the prices contained in the most current modification to GSA Contract No. GS-07F-0027N.

Placement of Orders: Purchasing entities must use both the instructions on the contractor's web page and the terms and conditions in the federal supply schedule to place orders. Purchasing entities may use a either a departmental purchase order or the contractor's on-line ordering system to place orders. Purchasing entities may opt out of using the contractor's on-line ordering system if it is incompatible with the entity's purchasing procedures. The contractor is not required to accept orders below the minimum listed below. Orders between the minimum and maximum listed below are subject to GSA preferred customer pricing. For orders above the maximum, purchasing entities are entitled to negotiate for lower prices than those listed on the on-line federal supply schedule price list.

Order Limitation:

Minimum Order: 1 PAIR Maximum Order: \$50,000

Approved Products/Services: Only products or services listed in the CPA approved GSA contract may be purchased from this TXMAS contract, with one exception. Incidental, off-schedule items may be purchased as "best value, open market" items provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market (OM), best value" items.

State Contracts: All Texas Council for Purchasing from People with Disabilities contracts and Texas Correctional Industries (TCI) term contracts take precedence over this TXMAS contract. If similar products or services are listed on this TXMAS contract and a CPA term contract, a determination should be made that will result in a best value purchase.

Payment Due Date: Payment will be due on the thirtieth (30) calendar day after the later of: (a) the date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or (b) the date the State accepts the products or services. The post mark date on the envelope for the State warrant (State's equivalent to a check) or banking information showing when a direct deposit transaction was received will be considered the date payment is made. Interest starts accruing on the first day that payment is late. The rate of interest for late payments is set at one percent per month.

Special Note: The State of Texas, including but not limited to its Agencies, cooperative purchasing members and any local governmental entity authorized by law to use the Texas Multiple Award Schedule method for purchasing is not obligated to procure any products or services from this TXMAS contract. This schedule contract shall not be construed to prevent the State from purchasing products or services using other procurement methods as authorized by law.

Contact Us

If you have any suggestions on how to improve TXMAS or this web site, please send an email to txmas@cpa.state.tx.us or call 512-463-3421.

Texas Online | Statewide Search from the Texas State Library | State Link Policy | Texas Homeland Security

Susan Combs, Texas Comptroller • Window on State Government • Contact Us

Privacy and Security Policy | Accessibility Policy | Link Policy | Public Information Act | Compact with

Texans



TEXAS MULTIPLE AWARD SCHEDULE (TXMAS) PROGRAM



Contract Number TXMAS-9-84090

Authorized Dealers

Red Wing Shoe Store

Renaissance Square

1401 IH-35 South #110

Round Rock, TX 78664

Phone: 512-819-9673

Red Wing Shoe Store

8440 Burnet Road #182

Austin, TX 78757

Phone: 512-452-1575

Red Wing Shoe Store

3005 So. Lamar #115

Austin, TX 78704

Phone: 512-443-3766

Red Wing Shoe Industrial

2517 South Hampton Road

Dallas, TX 75224

Phone: 214-339-1284

Additional Information

For more information on the Red Wing Shoe Company TXMAS Program, please contact:

Tom Weeks

Industrial Sales Manager, Red Wing Brands of America, Inc.

C/O Red Wing Shoe Industrial

2517 South Hampton Road

Dallas, TX 75224

Phone: 817-903-2590

TOM.WEEKS@REDWINGSHOE,COM

Products & Price List

TXMAS PRICELIST, EFFECTIVE 2009

TXMAS APPROVED SAFETY FOOTWEAR









6662 Mens Chukka \$145.40 Sola: SD Cross Country
Sizes: B 9-14, D 7-15, E 8-12,



2226 Mens 8-inch \$131.36 Sole: HurizonTM SuperSole® Sizes: 6 9-15, D 6-16, E 8-13, EE 6-15, H 8-13



2245 Mens 6-inch \$138.79 Sole: Diamond Lug SuperSole® Sizes: B 9-14, O 7-16, E 8-13,



6680 Mens Hiker \$145.48 Sale: Extensity™ Rubber
Sizes: B 9-15, D 6-15, EE 6-14,
H 8-13





RED WING MOBILE SHOE TRUCK AVAILABLE



RED WING SHOE STORE



2326 Womens 6-inch \$123.92 **③ ፫፭** Sole: Horizon™ SuperSale® Sizes: B 6-10, D 6-10, EE 7-10



2380 Womens Hilter \$142.92 Sizes: B 5-10, D 5-10, EE 6-10

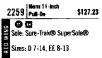






4	1451	Mens B-iach	\$161.5
Wing	Sole:	cc Diamond Back Suj	perSole®
R & D	Sizes:	B 10-13, D 7-14	, EE





















LIFETIME TUNE-UPS

Any warranty is only as good as the organization behind it. When purchasing a Red Wing shoe, your purchase is protected by the 104 year tradition of an American legend with over 4,000 points of distribution.

Like most manufacturers, Red Wing warrants our products against defects in workmanship and materials. These warranties however are not the basis of the Red Wing commitment to our customer. To completely understand this, you just have to talk to our customers.

With every purchase, Redwing provides a *LifeTime Tune-up*. This includes complimentary boot oiling, leather conditioning, hooks, eyelets, shoe laces, stitching and minor shoe repair, *regardless of how long you own your Red Wing footwear*. These are services we provide at no cost to your employees, and can extend the life of their footwear and assure maximum efficiency of the footwear selected. These complimentary services are unmatched in the industry, and are the basis of the relationship Red Wing Shoe Company builds with each customer. Heel taps are also available at a nominal charge.

The *LifeTime Tune-up* usually addresses any issue that can come up outside of the normal warranty. In the event of a more serious problem, Red Wing Shoe Company will be happy to promptly address the issue on a case-by-case basis.

No other manufacturer provides anything like Red Wing's *LifeTime Tune-up*. No other manufacturer has over 4,000 distribution locations. And, no other manufacturer has the reputation of the Red Wing Shoe Company. Just ask our customers. It's the best warranty you can buy.

Pr' 'List Effective January 1, 2009 - December 31, 7 TXMAS 2009 National Account Price List





Brand	Stock#	Price	Brand	Stock#	Price	Brai		Price		Brand	Stock #	Price		Brand	Stock #	Price
DV4	Soft Toe	\$444.07	Dia	STEEL TO		DW	STEEL TOE							1		
RW	202	\$141.27	RW	2206	\$156.97	RW	4476	\$184.23								
RW RW	237 238	\$170.19 \$185.06	RW RW	2211 2214	\$167.71 \$185.88	RW	4478 4496	\$195.80 \$204.89								
RW	402	\$153.66	RW	2218	\$222.23	RW	449 0 4497	\$204.09 \$185.06					-			
RW	406	\$133.00	RW	2210	\$244.54	RW	4497 4498	\$105.00					- 1			
RW	414	\$142.92	RW	2222	\$142.10	RW	6612	\$122.27								
RW	466	\$114.83	RW	2223	\$131.36	RW	6618	\$135.49		ł				1		
RW	468	\$125.57	RW	2224	\$150.36	RW	6646	\$124.75								
RW	595	\$133.84	RW	2226	\$131.36	RW	6647	\$124.75								
RW	606	\$146.23	RW	2230	\$182.58	RW	6659	\$137.14						1		
RW	607	\$146.23	RW	2231	\$155.32	RW	6662	\$145.40		1						
RW	608	\$156.97	RW	2232	\$156.97	RW	6680	\$145.40								
RW	676	\$148.71	RW	2233	\$147.05		End of Li	st								
RW	678	\$160.27	RW	2238	\$141.27											
RW	699	\$187.54	RW	2245	\$138.79					ĺ						
RW	866	\$162.75	RW	2249	\$147.05					[·						
RW	875	\$157.79	RW	2254	\$144.58											
RW	877	\$184.23	RW	2259	\$127.23			•								
RW	914	\$195.80	RW	2263	\$198.28											
RW	921	\$218.10	RW	2264	\$209.84				İ							
RW	923	\$115.66	RW	2270	\$166.88											
RW	926	\$115.66	RW	2292	\$269.32									1		
RW	931	\$147.88	RW	2326	\$123.92											
RW	938	\$127.23	RW	2380	\$142.92	- 1				1			-	1		
RW	952	\$112.36	RW	2405	\$174.32											
RW	953	\$130.53	RW	2406	\$165.23								- 1			
RW	963	\$171.84	RW	2408	\$180.10											
RW RW	964 996	\$184.23 \$166.06	RW RW	2412 2414	\$237.93 \$228.02								ı			
RW	998	\$171.84	RW	2414	\$229.67											
RW	1105	\$137.14	RW	2450	\$304.85									1		
RW	1124	\$132.18	RW	2499	\$155.32											
RW	1125	\$132.18	RW	3505	\$190.84											
RW	1132	\$148.71	RW	3507	\$174.32				ĺ	(ĺ	1		
RW	1137	\$133.01	RW	3508	\$191.67											
RW	1149	\$132.18	RW	3511	\$178.45											
RW	1155	\$165.23	RW	3523	\$141.27								ŀ			
RW	1159	\$113.18	RW	3526	\$141.27									Į.		
RW	1170	\$151.19	RW	3528	\$152.01									1		
RW	1206	\$142.10	RW	3568	\$148.71				İ							
RW	1411	\$152.01	RW	4206	\$167.71											
RW	1412	\$211.49	RW	4208	\$184.23	1				ł			-	1		
RW	1421	\$142.92	RW	4210	\$174.32											
RW	1425	\$190.84	RW	4273	\$175.14					1			1			
RW	1626	\$109.05	RW	4406	\$150.36											
RW	1698	\$180.93	RW	4410	\$138.79					Į						
RW	2156	\$172.67	RW	4414	\$160.27											
IS	3858	\$117.00	RW	4418	\$221.41									1		
IS RW	3859	\$126.00 \$121.44	RW RW	4425	\$215.63											
1	8618 8636	\$121.44		4437 4438	\$190.01 \$206.54				Ì							
RW RW	8636 8637	\$110.70 \$110.70	RW RW	44 38 4441	\$180.10								1			
RW	8662	\$133.01	RW	4441 4445	\$195.80											
RW	8664	\$133.01	RW	4451	\$161.93											
l <u>,</u>		Ţ,00.01	RW	4464	\$80.96								-			
			RW	4470	\$166.88											
			RW	4471	\$166.88											
		- 1	RW	4473	\$153.66										Rev 11.09)
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Amendment No. 2 CC \ Oo no 00003

Contract No. GA 100000003

for S Safety Shoes between

Red Wing Brands of America, Inc.

and the City of Austin

- 1.0 The City hereby extends the above-referenced contract in accordance with the terms of the Texas Multiple Award Schedule Contract, TXMAS-9-84090. Effective December 13, 2012, the term for the extension will be December 13, 2012 to September 30, 2017.
- 2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 12/21/09 - 09/30/12	\$993,750.00	\$993,750.00
Amendment No. 1: holdover 10/01/12 - 12/30/12	\$0.00	\$993,750.00
Amendment No. 2: extend contract and added funding in an amount of \$1,213,245	\$1,213,245.00	\$2,206,995.00

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

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

Signature & Date:

Sai Xoomsai Purcell, Senior Buyer

City of Austin Purchasing Office

Reviewed and Approved:

Steve Aden

/2//3//2 Date



Amendment No. 2

Contract No. GA100000003

for

Safety Shoes between

Red Wing Brands of America, Inc.

and the

City of Austin

- 1.0 The City request to extend the above-referenced contract for a period of 90 days in accordance with the terms of the Texas Multiple Award Schedule Contract, TXMAS-9-84090.
- 2.0 Effective October 1, 2012, the term for the extension will be October 1, 2012 to December 30, 2012.
- 3.0 The total contract amount is unchanged for the hold over period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 12/21/09 - 09/30/12	\$993,750.00	\$993,750.00
Amendment No. 1: extension		
10/01/12 - 12/30/12	\$0.00	\$993,750.00

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

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

Signature & Date: (

Cruz Banda III, Buyer II

City of Austin Purchasing Office

Reviewed and Approved:

Steve Aden

Date

Ac 10/11/12



Susan Combs Texas Comptroller of Public Accounts

Search TXMAS Contracts	Search
Dealen 17111111 Contracts	

Rebates: Pursuant to Texas Government Code § 2155.510(b), rebates generated from TXMAS contract purchases made using federal funds must be reported to the federal funding agency for reporting and reconciliation purchases. Each quarter of the State's fiscal year, TXMAS contractors rebate .75% of their TXMAS sales to the State of Texas via the Texas Comptroller of Public Accounts (CPA). It is the purchasing entity's responsibility to report the amount of rebate using the above percent based on the total dollar value of the TXMAS purchase order.

Example: A purchasing entity receives and uses federal funds of \$50,000 to purchase items/services on a TXMAS contract. The purchasing entity must report to the federal fund-provider that a sales rebate of \$375 (\$50,000 * .75% = \$375) will be paid to the State of Texas by the TXMAS contractor.



RED WING SHOE INDUSTRIAL Contract TXMAS-9-84090

On-Line Catalog/Order Processing

SHOES

Corporate Office:

Delivery: 45 DAYS ARO

EXPEDITED: N

EXPEDITED: NEXT DAY

INC. FOB Point: DESTINATION

314 MAIN STREET
RED WING MN 55066
Terms: NET 30 DAYS

USA Remit To: RED WING SHOE

Send PO to: KED WING SHO

RED WING SHOE INDUSTRIAL 2517 SOUTH HAMPTON ROAD

DALLAS TX 75224-1623
USA

DALLAS TX 75224-1623 USA Vendor ID:

Vendor ID: 14119751940 Vendor ID: 14119751940

Invoice From:

Dusings

RED WING SHOE INDUSTRIAL
2517 SOUTH HAMPTON ROAD

Business
Type:

Large

DALLAS TX 75224-1623 DUNS #: 143405871 USA Vender ID: Effective: 8/12/2009

Vendor ID: Effective: 8/12/2009 Expires: 9/30/2017

CONTACT: TOM WEEKS
Phone 817-903-2590

RED WING BRANDS OF AMERICA,

TOM.WEEKS@REDWINGSHOE.COM

Note: Click on the column headings below to change the sort order. To search for a particular company, simultaneously press the "CTRL" and "F" keys, then type the word you are looking for and hit "Enter".

Authorized Dealers

Dealer Name	City	State	Contract Number	<u>Hub</u>	Contact Info
RED WING SHOE STORE - DENTON	DENTON	TX	TXMAS- 9-84090- 1	No	PENNY RILEY 940-382-3512 <u>REDWING@AIRMAIL.NET</u>
RED WING SHOE STORE - HARLINGEN	HARLINGEN	TX	TXMAS- 9-84090- 2	No	JUAN CASTANEDA 956-423-7469 RWSS163@REDWINGRETAIL.COM
RED WING SHOE STORE - MCALLEN	MCALLEN	TX	TXMAS- 9-84090- 3	No	FRED GUZMAN 956-682-8428 RWSS081@REDWINGRETAIL.COM
RED WING SHOE STORE - SAN ANTONIO	SAN ANTONIO	TX	TXMAS- 9-84090- 4	No	DENNIS HAVEL 210-342-4711 REDWINGSANPEDRO@AOL.COM
RED WING SHOE STORE - HOUSTON	HOUSTON	TX	TXMAS- 9-84090- 5	No	JIM TATUM 713-932-0430 RWSS632@REDWINGRETAIL.COM
RED WING SHOE STORE - SAN ANTONIO	SAN ANTONIO	TX	TXMAS- 9-84090- 6	No	STEVE GIROIR 210-680-1796 RWSS642@REDWINGRETAIL.COM
RED WING SHOE STORE - HOUSTON	HOUSTON	TX	TXMAS- 9-84090- 8	No	MARY BETH WHEAT 713-738-5200 RWSS259@REDWINGRETAIL.COM
RED WING SHOE STORE - SAN ANTONIO	SAN ANTONIO	TX	TXMAS- 9-84090- 9	No	KENNY SANDERS 210-637-7288 REDWING_WALZEM@YAHOO.COM
RED WING SHOE STORE - BROWNSVILLE	BROWNSVILLE	TX	TXMAS- 9-84090- 10	No	ARMONDO LUNA 956-546-0595 RWSS085@REDWINGRETAIL.COM
RED WING SHOE STORE - IRVING	IRVING	TX	TXMAS- 9-84090- 11	No	RUSS BARNES 972-252-6626 RWSS635@REDWINGRETAIL.COM
RED WING SHOE STORE - CARROLLTON	CARROLLTON	TX	TXMAS- 9-84090- 12	No	ARJELIA LIRA 972-416-1432 RWSS624@REDWINGRETAIL.COM
RED WING SHOE STORE - DALLAS	DALLAS	TX	TXMAS- 9-84090- 13	No	DOUG REINWALD 214-339-1284 RWSS018@REDWINGRETAIL.COM
RED WING SHOE STORE - ARLINGTON	ARLINGTON	TX	TXMAS- 9-84090- 14	No	DOUG REINWALD 817-468-8171 DOUGREINWALD@SBCGLOBAL.NET

RED WING SHOE STORE - RICHARDSON	RICHARDSON	TX	TXMAS- 9-84090- 15	STAN JOSEPHSON 972-907-1106 RWSS663@REDWINGRETAIL.COM
RED WING SHOE STORE - PEARLAND	PEARLAND	TX	TXMAS- 9-84090- 16 No	MEAL MENTZEL 281-412-0707 AMEALMENTZEL@YAHOO.COM
RED WING MOBILE SHOE STORE	PASADENA	TX	<u>TXMAS-</u> <u>9-84090-</u> No <u>17</u>	CRAIG MULVANEY 281-998-00101 GRMINC@HOTMAIL.COM
RED WING SHOE STORE, PASADENA	PASADENA	TX	<u>TXMAS-</u> <u>9-84090-</u> No <u>18</u>	RANDY MULVANEY 281-998-0101 <u>GRMINC@HOTMAIL.COM</u>

Effective Date: This Texas Multiple Award Schedule (TXMAS) contract is effective beginning 8/12/2009 through 9/30/2017 and is automatically renewed on the date that the General Services Administration (GSA) exercises the renewal option. All State of Texas terms and conditions will continue and apply to all renewal periods by mutual agreement. The contractor has certified that the prices reflected in the contractor's catalog are the same as the prices contained in the most current modification to GSA Contract No. GS-07F-0027N.

Placement of Orders: Purchasing entities must use both the instructions on the contractor's web page and the terms and conditions in the federal supply schedule to place orders. Purchasing entities may use a either a departmental purchase order or the contractor's on-line ordering system to place orders. Purchasing entities may opt out of using the contractor's on-line ordering system if it is incompatible with the entity's purchasing procedures. The contractor is not required to accept orders below the minimum listed below. Orders between the minimum and maximum listed below are subject to GSA preferred customer pricing. For orders above the maximum, purchasing entities are entitled to negotiate for lower prices than those listed on the on-line federal supply schedule price list.

Order Limitation:

Minimum Order: 1 PAIR Maximum Order: \$50,000

Approved Products/Services: Only products or services listed in the CPA approved GSA contract may be purchased from this TXMAS contract, with one exception. Incidental, off-schedule items may be purchased as "best value, open market" items provided that they are necessary for product integration or product completeness. The purchasing entity is responsible for ensuring that the quoted price for such incidental items is fair and reasonable. These incidental items may be added to the TXMAS purchase order if they are clearly labeled as "open market (OM), best value" items.

State Contracts: All Texas Council for Purchasing from People with Disabilities contracts and Texas Correctional Industries (TCI) term contracts take precedence over this TXMAS contract. If similar products or services are listed on this TXMAS contract and a CPA term contract, a determination should be made that will result in a best value purchase.

Payment Due Date: Payment will be due on the thirtieth (30) calendar day after the later of: (a) the date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or (b) the date the State accepts the products or services. The post mark date on the envelope for the State warrant (State's equivalent to a check) or banking information showing when a direct deposit transaction was received will be considered the date payment is made. Interest starts accruing on the first day that payment is late. The rate of interest for late payments is set at one percent per month.

Special Note: The State of Texas, including but not limited to its Agencies, cooperative purchasing members and any local governmental entity authorized by law to use the Texas Multiple Award Schedule method for purchasing is not obligated to procure any products or services from this TXMAS contract. This schedule contract shall not be construed to prevent the State from purchasing products or services using other procurement methods as authorized by law.

Keywords: Red Wing, Red Wing Shoes, Red Wing Boots, Red Wing Safety, Red Wing Steel Toe, Safety Shoes, Safety Boots, Footwear, Shoes, Safety, Irish Setter, WORX, Steel Toes, Waterproof, Slip Resistant, Oil Resistant, Traction, Met Guard, Waterproof, Aluminum Toe, Non Metallic, Electrical Hazard, Puncture Resistant, Puncture, Electrical, Metatarsal Guard, ESD, Electrical Hazard, SD, Static Dissipative, Insulated, Carhartt, Carhartt Safety, Carhartt Boots, Carhartt Footwear, TXMAS Approved, Boots, Red Wing Footwear, Reds, Mobile, Mobile Service, Truck Service, On Site, On Site Delivery, Shoe Truck, Truck, Mobile Delivery, Truck Delivery, Boot Mobile, Shoe Mobile, Boot Delivery, Shoe Delivery, On Site Shoes, On Site Boots, Mobile Shoe Service, Mobile Boot Service, Shoe Stores, Red Wing Shoe Store, Red Wing Store, On Site Safety, Shoe Van, Chukka, oxford, work boot, work shoe, steel toe boot, men's work boots, women's work boots, men's work shoes, women's work shoes, waterproof steel toe, safety footwear, WORX shoes, WORX boots, antistatic footwear, anti static footwear, anti static shoes, ASTM, ASTM footwear, ASTM Boots, ASTM Shoes, best work boot, best work shoe, best rated, best rated work boots, best rated work shoes, best work boots, boot truck, boot trucks, boots for work, comfort work shoe, comfort footwear, comfort work boot, comfortable work boot, comfortable work shoe, comfortable shoes, comfortable boots, composite toes, construction boots, duty boots, EH boots, EH shoe, workboot, safety toe boot, industrial boots, industrial shoes, waterproof work shoes, waterproof work boots, redwing, redwing shoes, redwing boots, wellington, wellington boots, pull on boots, Composite, Composite Safety Toe, Fiberglass Safety Toe, Boots, Leather, Full Grain Leather, All Leather, Leather Boots, Leather Footwear, Leather Safety Boots, Leather Shoes, Leather Safety Shoes, Lightweight Boots, Lightweight Shoes, Shank, Steel Shank, Composite Shank, Non-Metallic Shank, Fiberglass Shank, TPU Shank, Made in USA, Made In China, Made in USA with imported materials, Welt Construction, Cement Construction, Goodyear Welt, Direct Attached, Direct Attached Construction, Oil/Slip Resistant, ANSI, ANSI Approved, ASTM Approved, Removable Foot bed, Athletic safety shoes, Lace Ups, Pull-ons, Slip-Ons, Tennis shoes, Oxfords, Tie-ups, Pull-Ups, Hikers, Ankle protection, Slips/Trips & Falls, Rubber Soles, King Toe, Wide Widths, Lenzi, Thinsulate, CSA Grade 1, Vibram, Vibram Sole, 6 inch boot, 8 inch boot, Gore-Tex, Comfortable, Flexible, Warranty, Black boots, Zipper boots, Wedge sole, flat sole, smooth sole, SuperSole, ComfortForce, Dual-Density sole, Fire and Ice sole, RedBed, Waterproof Membrane, Vibram Galactic, Stars and Bars sole, Logger. 10 inch boot, 11 inch boot, 9 inch Logger, Lineman boot, Motorcycle boot, Cordura, Large sizes, Small sizes, Men's boots, Men's shoes, Ladies boots, Ladies shoes, Women's boots, Women's shoes, Hassle-Free, Leather Protector, Boot Oil, Silicone, Suede, Shoe Cream, Leather Conditioner, Waterproofing, Boot Dryer, Shoe repair, Toe Armor, Boot Bumpers, Shoe Goo, Natureseal, Socks, Belts, Fit Guarantee, Limited Warranty, PPE, Personal Protective Equipment, Safety Glasses, Work Gloves, FRC Clothing, Hard Hats, Safety Footwear, Steel Toe Footwear, Steel Toe Shoes, Red Wing Mobile Unit, Red Wing Mobile, Steel Toe Boots, S.R. Shoes, S.R. Footwear, Cordura Pull Ons, Boot truck

Contact Us

If you have any suggestions on how to improve TXMAS or this web site, please send an email to txmas@cpa.state.tx.us or call 512-463-3421.

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Susan Combs, Texas Comptroller • Window on State Government • Contact Us

Privacy and Security Policy | Accessibility Policy | Link Policy | Public Information Act | Compact with Texans

year	annual
1	\$ 323,530
2	\$ 339,707
3	\$ 356,692
4=9mos	\$ 280,895
Total	\$ 1,300,823

	\$ 323,530
	\$ 339,707
	\$ 356,692
	\$ 193,317
1213245 \$ 87,578	\$1,213,245

\$998,530



Amendment No. 1
to
Contract No. GC100000003
For
Safety Shoes
Between
Red Wing Shoe Store
and the
City of Austin, Texas

1.0 The Contract is hereby amended as follows: Change the Contractor's name and other information as requested by the Contractor on May 2, 2011:

Change From: Red Wing Shoe Store 3005 South Lamar, Ste. 115 Austin, TX 78704

Vendor Code: RED8315105

Change To:

Red Wing Brands of America, Inc.

314 Main Street

Red Wing, MN 55066

Vendor Code: RED8315105

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

BY THE SIGNATURE affixed below, this Amendment No. 1 is hereby incorporated into and made a part of the Contract.

Cynthia Gonzales

Corporate Contract Compliance Manager

City of Austin, Purchasing Office

Date

Red Wing Safety Shoes Contract

Master Agreement Number: GC100000003

Contract Date: 12/18/09 – 09/30/12 (no extension options)

TXMAS Contract: 9-84090

RED WING STORE LOCATIONS

A) Red Wing Shoe Store

Renaissance Square 1401 IH-35 South #110 Round Rock, TX 78664

Phone: 512-218-1351

B) Red Wing Shoe Store

8440 Burnet Road #182

Austin, TX 78757 Phone: 512-452-1575 C) Red Wing Shoe Store

3005 So. Lamar #115 Austin, TX 78704 Phone: 512-443-3766

The store hours for all Red Wing locations:

Mon-Fri

9:30am - 7:00pm

Saturday

9:30am - 5:00pm

Sunday

12 noon – 5:00pm

Red Wing Regional Industrial Sales Manager

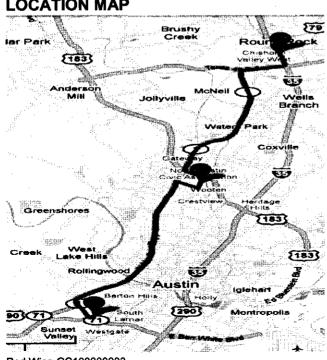
Tom Weeks

4203 Treehaven Court Arlington, Tx 76016

Phone: 817-563-6072 Cell: 817-903-2590

Email: Tom.Weeks@Redwingshoe.com

LOCATION MAP



Red Wing GC100000003

January 22, 2010

LINK TO RED WING' TXMAS WEBSITE:

http://www.redwingsafety.com/content/txmas

- Click on 'Footwear' at the top to view the different shoe styles available on the contract
- Look for the PDF file at the bottom of the page for TXMAS pricing

CITY OF AUSTIN CONTRACT MANAGER

Jorge Valle, Contract Compliance Specialist, Sr. Jorge.Valle@ci.austin.tx.us
Materials Management
2001 East 5th Street
Austin, Texas 78702
(512) 974-1718

DEPARTMENTAL FUNDING

DEPARTMENT	ANNUAL AMOUNT	CONTACT PERSON	
Austin Water	\$80,000.00	Andy Ramirez	
Public Works	\$40,000.00	Brenda Jimenez	
Parks and Recreation	\$35,000.00	Trish Kormanik	
Planning and Development Review	\$25,000.00	Cassandra Alexander	
Convention Center	\$25,000.00	Sergio Munguia	
Transportation Department	\$20,000.00	Lisa Escobedo Cynthia Andrews	
Fleet Services	\$18,500.00	Ginger Whitaker Jo-Ann Cowan	
Aviation	\$17,000.00	Amy Whitworth	
Building Services	\$6,000.00	Roger Stricklin David Acuna	
Austin Public Library	\$3,500.00	Xavier Ramirez	
Health and Human Services	\$2,500.00	Colleen Athey	
Austin Fire Department	\$1,500.00	Teresa Reddy	
Human Resources Department	\$500.00	Sarah Chen	
Communications and Technology Management	\$500.00	Barbara Kennedy	
Other City Departments (as needed)	\$50,000.00		
TOTAL	\$325,000.00		

Red Wing GC10000003

Price List Effective January 1, 2009 - December 31, 2009
TXMAS 2009 National Account Price List

11/11/2009





Brand	Stock #	Price	Brand	Stock#	Price	Bran	nd Stock#	Price	Brane	Stock#	Price	Par:	and Stock#	Price
	Soft Toe			STEEL			STEEL TO				11100	-	nm Stocker	IIAAE
RW	202	\$141.27	RW	2206	\$156.97	RW	4476	\$184.23				.		
RW	237	\$170.19	RW	2211	\$167.71	RW	4478	\$195.80						
RW	238	\$185.06	RW	2214	\$185.88	RW	4498	\$204.89	'			11		
RW	402	\$153.66	RW	2218	\$222.23	RW	4497	\$185.06						
RW	406	\$133.01	RW	2221	\$244.54	RW	4498	\$193.32	1					
RW	414	\$142.92	RW	2222	\$142.10	RW	6612	\$122.27						
RW	466	\$114.83	RW	2223	\$131.36	RW	6618	\$135.49						
RW	468	\$125.57	RW	2224	\$150.36	RW	6646	\$124.75						
RW	595	\$133.84	RW	2226	\$131.36	RW	6647	\$124.75				}		
RW	506	\$146.23	RW	2230	\$182.58	RW	6659	\$137.14	ĺ			1 1		
RW	607	\$146.23	RW	2231	\$155.32	RW	6662	\$145.40						
RW	808	\$156.97	RW	2232	\$156.97	RW	6680	\$145.40						
RW	676	\$148.71	RW	2233	\$147.05		End of L	ist						
RW	678	\$160.27	RW	2238	\$141.27									
RW	699	\$187.54	RW	2245	\$138.79				i l					
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RW	931	\$115.66 \$147.88	RW	2326	\$269.32 \$123.92									
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RW	953	\$130.53	RW	2405	\$165.23									
RW	963	\$171.84	RW	2408	\$180.10	-		1	1					
RW	904	\$184.23	RW	2412	\$237.93									
RW	998	\$166.06	RW	2414	\$228.02									
RW	998	\$171.84	RW	2426	\$229.67							l I		
RW	1105	\$137.14	RW	2450	\$304.85							ĺĺ		
RW	1124	\$132.18	RW	2499	\$155,32									
RW	1125	\$132.18	RW	3505	\$190.84									
RW	1132	\$148.71	RW	3507	\$174.32			Ì	1					
RW	1137	\$133.01	RW	3508	\$191.67				.					
RW	1149	\$132.18	RW	3511	\$178.45				i					
RW	1155	\$165.23	RW	3523	\$141.27	ł						1 1		
RW	1159	\$113.18	RW	3526	\$141,27									
RW	1170	\$151.19	RW	3528	\$152.01							1 1		
RW	1206	\$142.10	RW	3568	\$148,71									
RW	1411	\$152.01	RW	4208	\$167.71									
RW	1412	\$211.49	RW	4208	\$184,23	1		1	1					
RW	1421	\$142.92	RW	4210	\$174.32				.					
RW	1425	\$190.84	RW	4273	\$175.14	1		ĺ	' (1 1		
RW	1626	\$109.05	RW	4406	\$150.36									
RW	1698	\$180.93	RW	4410	\$138.79									
RW	2156	\$172.67	RW	4414	\$160.27									
IS	3858	\$117.00	RW	4418	\$221.41	-								
IS	3859	\$126.00	RW	4425	\$215.63				.					
RW	98 18	\$121.44	RW	4437	\$190.01]]		
RW	8636	\$110.70	RW	4438	\$206,54									
RW	8637	\$110.70	RW	4441	\$180.10									
RW	8662	\$133.01	RW	4445	\$195.80									
RW	8664	\$133.01	RW	4451	\$181.93			ļ						
			RW	4464	\$80.96			i						
			RW	4470	\$166.88				1					
		- 1	RW	44 71	\$186.88	ł		ļ	ł					
			RW	4473	\$153.66	ĺ			. L				Rev 11.	09

IN-STORE SERVICE

- Purchase Red Wing Brand Safety Shoes
- Employees can bring shoes/boots in to the store for a lifetime tune-up for laces, oiling, re-stitching, and waterproofing.

RED WING MOBILE SHOE SERVICE

- A mobile shoe service is available for on-site shoe fittings and purchases (will be on site for 2-3 hours).
- Contact Tom Weeks to set up initial Departmental profile.
- Limited quantities/styles available. When scheduling the mobile shoe service, the Department may request specific style and sizes.
- Minimum purchase of 10 shoes/boots per on-site visit.
- The Department should provide Red Wing with a list of employee names authorized to visit the mobile shoe service van.
- Please try to schedule your employees so that there are no more than 3 employees at the mobile shoe service van at any given time.

MISCELLANEOUS INFORMATION

- This does not replace any current safety shoe contracts that City Departments already have in place.
- Returns or exchanges can be done in-store or with the mobile shoe service (with receipt).
- Employees must pay sales tax when they pay the difference between the cost of the shoes and the amount of the City voucher.

Example:

The Department gives the employee a \$100 voucher to buy safety shoes. The employee selects a \$150 pair of safety shoes. The City will pay \$100 at no tax, and the employee pays the \$50 difference plus sales tax on the \$50.

\$150 shoes
- \$100 City voucher
\$ 50 difference
+\$ 4.13 (8.25% tax)
\$54.13 Employee pays

• The Departments are encouraged to consider a \$150/pair allowance (average cost of safety shoes).



LIFETIME TUNE-UPS

Any warranty is only as good as the organization behind it. When purchasing a Red Wing shoe, your purchase is protected by the 104 year tradition of an American legend with over 4,000 points of distribution.

Like most manufacturers, Red Wing warrants our products against defects in workmanship and materials. These warranties however are not the basis of the Red Wing commitment to our customer. To completely understand this, you just have to talk to our customers.

With every purchase, Redwing provides a *LifeTime Tune-up*. This includes complimentary boot oiling, leather conditioning, hooks, eyelets, shoe laces, stitching and minor shoe repair, *regardless of how long you own your Red Wing footwear*. These are services we provide at no cost to your employees, and can extend the life of their footwear and assure maximum efficiency of the footwear selected. These complimentary services are unmatched in the industry, and are the basis of the relationship Red Wing Shoe Company builds with each customer. Heel taps are also available at a nominal charge.

The **LifeTime Tune-up** usually addresses any issue that can come up outside of the normal warranty. In the event of a more serious problem, Red Wing Shoe Company will be happy to promptly address the issue on a case-by-case basis.

No other manufacturer provides anything like Red Wing's *LifeTime Tune-up*. No other manufacturer has over 4,000 distribution locations. And, no other manufacturer has the reputation of the Red Wing Shoe Company. Just ask our customers. It's the best warranty you can buy.

CITY OF AUSTIN WORKPLACE CONDITIONS AFFIDAVIT FOR ALL FACILITIES INVOLVED IN THE PERFORMANCE OF THIS CONTRACT SOLICITATION NO. (cooperative purchase through State of Texas)

For

TXMAS-9-84090 Contract for Red Wing Safety Shoes

	te of Texas unty of Travis			
l,		, being first duly s	worn, depose and say:	
1.	The following are the names of each facility involved in the proindicate any changes to this list	duction of goods or provision	on of services covered by this of	code, which I shall update to
	Description of goods or			
	services			
	Country of Production			
	Name of Facility			
	Physical	· · · · · · · · · · · · · · · · · · ·		
	Address			
	City, State,	"		
	Zip Code	<u></u>		
	Phone Number			
	[List as necessary, attach add	titional sheet if needed]		
	standard payroll records, included of wage level paid as health be and week, actual working hours indicate any change to this information. Contractor's Name: Red Wing Printed	nefit, other benefits, regular s per day and week, and ov rmation and these standard	r deductions from paychecks, i ertime policy if any. I shall upo	normal working hours per day date this attachment to
	Name:			
	Title			•
Sig	nature of Officer or Authorized R	lepresentative:		
Sub	scribed and sworn to before me	this day of	20	
			My Commission Ex	pires
Not	ary Public			

Other City Departments (as needed)	\$50,000	
ANNUAL CONTRACT AMOUNT	\$325,000	

The total contract amount was determined as follows:

FY10 funding (pro-rated for 9 months)	\$243,750.00
FY11 funding	\$350,000.00
FY12 funding	\$400,000.00
Total Contract Amount	\$993,750.00