



Amendment No. 1
of
Contract No. GC160000011
U.S. Communities Government Purchasing Alliance Contract #31172
for
Rental of Heavy Equipment and Vehicles
between
Herc Rentals Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension will be effective April 1, 2017 to March 31, 2019 and there are no remaining options.
- 2.0 The total contract amount is increased by \$630,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 08/31/2016 – 03/31/2017	\$210,000.00	\$210,000.00
Amendment No. 1: Option 1 04/01/2017 – 03/31/2019	\$630,000.00	\$840,000.00

- 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: _____

Printed Name: Jason Oosterbeek
Authorized Representative

Signature: _____

Linell Goodin-Brown, Contract Compliance Supervisor 3/23/17
City of Austin
Purchasing Office

Herc Rentals Inc.
27500 Riverview Center Blvd
Bonita Springs, FL 34134
Rex Walz
RWalz@HercRentals.com
512-472-5038



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

August 31, 2016

Herc Rentals Inc.
Zach Miller
27500 Riverview Center Blvd
Bonita Springs, FL 34134
zmillier@hercrentals.com

Dear Mr. Miler.

The Austin City Council approved the execution of a contract with your company for vehicle and equipment rental through the Herc Rentals Inc. contract with U.S. Communities.

Responsible Department:	Fleet Services Department
Department Contact Person:	Hazel Black
Department Contact Email Address:	hazel.black@austintexas.gov
Department Contact Telephone:	512-974-1751
Project Name:	Herc Rentals Inc.
Contractor Name:	Herc Rentals Inc.
Contract Number:	MA 7800 GC160000011
Contract Period:	08/31/2016– 03/31/2017
Dollar Amount	\$210,000
Extension Options:	One 24-Month Option not to exceed \$630,000
Requisition Number:	RQM 16072500592
Solicitation Type & Number:	U.S. Communities Contract #31172
Agenda Item Number:	42
Council Approval Date:	08/04/2016

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.

Sincerely,

Marian Moore
Buyer II
City of Austin
Purchasing Office

cc: Hazel Black

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
HERC RENTALS INC. ("Contractor")
FOR
RENTAL OF HEAVY EQUIPMENT AND VEHICLES
MA 7800 GC160000011**

This Contract is between Herc Rentals Inc. having offices at 3737 Airport Blvd, Austin, TX 78722 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"). Solicitation requirements are met by using Contractor's U.S. Communities Government Purchasing Alliance ("GPA") Contract No.31172.

1.1 This Contract is composed of the following documents:

- 1.1.1 This document
- 1.1.2 GPA Contract No. 31172, including all documents as referenced in Section 1, Scope of Services
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, Non Discrimination Certification
- 1.1.5 Exhibit C, Non-Suspension & Debarment Certification.

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

- 1.2.1 This document
- 1.2.2 GPA Contract No. 31172 as referenced in Section 1.1.2
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 Non Discrimination Certification as referenced in Section 1.1.4
- 1.2.5 Non-Suspension & Debarment Certification as referenced in Section 1.1.5.

1.3 Quantity. Quantity of goods or services will be determined on an as needed basis as specified in each Delivery Order. There are no guaranteed quantities or minimum order quantities.

1.4 Term of Contract. The Contract shall be in effect for an initial term beginning on the Effective Date and coinciding with the cooperative contract (as referenced in Section 1.1.2 above) expiration date of March 31, 2017 and may be extended thereafter for up to one 24 month extension option, subject to the extension of the cooperative contract (as referenced in Section 1.1.1 above), approval of the Contractor and the City Purchasing Officer or his designee. The City reserves the right to transfer this Contract by amendment to future GPA contract(s) that supersede GPA Contract No. 31172 if the terms and conditions are favorable to the City.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$210,000 for the initial Contract term and \$630,000 for the extension option for a total amount Not-to-Exceed of \$840,000.

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.

Herc Rentals Inc.

Jason Oosterbeek

Printed Name of Authorized Person


Signature

Vice President

Title:

08/31/2016

Date:

CITY OF AUSTIN

TRACY FRANKLIN

Printed Name of Authorized Person


Signature

SENIOR BUYER SPECIALIST

Title:

8/31/16

Date:

Exhibit A - Supplemental Terms

Exhibit B - Non Discrimination Certification

Exhibit C - Non-Suspension & Debarment Certification

EXHIBIT A

SUPPLEMENTAL TERMS

1. **Purpose.** The Contract will be utilized by the Fleet Services Department. The City reserves the right to allow other City Departments to utilize the Contract.

2. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Rex Walz; Phone: (512) 472-5038; Email: rwalz@hercrentals.com. The City's Contract Manager for the engagement shall be Hazel Black; Phone: (512) 974-1751; Email: hazel.black@austintexas.gov

3. **Contractor Responsibilities.**

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

3.2 The Contractor shall notify the City's Contract Manager and the Fleet Department Administrative Specialist at the Vehicle Support Services Rental Pool or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding the equipment being rented. The Contractor shall provide a point of contact for receiving orders from the City. A City representative from the Fleet Department Vehicle Support Services Rental Pool or designee will contact the Contractor by e-mail, fax, or telephone to place an order. **Approval for all rentals shall be made by the Fleet Department Administrative Specialist at the Vehicle Support Services Rental Pool.** The Contractor shall confirm the delivery of equipment to the Fleet Vehicle Support Services Rental Pool representative by email or telephone within two (2) hours after the order is sent.

3.3 The Contractor shall provide, upon request, a monthly and/or yearly total of all heavy vehicles and equipment rented under this Contract. The City prefers that the report be in an electronic format that may be sorted, or other City-approved format. The report shall include at a minimum, the rental start date and end date, quantity and description of the vehicles and equipment rented, the rental charge, department renting and contact information, and the invoice number.

3.4 Deliveries shall be made to the City department as specified on the order during normal City business hours Monday through Friday between the hours of 7:30 A.M. through 4:00 P.M. unless another time is specified. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see Paragraph 24 below).

4. **Invoices.** Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor.

Invoices shall be mailed to the below address:

	City of Austin Fleet Services Vehicle Support Services Rental Pool
Attn:	Fleet Services Administrative Specialist
Address:	6400 Bolm Road
City, State, Zip Code	Austin, TX 78721

Any monthly statements other than actual invoices shall be mailed to the below address:

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

5. **Payment.**

5.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

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

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

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

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

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

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

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

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

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

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

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

5.6 The City will review invoices to determine the accuracy of charges invoiced. The review will be performed by using the current price list and percentage discount or mark up and labor rates indicated on the bid sheet. If pricing is found to be different than bid, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the City's Contract Manager.

6. **Termination.**

6.1 **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.

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

6.3 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

6.4 **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.

7. **Right To Audit.**

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

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

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

To the City:
City of Austin, Purchasing Office
ATTN: Contract Administrator
P O Box 1088
Austin, TX 78767

To the Contractor:
Herc Rentals Inc.
ATTN: Rex Walz
3737 Airport Blvd.
Austin, TX 78722

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

9.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides

Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

9.2 The Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

9.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the 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 Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

10. Travel Expenses. No travel expenses are authorized under this Contract.

11. Insurance. 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.

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

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

11.1.2 Independent Contractor's Coverage

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

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

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

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

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

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

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

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

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

\$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

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

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

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

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

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

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

12. **Dispute Resolution.**

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

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

13. **Indemnity:**

13.1 Definitions:

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

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

13.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not

limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

14. **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.

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

16. **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.

17. **Workforce**

17.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

17.2 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:

17.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

17.2.2 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.

17.3 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.

18. **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.

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

20. **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby 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.

21. **Equal Opportunity.**

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

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

22. **Subcontractors.**

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

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

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

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

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

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

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

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

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

23. **Warranty.** The Contractor warrants and represents that all services 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. The warranty period shall be for a minimum of twelve (12) months from acceptance of the services.

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

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

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

25. **Workforce Security.** Access to any Fleet Services facility by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Contractor personnel will be required to check in at the Fleet Service Writer's desk when entering or leaving any Fleet Services facility. Failure to do so may be cause for removal of Contractor personnel from the worksite, without regard to Contractor's schedule. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees are kept fully informed as to these requirements.

26. **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.

27. **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.

27. **City Fleet Services Department Contacts.**

Vehicle Support Services Rental Pool Jennifer Rodriguez, Vehicle Support Specialist 6400 Bolm Road Austin, TX 78721 jennifer.rodriguez@austintexas.gov Main Tel. No.: (512) 978-2650 / Fax No.: (512) 978-2630	Fleet Administration - Contracts & Contract Compliance 1190 Hargrave Street Austin, TX 78702 Hazel Black, Contract Compliance Supervisor (512) 974-1751 Fax: (512) 974-9170 hazel.black@austintexas.gov
Vehicle Support and Accidents Julian Boring, Fleet Division Manager 6400 Bolm Road Austin, TX 78721 fleetaccidentgroup@austintexas.gov Main Tel. No.: (512) 978-2655 / Fax No.: (512) 978-2630	Fleet Administration – Safety Jo-Ann Cowan, Occupational Health & Safety Spec Sr. 1190 Hargrave Street Austin, TX 78702 jo-ann.cowan@austintexas.gov Main Tel. No.: (512) 974-1534 / Fax No.: (512) 974-1549

Exhibit B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sanctions:

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

Term:

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

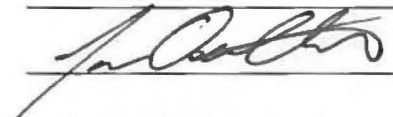
Dated this 31st day of August, 2016

CONTRACTOR

Authorized
Signature

Title

Herc Rentals Inc



Vice President

Exhibit C

City of Austin, Texas
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. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

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

Contractor's Name:

Herc Rentals Inc

Signature of Officer or
Authorized
Representative:



Date: 08/31/2016

Printed Name:

Jason Oosterbeek

Title:

Vice President

STATE OF NORTH CAROLINA
WAKE COUNTY

Rev. 11/12

**NORTH CAROLINA STATE UNIVERSITY
AGREEMENT**

THIS AGREEMENT ("Agreement") made and entered into this 1st day of April 2014, by and between Hertz Equipment Rental, 225 Brae Blvd, Park Ridge, NJ 07656 ("Contractor"), and NC State University, c/o Purchasing Department, Campus Box 7212, Raleigh, North Carolina 27695 ("NC State").

WITNESSETH

WHEREAS, Contractor has submitted to NC State a proposal for the performance of certain professional services; and,

WHEREAS, NC State desires to enter into an agreement with Contractor for the performance of these professional services.

NOW, THEREFORE, in exchange of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NC State and Contractor agree as follows:

1. **Scope of Services.** Contractor agrees to supply NC State with equipment rental and associated services described in the following attachments, attached hereto and incorporated by reference as if fully set forth herein. Documents include:

- (1) University's Request for Proposals (RFP) #63-JGD10070, dated October 5, 2013
- (2) RFP Addendum Number One dated November 1, 2013
- (3) Contractor response dated November 11, 2013: noting that 1) the tab marked "Donlen Overview" is removed; the University is not accepting this program and; 2) the U.S. Communities Administration fee is applicable to all products and services made a part of this contract, including equipment financing.
- (4) Hertz pricing. See "Attachment A" for definition of Platinum, Gold and Preferred pricing.
- (5) University Request for Clarification Number 1 dated December 3, 2013
- (6) Contractor response to Request for Clarification dated December 3, 2013

Contractor agrees to supply the University and U.S. Communities' Participating Public Agencies (PPA's) with equipment rental and associated services, and the University agrees to utilize the Contractor for these purposes.

2. **Term.** Contractor shall commence providing the Services on April 1, 2014, and shall terminate on March 31, 2017 (the "Term"). In addition, the University reserves the right to renew for one (1) additional, two-year period, not to exceed March 31, 2019.

3. **Key Personnel.** Contractor shall not substitute key personnel assigned to the performance of this Agreement without the prior written approval of NC State's Contract Administrator. Contractor's individual designated as key personnel for the purposes of this Agreement is James W. Fiscus, Division Vice President.
4. **Notices.** All notices shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

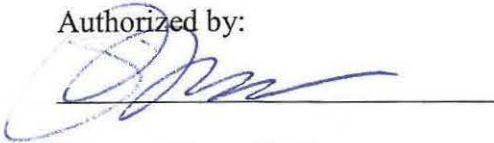
If to NC State: Director of Materials Management
North Carolina State University
Campus Box 7212
Raleigh, NC 27695-7212

If to Contractor: Hertz Equipment Rental
James Fiscus, Division Vice President
225 Brae Blvd
Park Ridge, NJ 07656

IN WITNESS THEREOF, the parties have executed this Agreement in duplicate originals, one of which is retained by each of the parties, effective the day and year first written above.

NC STATE UNIVERSITY:

Authorized by:



Name: Sharon D. Loosman

Title: Director of Materials ManagementDate: 2/12/2014**CONTRACTOR**By:  _____

Name: James W. Fiscus

Title: Division Vice President

Date: 02-11-14

Pricing Definitions

Hertz pricing includes three (3) options: Platinum, Gold and Preferred defined as follows:

Platinum: Extended to Participating Public Agencies (PPA's) where an agency enters into an exclusive agreement with Hertz by directly adopting this contract.

Gold: Extended to PPA's where an agency enters into a non-exclusive agreement with Hertz by directly adopting this contract. Pricing is applicable to all PPA's EXCEPT for 1) Platinum customers, 2) customers in North Dakota, South Dakota and Hawaii, and 3) **new** PPA's when formal states of emergency have been declared in the respective locale, i.e. no agreement previously existed between Hertz and PPA.

Preferred: Extended to 1) all Participating Public Agencies in North Dakota, South Dakota, and Hawaii, and to 2) new PPA's requesting the contract when formal States of Emergency have been declared, i.e. no agreement previously existed between Hertz and PPA.

Note: If a customer already has Platinum or Gold pricing downloaded to its Hertz customer number(s) and a state of emergency is declared, the respective Platinum or Gold pricing will be the pricing used for all current and new rentals, including when a state of emergency has been declared.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Herc Rentals Inc.
Bonita Springs, FL United States

Certificate Number:
2016-106504

Date Filed:
08/31/2016

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 7800 GC160000011
Equipment Rental

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Jason Oosterbeek
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Jason Oosterbeek, this the 31st day of August, 20 16, to certify which, witness my hand and seal of office.

Bryan Fernandez

Signature of officer administering oath

Bryan Fernandez

Printed name of officer administering oath

FL Public Notary

Title of officer administering oath

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Marian Moore / 512-974-2062	PM Name/Phone	Hazel Black / 512-974-1751
Sponsor/User Dept.	Fleet Services	Sponsor Name/Phone	Hazel Black / 512-974-1751
Solicitation No	Cooperative	Project Name	Heavy-Duty Equipment and Vehicle Rental
Contract Amount	\$806,176	Ad Date (if applicable)	N/A
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – Design Build <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> AD – JOC <input type="checkbox"/> IFB – Construction <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Commodities/Goods <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> Ratification <input type="checkbox"/> Sole Source*			
Provide Project Description**			
This is to establish a contract for the rental of heavy-duty, commercial, industrial, and construction equipment and vehicles. All City departments are approved to rent vehicles and equipment on an as-needed basis under this contract through Fleet Services. The initial contract will be for eight months not to exceed \$201,544 with one 24-month extension option of \$604,632.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
This is to replace the current contract, GC140000006, which does not have sufficient funding to support department requirements. No goals were established for the current contract.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
97540			
Marian Moore		5/11/2016	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	5/12/2016	Date Assigned to BDC	5/12/2016
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	

GOAL DETERMINATION REQUEST FORM

<input type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input checked="" type="checkbox"/> No Goals
--	--

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

(1) M/WBE available

Subcontracting Opportunities Identified

None.

LaVonia Horne-Williams

SMBR Staff

Signature/ Date 5/16/16

SMBR Director or Designee

Date 5-17-16

Returned to/ Date: