



Amendment No. 2
of
Contract No. MA 7800 NS170000034
for
Refuse Collection Bodies, Parts and Repair
between
Texan Waste Equipment dba Heil of Texas
and the
City of Austin

1.0 The City hereby exercises an early extension for the above referenced Contract. The term for the extension period is June 4, 2019 to June 3, 2020. The extension options for this Contract are hereby nullified. With this Amendment, the Contract expiration date is June 3, 2020.

1.1 The total Contract amount is increased by \$545,500. The total Contract authorization is recapped below

Term	Action Amount	Total Contract Amount
Initial Term: 07/10/2017-07/09/2020	n/a	\$1,636,500.00
Amendment No. 1: Administrative Increase 05/23/19	\$61,000.00	\$1,697,500.00
Amendment No. 2: Early Extension June 4, 2019 to June 3, 2020	\$545,500.00	\$2,243,000.00

2.0 MBE/WBE goals were not established for this contract.

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

4.0 All other terms and conditions remain the same.

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

Signature & Date:

Printed Name:

LARRY C DAVIS

Texan Waste Equipment dba Heil of Texas
503 Pop Gunn Street
San Antonio, TX 78219

Signature & Date:

John Hilbun, Contract Mgmt Specialist IV
City of Austin
Purchasing Office



Amendment No. 1
of
Contract No. MA 7800 NS170000034
for
Refuse Collection Bodies, Parts and Repair
between
Texan Waste Equipment dba Heil of Texas
and the
City of Austin

1.0 The City hereby amends the contract as follows:

1.1 The total Contract amount is increased by \$61,000. The total Contract authorization is recapped below

Term	Action Amount	Total Contract Amount
Initial Term: 07/10/2017-07/09/2020	n/a	\$1,636,500.00
Amendment No. 1: Administrative Increase 05/23/19	\$61,000.00	\$1,697,500.00

2.0 MBE/WBE goals were not established for this contract.

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

4.0 All other terms and conditions remain the same.

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

Signature & Date:  5-23-19

Printed Name: Brad Mecke

Texan Waste Equipment dba Heil of Texas
503 Pop Gunn Street
San Antonio, TX 78219

Signature & Date:  5-28-19
John Hilborn, Contract Mgmt Specialist IV Erin Davin
City of Austin
Purchasing Office
Procurement Supv.



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

July 10, 2017

Texan Waste Equipment dba Heil of Texas
J.B. Sweeney
Branch Manager
503 Pop Gunn Street
San Antonio, TX 78219

Dear Mr. Sweeney:

The City of Austin approved the execution of a contract with your company for Aquatic Maintenance, Repair, Supplies and Service in accordance with the referenced solicitation.

Responsible Department:	Fleet Services
Department Contact Person:	Perry Been
Department Contact Email Addr:	perry.been@austintexas.gov
Department Contact Telephone:	512-974-2629
Project Name:	Refuse Collection Bodies, Parts and Repair
Contractor Name:	Texan Waste Equipment dba Heil of Texas
Contract Number:	MA 7800 NS170000034
Contract Period:	07/10/17 – 07/09/20
Dollar Amount	\$1,636,500 (initial term)
Extension Options:	Two 12-month options
Solicitation Type & Number:	sole source

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,

John Hilbun
Contract Mgmt Specialist IV
City of Austin
Purchasing Office

cc: Perry Been, Fleet Services

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Texan Waste Equipment dba Heil of Texas
For
Refuse Collection Bodies, Parts and Repair
MA 7800 NS170000034**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Texan Waste Equipment dba Heil of Texas ("Contractor"), having offices at 503 Pop Gunn Street, San Antonio, TX 78219.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Mike Dugie, Phone: (210) 414-3157, Email Address: mdugie@heiloftexas.com. The City's Contract Manager for the engagement shall be Perry Been, (512) 974-2629, Email Address: perry.been@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide OEM parts and repair services for Heil Collection Bodies in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.1.1 OEM Parts and Repairs: The Contractor shall provide non-warranty OEM parts and repairs as shown in Exhibit A for Heil Collection Bodies on an as-needed basis.

2.1.2 Consignment Parts and Repairs: The Contractor shall provide a consignment inventory of frequently used and high dollar parts for warranty and non-warranty repairs according to the Consignment Inventory Procedures. The City's Fleet Services will provide warranty and non-warranty repair services using the consignment parts. Fleet Services will also maintain stock parts to be used for warranty and non-warranty repair services as needed.

2.2 **Definitions.**

2.2.1 Stock Parts are defined as high turnover parts that the City commonly uses. The City will provide a list of Stock Parts to the Contractor after contract execution.

2.2.2 Non-Stock Parts are low usage, high dollar parts that do not appear on the Stock Parts list and are not kept in inventory.

2.2.3 Back-ordered (or Out-of-Stock) Parts are defined as parts that are not currently in stock but have been ordered or will be ordered.

2.2.4 Fleet Services is a department within the City under which this contract is managed.

2.2.5 Fleet Service Center is a term used to designate any City facility where vehicles and equipment are repaired or serviced. Fleet Service Center 11 shall be used for this contract and is located at 6301-J Harold Court, Austin, Texas, 78721. In the event Fleet Service Center 11 is not available for use, Fleet Services may designate another Fleet Service Center to use for services to be provided under this contract.

2.2.6 Fleet Service Center Manager oversees the activities of the Fleet Service Center and will serve as the day-to-day contact for services performed under the contract.

2.2.7 Expedited Services is a term used when the City requires priority repair services for City-owned vehicles and/or equipment. The Contractor shall prioritize repairs of City-owned vehicles and/or equipment in front of other vehicles and/or equipment and expedite repair and return of the City's vehicles and/or equipment.

2.2.8 Repair means to return or restore a broken, damaged, or failed part, vehicle, or piece of equipment to an acceptable operating or usable condition or state.

2.3 **Contractor's Responsibilities for Repair Services.**

2.3.1 The Contractor shall provide all labor, parts, equipment, materials, tools, supervision, and transportation required to perform the services described herein. Contractor shall perform all services according to the manufacturer's recommended repair techniques and standards.

2.3.2 The Contractor shall stock or have immediate access to a parts inventory sufficient to complete needed repairs within the timeframe stipulated in the Contract.

2.3.3 The Contractor shall perform all repair services on the Contractor's premises.

2.3.4 The Contractor shall provide a point of contact for receiving orders from the City within five (5) working days after contract execution. A City representative from the Fleet Service Center will contact the Contractor by e-mail, fax, or telephone to place an order for repairs.

2.3.5 The Contractor shall transport (pick up and/or return) all drivable City units to and/or from the Contractor's premises where the repair services will be completed. Unit(s) in need of repair(s) shall be picked up within one (1) working day after notification and returned within one (1) working day after completion of the repair(s).

2.3.6 The City may on occasion provide transportation for non-drivable units to the Contractor's premises. Upon completion of repairs, the Contractor shall deliver the unit back to the City within one (1) working day after completion of the repair(s).

2.3.7 The Contractor shall diagnose the unit for repairs and provide a written cost estimate to the Fleet Service Center Manager or their designee within one (1) working day after taking possession of the unit. The written cost estimate shall include:

- 2.3.7.1 The cause of failure
- 2.3.7.2 The correction or repair needed
- 2.3.7.3 Estimated labor hours and cost
- 2.3.7.4 Description and cost of parts
- 2.3.7.5 Total cost to complete repair services
- 2.3.7.6 Total amount of time needed to complete repairs
- 2.3.7.7 Unit identification (unit number, license plate, or VIN)

2.3.8 The Fleet Service Center Manager or their designee will provide written authorization (e.g. email) to proceed with the repairs after evaluating the estimate. Authorization will include a unique delivery order number. The Contractor is not authorized to proceed with repairs based on verbal authorizations and assumes all liability and responsibility for repairs performed based on such verbal authorizations.

- 2.3.9 The Contractor shall submit a new cost estimate if the cost of the necessary repairs increases from the original cost estimate due to hidden damage. The new cost estimate shall list the additional repairs and costs and shall be submitted in advance to the Fleet Service Center Manager or their designee for written (e.g. email) approval for the hidden damage repairs.
- 2.3.10 The Contractor shall complete the repairs within the timeframe indicated in the estimate, after receipt of the Fleet Service Center Manager or their designee's written approval to proceed with the repairs. If more time is required to complete the necessary repairs, the Contractor shall request an extension in writing that includes the reason for the extension and the date repairs will be completed. The Fleet Service Center Manager or their designee must approve the Contractor's request for extension in writing.
- 2.3.11 Upon receipt of the repaired unit, the Fleet Service Center Manager or their designee will inspect the repairs for compliance with all contract requirements and to ensure repairs have been completed in a satisfactory manner. If, upon inspection, deficiencies are detected, the repairs will be rejected and the Contractor shall be required to make the necessary adjustments or correct the repairs at its own expense. This includes round trip transportation, if applicable. If corrective work is required, the Contractor shall arrange for pickup of the unit within one (1) business day of notification. Contractor shall complete corrective work within one (1) business day unless the Fleet Service Center Manager or their designee in writing (e.g. email) approves additional time.
- 2.3.12 The Contractor shall anticipate that repairs will be tested and/or inspected by the City during the term of the Contract. Fleet Services reserves the right to conduct any tests or inspections deemed necessary to ensure services or parts conform to the vehicle or equipment manufacturer's specifications. Inspections completed by the City will not relieve the Contractor of its obligation to ensure all repairs, articles, materials, and parts are consistent with the vehicle or equipment manufacturer's specifications, and are fit for their intended use.
- 2.3.13 The Contractor shall be responsible for any damage by the Contractor or Contractor's Subcontractor to City equipment, buildings, and/or property. Any damage shall be repaired at the Contractor's expense.
- 2.3.14 The Contractor shall be responsible for risk of loss or damage to all vehicles, equipment, and/or parts in the care, custody, and control of the Contractor until accepted by the Fleet Service Center Manager or their designee.
- 2.3.15 The Contractor shall return all non-usable cores to the Fleet Service Center Manager or their designee upon completion of the repair job, if cores are applicable to the repair. The Contractor shall not charge the City for usable cores from City units repaired at Contractor's facility.
- 2.3.16 The Contractor shall provide the parts removed during repair of the unit, for verification purposes upon request by the Fleet Service Center Manager or their designee.
- 2.3.17 The Contractor shall properly recycle and/or dispose of used and contaminated lubricants and/or filters. The Contractor shall not invoice the City a separate fee for recycling or disposal. The Contractor shall provide to the Fleet Services, upon request, a copy of a standard transportation manifest showing that all used and contaminated lubricants and/or filters were properly recycled and/or disposed.
- 2.3.18 The Contractor shall comply with all health, safety and environmental laws.
- 2.3.19 The Contractor shall submit copies of all documentation related to hazardous waste to both the Fleet Service Center Manager and the City's Occupational Health & Safety Specialist.
- 2.3.20 The Contractor shall provide, upon request, a monthly and/or yearly total of all repairs performed for the City. The Contractor shall provide the report in an electronic, sortable format or other City-approved format. The report shall itemize repairs by date, Service Center that placed the order, type of repair, cost for labor (including hours and rates), description and cost for parts, total cost of repair, and repaired unit identification (either unit number, license plate, or VIN).
- 2.3.21 The Contractor shall complete "Expedited Services" as specified in the order. A fee may be assessed for any orders for Expedited Services" placed by the City. "Expedited Services" shall be noted on the invoice when authorized by the City.

2.3.22 The Contractor shall be a manufacturer's authorized representative for parts and shall have an operational repair facility regularly engaged in the business of providing Heil Refuse Collection Bodies parts and repair services for a minimum of three (3) consecutive years within the last five (5) years.

2.3.23 The Contractor shall be a manufacturer authorized warranty repair facility equipped with all tools, diagnostic equipment, and supplies necessary to repair and provide warranty services (when requested by the City) for Heil Refuse Collection Bodies parts and repairs. In order to minimize downtime of City units, said facility shall be located within 150 miles of the Texas State Capitol.

2.3.24 The Contractor shall have a facility with adequate warehouse space and equipped with parts, supplies and equipment necessary to satisfy the requirements of the Contract.

2.3.25 The Contractor shall maintain a storage area that is secure from vandalism or theft, for all City units and equipment at the Contractor's location.

2.3.26 The Contractor shall have a minimum of two (2) service technicians, fully qualified to work on Heil Refuse Collection Bodies. The Contractor shall be able to verify that all service technicians have had sufficient training with a minimum of three (3) years hands-on experience within the last five (5) years working on Heil Refuse Collection Bodies. The Contractor shall furnish training certificates and/or documentation to the City within five (5) calendar days after written request.

2.4 Contractor's Responsibilities for Parts.

2.4.1 The Contractor shall stock or have immediate access to a parts inventory sufficient to fill stock orders 95% of the time and to complete needed repairs within the timeframe stipulated in this Scope of Work. The stock level required shall be a two-week supply of inventory, which will be determined by the City after Contract execution. The City will provide the Contractor with a list of parts for the Stock Parts two-week supply after Contract execution. All parts will be ordered on an as-needed basis. The City reserves the right to inspect the Contractor's, or the Contractor's Subcontractor's, parts inventory and/or repair facility.

2.4.2 The Contractor shall submit two (2) CDs or electronic copies, if available, of the price list(s) upon which the discounts or markups are based on Exhibit A – Pricing Sheet within five (5) business days of Contract execution to the Fleet Services Contract Manager. The City will accept a printed copy only if no electronic format is available.

2.4.3 The Contractor shall grant the City access to a company website or company-owned local computer to research parts pricing for verification purposes if a price list is no longer available in hard copy or electronic format. The Contractor shall document by written invoice from the supplier the cost for all parts charged to the City if the Contractor is unable to provide a CD, electronic copies, access to a company website, or a hard copy of the price list with their Offer. The cost documentation shall be submitted with each invoice.

2.4.4 The Contractor shall provide new parts except for core components on renewed assemblies. Parts must meet all applicable federal, state and local requirements for quality and safety. If new parts are not available, or if Fleet Services requests them in writing (e.g. email), remanufactured or rebuilt parts may be used. The City will not accept used, factory seconds, remanufactured, shopworn, demonstrator, prototype, and discontinued parts or materials.

2.4.5 The Contractor shall provide OEM parts. If OEM parts are not available, any parts that are not OEM shall be approved by the Fleet Service Center Manager or their designee in writing (e.g., email), and shall be equivalent to or better than the manufacturer's parts originally installed on the respective unit.

2.4.6 The Contractor shall notify the Contract Manager and the Fleet Service Center Manager or their designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding the parts sold. Failure to report this within fifteen (15) calendar days after receipt of notice may result in cancellation of the contract.

2.4.7 The Contractor shall provide a point of contact for receiving orders from the City. A City representative will contact the Contractor by e-mail, fax, or telephone to place an order for parts. The request will include the part number, part description, delivery requirements, and a unique delivery order number.

2.4.8 The Contractor shall confirm the quantity shipping to the ordering Fleet Services Center representative by telephone or email within two (2) hours after the order is sent.

2.4.9 The Contractor shall ship all orders for parts complete unless the Contractor and the City arrange for partial shipments in advance. The Contractor shall provide, with each delivery, an invoice showing the description of each item, quantity, and unit price.

2.4.10 Parts ordered before 10:00 AM shall be delivered to the ordering Fleet Service Center no later than 5:00 PM the same working day the order is placed. Parts ordered after 10:00 AM shall be delivered before noon the next working day after the order is sent. The City will not pay shipping costs to obtain "stock" parts that the Contractor does not have in inventory at the time the City places the order.

2.4.11 The Contractor shall deliver Non-Stock Parts to the ordering Fleet Service Center within three (3) working days after the Fleet Service Center sends the order. If delivery cannot be made as specified, the Contractor shall notify the ordering Fleet Service Center and provide an estimated delivery date. The Contractor shall honor all special orders under the Contract pricing, without any additional markups.

2.4.12 The Contractor shall deliver Back-ordered (or out-of-stock) Parts to the Fleet Service Center within five (5) working days after the order is sent. The Contractor shall advise the ordering Fleet Service Center representative by telephone when the part(s) will be available. Notification will be within two (2) hours after the Fleet Service Center sends the order. If the Contractor cannot provide the backordered part within five (5) working days, the City reserves the right to purchase the part on the open market and charge the Contractor the difference between the Contract price and the purchase price.

2.4.13 The Contractor shall provide, upon request, a monthly and/or yearly total of all parts purchased by Fleet Services. The City prefers that the report be in an electronic format that is sortable, or other City-approved format. The report shall include date purchased, invoice number, part number, part description, price per part, and the total dollar amount for all parts purchased.

2.5 **Contractor's Training Responsibilities.** The Contractor shall provide technical training for Fleet Services Center automotive technicians according to the requirements in this section.

2.5.1 Training shall be provided by a qualified factory-authorized service representative.

2.5.2 Training shall consist of a combination of classroom discussion and/or audio-visual aids and/or other training modules.

2.5.3 Training shall also include safety instruction, operation, maintenance, and lubrication requirements, any special adjustments and minor repair procedures. Fleet Services Center automotive technicians, supervisors, and parts room personnel shall also receive procedures for ordering parts, along with repair manual and parts book orientation.

2.5.4 Training shall be up to 8-hours a day, or longer if the Contractor deems necessary.

2.5.5 The date of the training shall be coordinated between the Contractor and a Fleet Service Center Manager or their designee.

2.5.6 Equipment training shall be held at one of the Fleet Service Centers and the classroom training shall be held at a designated location arranged by a Fleet Service Center Manager or their designee.

2.6 **Emergency Contractor Support.**

2.6.1 Within 30 days of Effective Date, Contractor shall provide the City with an emergency contingency plan that identifies the City as a priority customer in the event of an emergency situation during the term of the Contract and through subsequent renewal periods if the City and the Contractor choose to renew the Contract.

2.6.2 In the event of an emergency, the Contractor and all subcontractors shall agree to follow the direction of the Fleet Director, or their designee, to assure that parts are delivered when and where the City requires them and that repairs are made when the City requires them.

2.6.3 Contractor shall consider all City orders as priority and provide preferential treatment to the City throughout the entire Contract term. This is a requirement due to the critical nature of much of the City's business, such as Police, Fire, and EMS.

2.7 **Consignment Inventory Procedures**

2.7.1 The Contractor and City shall determine, by mutual agreement, appropriate parts and quantities for the consignment inventory.

2.7.2 The City will maintain the consignment inventory at the City's Service Center 11 but the consignment inventory will be the exclusive property of Contractor.

2.7.3 Upon termination of the Contract for any reason, Contractor may enter the City's place of business with City approval for the sole purpose of removing the consignment inventory of record. The Contractor shall invoice the City for any shortages or damages to the consignment inventory at the agreed price level.

2.7.4 The Contractor shall publish the first count and cost of inventory on an Excel spreadsheet or tracking document with a tracking number. This shall be the official inventory of record. The Contractor and the City shall each be provided a signed, mutually agreed-upon copy. Any changes or modifications to the consignment inventory stocking level will require mutual agreement of both parties and shall be accomplished in the same manner as the placement of the original consignment inventory. The result of the change or modification shall become a part of the "official inventory of record".

2.7.5 Contractor shall clearly mark all inventory items that are to be consigned. Contractor shall audit the inventory level on a weekly basis, replace the parts that have been used, and issue an invoice to the City for the replaced parts accordingly.

2.7.6 Contractor shall provide detailed transaction history of all parts replaced in the consignment inventory on a monthly basis, including a sign off on starting inventory, transaction history in and out of warehouse, and ending inventory. This report shall show all counts and sale prices so both parties can track the inventory.

2.7.7 The City will notify Contractor of any change in represented inventory part(s). This includes, but is not limited to use of inventory parts.

2.7.8 Contractor shall be responsible for administering the Manufacturer's warranty on parts sold out of consignment that are standard for all parts sold by Contractor. City does not warrant the part consigned. If a part must be returned to Contractor because of a defect or other circumstance, the Contractor shall issue the City a return for credit (Return Authorization Number). The warranty claim shall then be submitted online to the Contractor at www.heiloftexas.com. The parties will determine the disposition of the part, whether to return it to stock, ship back to Contractor for inspection, or dispose of the part due to defect or quality issues. If applicable, the City will send the part to the Contractor for warranty consideration. Invoice amounts for parts purchased specifically for warranty replacement can be suspended for payment by the City pending the warranty approval process. If a part is not replaced via the warranty process, the City agrees to process the invoice.

2.7.9 The City will provide Contractor a secure, weather-protected area of sufficient size to store the consignment inventory. Any shortage or damage to the consignment inventory will be the responsibility of the City except in the case of negligence or misconduct on the part of the Contractor, and the Contractor shall invoice the City for any shortages or damages accordingly. The consignment inventory shall not be subject to any liens or encumbrances by the Contractor. The City will not subject the consignment inventory to any liens or encumbrances.

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

2.9 **Pickup and Delivery Requirements**. Pickup and delivery shall be made at Fleet Services Center 11, 6301-J Harold Court, Austin, Texas, 78721, during normal City business hours Monday through Friday between the hours of 7:00 A.M. and 5:00 P.M. except for City-recognized legal holidays and weekends unless requested by Fleet Services in advance. Fleet Services may designate the use of a different Fleet Service Center at their discretion.

2.10 **Mileage**. Mileage is not reimbursable, and the Contractor shall not bill for mileage. However, the Contractor may charge one flat fee as indicated for pickup and delivery of units under repair on Contractor's premises.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$1,636,500 for the initial 36-month term and an amount not to exceed \$545,500 for each of two 12-month extension options, for a total estimated Contract amount not to exceed \$2,727,500.

3.2 **Economic Price Adjustment.**

3.2.1 **Price Adjustment.** Prices shown in this Contract shall remain firm for the first 12 month period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

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

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).

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

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

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

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

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

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

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

3.2.4.3 **Index Identification.**

Weight % or \$ of Base Price: 100%	
Database Name: Consumer Price Index – All Urban Consumers	
Series ID: CUUR0000SETD	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: U.S. City Average	
Description of Series ID: Motor Vehicle Maintenance and Repairs	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: Labor	

Weight % or \$ of Base Price: 100%	
Database Name: Consumer Price Index – All Urban Consumers	
Series ID: CUUR0000SECT	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: U.S. City Average	
Description of Series ID: Motor Vehicle Parts and Equipment	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: Parts	

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

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

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

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

3.3 **Invoices.**

3.3.1 The Contractor shall invoice the City according to Exhibit A – Pricing Sheet.

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

3.3.3 **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 the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

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

3.3.4 The Contractor shall provide an itemized invoice to the Fleet Service Center Manager or their designee, upon completion of each repair. The invoice shall include the following information:

- 3.3.4.1 Date repairs were authorized
- 3.3.4.2 List of repairs made
- 3.3.4.3 Date repairs were completed

3.3.4.4 Itemized list of parts and other products used for the repairs

3.3.4.5 Number of labor hours associated with the repairs

3.3.4.6 Repaired unit identification (unit number, license plate, or VIN)

3.3.5 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.

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

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

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

3.1.2 Labor hours must be based on published industry standards where they apply. In areas where such standards have not been published, the City reserves the right to restrict labor hours based on historic experience for like repairs. Fleet Services Parts Room, Contract Compliance and/or Accounts Payable personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed using the Price List, revisions approved by the City, and the percentage mark up or discount as indicated on the bid sheet. If pricing is found to be different, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the Contract Manager.

3.1.3 The Contractor may invoice the City restocking fees (limited to 5% of the total cost of the item or items returned) for parts that are ordered by the City under the Contract during the Contract term and returned for refund; except that no restocking fee shall be billed for any parts returned within thirty (30) calendar days after receipt or for any parts returned during a quarterly stock lift. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased. The City will permit a restocking fee greater than 5% only in the event that the manufacturer charges the Contractor a restocking fee greater than 5%. In order to qualify for the higher restocking fee, the Contractor shall be required to submit written evidence of the manufacturer's higher restocking fee.

3.4 **Payment.**

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

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

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

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

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

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

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

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

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

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

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

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

3.4.6 Order Quantities. There is no guaranteed quantity of work for the period of the Contract, and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each order. Contractor will be paid monthly pursuant to the OEM parts and repair services ordered for the previous month.

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

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

3.6.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.6.2 The making and acceptance of final payment will constitute:

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

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

3.7 **Stock Lift.** The City may require a stock lift on a quarterly basis. When required, the Contractor shall pick up and credit the City's account for items purchased during the Contract term which have not been used or have become obsolete for the City's needs, provided that these items are in the original cartons and in marketable condition. The amount credited to the City's account shall be the original purchase price for the items. The date for the quarterly stock lift shall be mutually agreed upon between the Contractor and the Fleet Services Materials Control Manager or designee. No restocking fees will be assessed for parts returned during a quarterly stock lift. At the end of the final Contract term, if the Contractor is not the successful vendor for the replacement Contract, when requested by the City, the Contractor shall pick up and refund the City for items purchased during the Contract term which were not used, provided the items are in the original cartons and in marketable condition. The amount refunded to the City shall be the original purchase price for the items less the restocking fee as outlined in the Restocking Fees provision above.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to two additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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

4.1.2 Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions

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

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

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

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

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

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

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

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

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

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

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of

the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

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

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

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

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

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

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

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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

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

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Property Insurance.** The Contractor shall provide All Risk Property coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear.

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

5.1.2.5.1 The policy shall include these endorsements in favor of the City of Austin:

5.1.2.5.1.1 Waiver of Subrogation

5.1.2.5.1.2 Thirty (30) days Notice of Cancellation

5.1.2.5.1.3 The City of Austin listed as an additional insured

5.1.2.6 **Garagekeepers Liability.** The Contractor may provide Garagekeepers Liability for the required property coverage for vehicles in the care, custody, and control of the Contractor. Comprehensive and collision coverage shall be provided on a Legal Liability basis. The limit of

coverage required is the total estimated actual cash value of vehicles in the Contractors care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.

5.1.2.6.1 City of Austin shall be added as a loss payee.

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

5.2 **Contractor To Package Deliverables.** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. 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.

5.3 **Shipment Under Reservation Prohibited.** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5.4 **Title & Risk of Loss.** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

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

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

5.7 **Special Tools & Test Equipment.** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.8 **Equal Opportunity.**

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

5.8.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.9 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract

with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

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

5.11 Delays.

5.11.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

5.12 Recycled Products. The City prefers that Contractors offer products that contain recycled materials. When a recycled product is offered by the Contractor, the Contractor must state the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.

5.13 Workforce Security Clearance and Identification.

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

5.13.2 Contractor personnel will be required to check in at the service writer's desk when entering or leaving all Fleet Services facilities. Failure to do so may be cause for removal of Contractor personnel from the worksite, without regard to Contractor's schedule.

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

5.14 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 terminate the Contract for cause based on repetitive non-compliance.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

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

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor shall provide a 12-month labor warranty for all repair services. The Contractor shall provide a copy of the labor warranty to the Fleet Service Center Manager or their designee with each delivery.

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

6.2.3 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall

6.2.4 be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.5 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.

6.3 **Warranty – Parts.** The Contractor warrants that all parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time.

6.3.1 The warranty period for all parts shall not start until the part is actually installed on a unit as evidenced by the City's work order or the Contractor's invoice for repairs. A copy of the manufacturer's parts warranty shall be provided to the Fleet Service Center Manager or their designee within five (5) calendar days of request by the City.

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

SECTION 7. MISCELLANEOUS

7.1 **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.

7.2 **Workforce.**

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

7.2.2 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:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 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.

7.2.3 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.

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 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.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

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

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

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

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

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

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of

notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **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: John Hilbun, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Texan Waste Equipment dba Heil of Texas

ATTN: Mike Dugie, Contract Manager

503 Pop Gunn Street

San Antonio, TX 78219

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

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

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

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee

guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

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

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

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

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

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

7.20 **Dispute Resolution.**

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

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

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

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

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

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

7.22 **Subcontractors.**

7.22.1 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.

7.22.2 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:

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

7.22.2.2 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;

7.22.2.3 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;

7.22.2.4 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 a named insured as its interest shall appear; and

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

7.22.3 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.

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

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

7.26 **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.

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

7.28 **Incorporation of Documents.** **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

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

TEXAN WASTE EQUIPMENT dba HEIL OF TEXAS

CITY OF AUSTIN

By: [Signature]
Signature

Name: JB Sweeney
Printed Name

Title: Branch Manager HOTS A

Date: 7/10/2017

By: [Signature]
Signature

Name: JOHN HILBMAN
Printed Name

Title: CONTRACT MGMT SPECIALIST III

Date: 07/10/17

List of Exhibits

Exhibit A	Pricing Sheet and Consignment Inventory Parts List
Exhibit B	Non Discrimination Certification
Exhibit C	Non-Suspension or Debarment Certification

EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, 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 payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 10th day of July, 2017

CONTRACTOR
Authorized
Signature

Title

Texas Waste Equipment & Leasing
JJ - JASweezy
Branch Manager HQ

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 Contractor 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.

Dated this 10th day of July, 2017

CONTRACTOR

Authorized
Signature

Title

Term Waste Equipment dba Heil/ATerm.
J. J. J. J. J.
Branch Manager HOTS

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

Certificate Number:
2017-233279

Date Filed:
07/07/2017

Date Acknowledged:

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

Texan Waste Equipment Inc. dba Heil of Texas
San Antonio, TX United States

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.

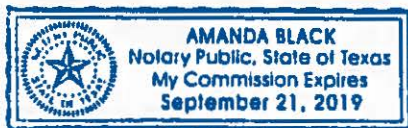
MA 7800 NS170000034
Refuse Bodies, Parts & Repair

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Davis, Larry	Houston, TX United States	X	

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.



Larry C Davis
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Larry C Davis, this the 7 day of July, 2017, to certify which, witness my hand and seal of office.

Amanda Black Amanda Black Notary
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 12/06/2016

DEPT: Fleet Services

TO: Purchasing Officer or Designee

FROM: Perry Been

BUYER: Marian Moore

PHONE: 974-2629

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

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

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

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

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

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

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

Request for an MA in the amount of \$2,727,321 with Texan Waste Equipment dba Heil of Texas located at 503 Pop Gunn, San Antonio, TX 78219. Heil of Texas, with facilities in San Antonio, Dallas, and Houston, has the sole protected distributorship for Heil parts and services in the State of Texas. There are no other authorized distributors for Heil parts and services in the State to supply parts and service for the City's Heil garbage trucks. Using non-OEM or After-Market parts may violate any warranties on Heil equipment.

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

Texan Waste Equipment dba Heil of Texas with facilities in San Antonio, Dallas, and Houston, has the sole protected distributorship for Heil parts and services in the State of Texas. There are no other authorized distributors for Heil parts and services in the State. In addition, authorized dealers for Heil parts and services outside the State of Texas are not permitted to sell parts or provide repair services to customers located within the State of Texas.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Heil of Texas which will cost approximately \$2,727,321.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Perry Been
Originator

12-6-16
Date

Approved
Certification

Department Director or designee

12/16/16
Date

Assistant City Manager / General Manager
or designee (if applicable)

12/28/16
Date

Purchasing Review
(if applicable)

Buyer

2/16/17
Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

2-17-17
Date

02/26/2013



September 9, 2016

To whom this may concern:

This letter is to confirm that Heil of Texas is the sole Heil OEM body, parts, warranty, certified Heil rebuilt parts, and full service dealer for the state of Texas and New Mexico. Heil of Texas, with facilities in San Antonio, Dallas, and Houston, has the sole protected distributorship for Heil parts and services in the State of Texas. There are no other authorized distributors for Heil parts and services in the State of Texas. In addition, authorized Distributors for Heil parts and services outside the State of Texas may not sell Heil OEM parts or provide repair services to customers located in the State of Texas. Using Non-OEM or After Market parts may violate any warranties on the Heil Refuse Bodies.

Heil of Texas San Antonio
503 Pop Gunn
San Antonio, TX 78219
210-224-5800

Heil of Texas Houston
5900 Wheeler Street
Houston, TX 77023
713-923-7600

Heil of Texas Dallas
1440 South Loop 12
Irving, TX 75060
972-438-6488

If you have any questions, please call me at 281-685-3750.

Sincerely,

Joe Howard
Heil Environmental
South Central Region Manager
281-685-3750