Amendment No. 1
to
Contract No. MA 8100 GA180000013

for
OEM Parts for Toro Lawn Equipment
between
Top Gunn Equipment Rentals, Inc.
and the
City of Austin

1.0 The City of Austin hereby grants a Price Increase Request of 2% per "*Section 0400 Supplemental Purchase Provisions, Paragraph 15"* on Contract line items 1-30. The increase will be effective the date both parties execute this Amendment.

2.0 The total contract amount remains unchanged. The total contract authorization is recapped below:

Description	Contract Amount for the Item	Total Contract Amount
Initial Term: 12/08/17 – 12/07/20	$158,000.00	$158,000.00
Amendment No. 1: 2% Toro Price Increase for Contract GA180000013 Line Items 1-30	$ 0.00	$158,000.00

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

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

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

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

TOP GUNN EQUIPMENT RENTAL, INC.

BY: _____
Signature

Nathaniel Thompson
Printed Name of Authorized Representative

Title: Sales Manager

Date: 4/26/2019

CITY OF AUSTIN

BY: Diana C McIntosh
Signature

Diana McIntosh
Printed Name of Authorized Representative

Title: Purchasing Specialist II

Date: 5/1/2019

Amendment No. 01
Contract No. MA 8100 GA180000013
for
OEM Parts for Toro Lawn Equipment
between
Top Gunn Equipment Rentals, Inc.
and the
City of Austin

LINE ITEM	MANUFACTURER PART NUMBER	ITEM DESCRIPTION	INDICATE PRICE LIST OFFERED	Qty	Unit	Price effective 12/8/2017			Price Effective Date Amendment No. 01 effective 4/23/2019	
						Unit Price	Price Each	Extended Price	2% Price Increase	Extended Price
1	105-7784-03	High Flow Blade 24.5"	$19.74	108	Each	$15.00	$15.00	$1,620.00	$15.30	$1,652.66
2	114-4483	Blank Deck	$1,922.15	2	Each	$1,460.83	$1,460.83	$2,921.66	$1,490.05	$2,980.10
3	1-603299	Wheel Toro Deck	$10.38	6	Each	$7.89	$7.89	$47.34	$8.05	$48.28
4	110-5727	Throttle Cable Assm.	$39.45	4	Each	$29.98	$29.98	$119.92	$30.58	$122.33
5*	~~117-2221~~ 137-4100	Ingition Switch	$17.49	5	Each	$13.29	$13.29	$66.45	$13.56	$67.79
6*	~~116-4668~~ 132-9425	Deck Idler Pulley	$23.06	5	Each	$17.53	$17.53	$87.65	$17.88	$89.38
7	109-8590	Deck Idler Pulley	$89.32	6	Each	$67.88	$67.88	$407.28	$69.24	$415.45
8	~~116-4670~~ 136-5404	Deck Idler Pulley	$28.60	9	Each	$21.74	$21.74	$195.66	$22.17	$199.54
9	109-9127	Deck Caster Wheel	$174.94	4	Each	$132.95	$132.95	$531.80	$135.61	$542.45
10	112-4195	Blank Deck	$2,306.00	2	Each	$1,752.56	$1,752.56	$3,505.12	$1,787.61	$3,575.22
11	116-4689	Mixer Propane	$2,106.66	2	Each	$1,601.06	$1,601.06	$3,202.12	$1,633.08	$3,266.17
12	119-8500	Spindle Assm. Complete	$332.75	10	Each	$252.89	$252.89	$2,528.90	$257.95	$2,579.48

Amendment No. 01
Contract No. MA 8100 GA180000013
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OEM Parts for Toro Lawn Equipment
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Top Gunn Equipment Rentals, Inc.
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LINE ITEM	MANUFACTURER PART NUMBER	ITEM DESCRIPTION	INDICATE PRICE LIST OFFERED	Qty	Unit	Price effective 12/8/2017			Price Effective Date Amendment No. 01 effective 4/23/2019	
						Unit Price	Price Each	Extended Price	2% Price Increase	Extended Price
13	114-5859	Mower Deck Belt V	$119.85	6	Each	$91.09	$91.09	$546.54	$92.91	$557.45
14	126-8365	Deck Strut Assm	$80.74	1	Each	$61.36	$61.36	$61.36	$62.59	$62.59
15	116-1255	Hydro Pump Idler Assm	$100.60	6	Each	$76.46	$76.46	$458.76	$77.99	$467.91
16	109-8972	Tire & Rim	$248.46	4	Each	$188.83	$188.83	$755.32	$192.61	$770.42
17	KAWFX801V-FS00-S	Kawasaki Replacement Engine	$2,190.00	2	Each	$1,971.00	$1,971.00	$3,942.00	$2,010.42	$4,020.84
18*	~~D~~ PCV740-3016	Kohler Replacement Engine	$3,070.12	1	Each	$2,763.11	$2,763.11	$2,763.11	$2,818.37	$2,818.37
19	EXM116-0234	Toro Mower/Pulley Kit	$88.03	6	Each	$66.90	$66.90	$401.40	$68.24	$409.45
20	TLB116-9120	Toro Regulator LPG	$524.17	6	Each	$398.37	$398.37	$2,390.22	$406.34	$2,438.02
21	TLB116-1712	Toro Muffler	$162.38	2	Each	$123.41	$123.41	$246.82	$125.88	$251.75
22	109-3388	Hydraulic Belt	$21.86	9	Each	$16.61	$16.61	$149.49	$16.95	$152.51
23	~~116-6707-01~~ 116-8888	Deck Caster Fork	$85.57	4	Each	$65.03	$65.03	$260.12	$66.33	$265.34
24	116-1620	Clutch Kit	$359.46	2	Each	$273.19	$273.19	$546.38	$278.65	$557.31

Amendment No. 01
Contract No. MA 8100 GA180000013
for
OEM Parts for Toro Lawn Equipment
between
Top Gunn Equipment Rentals, Inc.
and the
City of Austin

LINE ITEM	MANUFACTURER PART NUMBER	ITEM DESCRIPTION	INDICATE PRICE LIST OFFERED	Qty	Unit	Price effective 12/8/2017			Price Effective Date Amendment No. 01 effective 4/23/2019	
						Unit Price	Price Each	Extended Price	2% Price Increase	Extended Price
25	112-2320	Diesel Clutch	$705.43	2	Each	$536.13	$536.13	$1,072.26	$546.85	$1,093.70
26	105-7790	Deck Belt	$121.31	6	Each	$92.20	$92.20	$553.20	$94.04	$564.24
27	~~116-6415~~ 126-1325	LH Hydraulic Pump Assm	$1,943.11	1	Each	$1,476.76	$1,476.76	$1,476.76	$1,506.30	$1,506.30
28	~~116-6416~~ 126-1326	RH Hydraulic Pump Assm	$1,943.11	1	Each	$1,476.76	$1,476.76	$1,476.76	$1,506.30	$1,506.30
29	~~116-1694~~ 126-4507	CPG Tank	$688.22	2	Each	$523.05	$523.05	$1,046.10	$533.51	$1,067.02
30	~~125-3107~~ 121-7595	Suspension Seat	$576.91	1	Each	$438.45	$438.45	$438.45	$447.22	$447.22

End of Document

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

December 8, 2017

Top Gunn Equipment Rentals, Inc.
Nathaniel Thompson
7920 Anderson Square
Austin, TX 78757
nat@topgunn.net

Dear Mr. Thompson:

The City of Austin approved the execution of a contract with your company for OEM parts for Toro lawn equipment in accordance with the referenced solicitation.

Responsible Department:	Aviation Department
Department Contact Person:	Chris Carter
Department Contact Email Address:	Chris.Carter@austintexas.gov
Department Contact Telephone:	512-530-6352
Project Name:	OEM Parts for Toro Lawn Equipment
Contractor Name:	Top Gunn Equipment Rentals, Inc.
Contract Number:	MA 8100 GA180000013
Contract Period:	12/08/17 – 12/07/20
Dollar Amount	$158,000 Initial Term
Extension Options:	Two 12-Month Options 1st Option = $57,000 2nd Option = $58,000
Requisition Number:	RQM 8100 17080800693
Solicitation Type & Number:	IFB 8100 MMO0123

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

Sincerely,

Marian Moore
Procurement Specialist III
City of Austin
Purchasing Office

cc: Sandy Wirtanen
Tina Gamez
Chris Carter

CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
TOP GUNN EQUIPMENT RENTALS, INC. ("Contractor")
FOR
OEM PARTS FOR TORO LAWN EQUIPMENT
MA 8100 GA180000013

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

This Contract is between Top Gunn Equipment Rentals, Inc. having offices at 7920 Anderson Square, Austin, TX 78757 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number MMO0123.

1.1 **This Contract is composed of the following documents:**

1.1.1 This document

1.1.2 The City's Solicitation, Invitation for Bid (IFB), MMO0123 including all documents incorporated by reference

1.1.3 Top Gunn Equipment Rentals, Inc.'s Offer, dated October 23, 2017, including subsequent clarifications

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

1.2.1 This document

1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 **Term of Contract.** The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to two (2) twelve (12) month extension options, subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of $158,000 for the initial Contract term and $57,000 for the first extension option and $58,000 for the second extension option in accordance with the Bid Sheet, IFB Section 0600. Payment shall be made upon successful delivery of goods as outlined in each individual Delivery Order.

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

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

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

TOP GUNN EQUIPMENT RENTALS, INC.	**CITY OF AUSTIN**
Brandon Morris	
Signature	Signature
Brandon Morris	Marian Moore
Printed Name of Authorized Person	Printed Name of Authorized Person
President	Procurement Specialist III
Title	Title
11-28-17	12-8-17
Date	Date

CITY OF AUSTIN, TEXAS

Purchasing Office

INVITATION FOR BID (IFB)

OFFER SHEET

SOLICITATION NO: MMO0123

DATE ISSUED: October 23, 2017

REQUISITION NO.: 17080800693

COMMODITY CODE: 5154584

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

Marian Moore
Procurement Specialist III
Phone: (512) 974-2062
E-Mail: marian.moore@austintexas.gov

Sandy Wirtanen
Procurement Specialist IV
Phone: (512) 974-7711
E-Mail: sandy.wirtanen@austintexas.gov

COMMODITY/SERVICE DESCRIPTION: OEM Parts for Toro Lawn Equipment

BID DUE PRIOR TO: Thursday, November 9, 2017 at 2:00 PM CST

BID OPENING TIME AND DATE: Thursday, November 9, 2017 at 3:00 PM CST

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

LIVE BID OPENING ONLINE:

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

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

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

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation #MMO0123	Purchasing Office-Response Enclosed for Solicitation # MMO0123
P.O. Box 1088	124 W 8th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

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

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

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

SUBMIT 1 ORIGINAL, AND 1 ELECTRONIC COPY (FLASH DRIVE) OF YOUR RESPONSE

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

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

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	9
0500	SCOPE OF WORK	3
0600	BID SHEET – Complete & return	2
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete & return	2
0700	REFERENCE SHEET – Complete & return	1
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION – Complete & return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete & return	1
EXHIBIT A	AVIATION TORO LAWN EQUIPMENT	1

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:**

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

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

INTERESTED PARTIES DISCLOSURE

In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed and notarized for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.

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

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

Company Name: Top Gunn Equipment Rentals, Inc.

Company Address: 7920 Anderson Square

City, State, Zip: Austin, TX 78757

Federal Tax ID No. ___ - - ___

Printed Name of Officer or Authorized Representative: Nathaniel Thompson

Title: Sales Manager

Signature of Officer or Authorized Representative: Nathaniel Thompson

Date: 10/23/17

Email Address: nat@topgunn.net

Phone Number: 512-452-2610

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

CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

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

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.

5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".

7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

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

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

10. **WORKFORCE**

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

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

12. **INVOICES**:

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

B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department’s Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor’s name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor’s registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor’s invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

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

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

13. **PAYMENT**:

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

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

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

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

i. delivery of defective or non-conforming Deliverables by the Contractor;
ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

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

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

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

15. **FINAL PAYMENT AND CLOSE-OUT**:

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

B. The making and acceptance of final payment will constitute:

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

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

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

17. **AUDITS and RECORDS**:

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

B. Records Retention:

i. Contractor is subject to City Code chapter 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.

ii. 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

iii. The Contractor shall retain all 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.

C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

18. **SUBCONTRACTORS**:

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

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

i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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

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

19. **WARRANTY-PRICE**:

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

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

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

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

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

    A. Recycled Deliverables shall be clearly identified as such.

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

    C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

    D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.

    E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

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

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

    B. Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

    C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES**: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

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

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

26. **DEFAULT**: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

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

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

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

30. **DELAYS**:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. **INDEMNITY**:

A. Definitions:

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

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

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

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

A. General Requirements.

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

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

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

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

vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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

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

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

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

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

xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

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

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

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

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

38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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

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

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

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

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

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

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

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

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

48. **DISPUTE RESOLUTION**:

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

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

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

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

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

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

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

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

54. **EQUAL OPPORTUNITY**

A. **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.

B. **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.

55. **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 successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

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

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
FOR
OEM PARTS FOR TORO LAWN EQUIPMENT

The following Supplemental Purchasing Provisions apply to this solicitation:

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

   All requests for explanations or clarifications must be submitted in writing to marian.moore@austintexas.gov by one week prior to the solicitation due date.

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

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

      i. The Contractor shall provide a Certificate of Insurance as verification of coverage's required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
      ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
      iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
      iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

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

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

      i. Worker's Compensation and Employers' Liability Insurance: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.
         (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
            (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
            (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

      ii. Commercial General Liability Insurance: The minimum bodily injury and property damage per occurrence are $500,000 for coverage's A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
         (1) The policy shall contain the following provisions:
            (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
            (b) Contractor/Subcontracted Work.
            (c) Products/Completed Operations Liability for the duration of the warranty period.
            (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
         (2) The policy shall also include these endorsements in favor of the City of Austin:

(a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
(b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
(c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

iii. Business Automobile Liability Insurance: The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident.
(1) The policy shall include these endorsements in favor of the City of Austin:
(a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
(b) Thirty (30) days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage
(c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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

Note: If shipment is made by common carrier, then the requirements for Workers Compensation Employee Liability and Business Automobile Liability Insurance are not required. The Contractor must provide a written statement if a common carrier will be used to deliver parts.

3. **TERM OF CONTRACT:**

A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to two (2) additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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

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

D. Prices are firm and fixed for the first twelve (12) months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

4. **PRE-AWARD**

A. Prior to awarding a Contract, the City reserves the right to visit the premises of any Offeror being considered for a Contract. The site visit will be made during the evaluation process to determine whether or not the Offeror has the appropriate facilities, equipment, inventory, licenses, registrations, permits, and qualified personnel to perform according to the Scope of Work (Section 0500). Offerors, who in the City's opinion, do not have the resources to perform, will not be considered for Contract award regardless of their bid price. The Offeror shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

B. In addition, in order to determine if the Offeror is responsible, the City reserves the right to review the Offeror's plan to comply with the requirements as specified in the Scope of Work. Offerors who, in the

City's opinion, do not have existing agreements or resources in place will not be considered for contract award regardless of their bid price.

5. **POST-AWARD**

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

B. The City may perform site visits during the term of the Contract to verify that the Contractor or the Contractor's Subcontractor maintains the appropriate facilities, equipment, inventory, licenses, registrations, permits, and qualified personnel to perform the requirements specified in the Scope of Work (Section 0500). The Contractor, or the Contractor's Subcontractor shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

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

7. **DELIVERY REQUIREMENTS:**

Delivery shall be made during normal City business hours. The City's normal business hours are defined as Monday through Friday, 7:00 A.M. through 5:00 P.M. except for City-recognized legal holidays and weekends. The City reserves the right to request, with advance notice, delivery at other days and times.

Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (reference paragraph 51 in Section 0300).

For Parts:

A. All orders must be shipped complete unless arrangements for partial shipments are made in advance.

B. The Contractor shall provide, with each delivery, a shipping or delivery ticket showing the description of each item, quantity, and unit price.

C. No additional delivery charges (FedEx, UPS, etc.) will be paid by the City for any delivery shipments.

Delivery Location:
Austin-Bergstrom International Airport
Aviation Fleet Services
3819 Bergstrom Drive
Austin, Texas 78719

D. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

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

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

B. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. The City cannot process payments to or for a Third Party on behalf of the Contractor until the Third Party has been approved by the City and included in the Vendor's registration with the City.

C. Invoices shall be emailed to the email address below:

	City of Austin
Department	Department of Aviation
Attn:	Accounts Payable
Address	3600 Presidential Blvd. Suite 411
City, State Zip Code	Austin, Texas 78719
Email:	**abia.invoices@austintexas.gov**

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

9. **VERIFICATION OF CONTRACTOR'S PARTS PRICING**

A. City personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed using the Bid Sheet, Section 0600, in effect at the time of contract award, revisions approved by the City, and any applicable percentage mark up or discount as indicated on the bid sheet.

B. If during the review the 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.

10. **RESTOCKING FEES**

A. The Contractor may bill 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 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.

B. 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.

11. **UNUSED INVENTORY (STOCK LIFT)**

A. 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.

B. The date for the quarterly stock lift shall be mutually agreed upon between the Contractor and the City's Contract Manager or their designee.

C. No restocking fees shall be assessed for parts returned during a quarterly stock lift.

D. 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.

12. **HAZARDOUS MATERIALS**

A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (SDS) (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

B. Submit copies of all documentation related to hazardous waste to both the Aviation Operations Manager and to the Aviation Occupational Health & Safety Specialist located within Aviation Administration.

C. Failure to submit the SDS as part of the Offer may subject the Offer to disqualification from consideration for award.

D. The SDS, instructions and information required in paragraph "A" above must be included with each shipment under the contract.

13. **RECYCLED PRODUCTS**

A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.

B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at http://www.epa.gov/cpg/.

C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

14. **PRICING REQUIREMENTS - SPECIFIED ITEMS**

A. The Specified Items listed in Section 0600 represent the most commonly purchased items. This list of parts is an annual estimate of Specified Parts that may be purchased under the resultant contract.

B. All Offerors must submit firm fixed pricing for the Specified Items for the first twelve (12) months of the contract. These prices may only be adjusted on the anniversary date of the Contract solely for the purpose of accommodating changes in the Contractor's direct costs. Any approved adjustment in the pricing of the Specified Items shall remain firm for the next twelve (12) month period of the contract.

C. Changes resulting from verifiable cost trends shall be made in accordance with the Economic Price Adjustment provision included in this Section 0400.

15. **PRICING REQUIREMENTS - NON-SPECIFIED ITEMS**

A. The City may purchase additional items that are available from the Contractor in various quantities using the Published Price List(s) ("Price List(s)") identified in Section 0600 under the Non-Specified Parts Section.

B. Offeror must quote a percentage discount or markup to a Price List.

i. The percentage discount or markup shall be fixed throughout the term of the Contract, and are not subject to increase. They shall also remain firm through subsequent renewal periods if the City and the Contractor choose to renew the Contract.

ii. The Offeror may offer a different percentage discount or markup amount per manufacturer for any Non-Specified Part; however, parts within each manufacturer's product line must be priced by taking the stated list price and applying that percentage discount or markup.

C. Two (2) CDs or electronic copies, if available, of the price list(s) upon which the discounts or markups are based shall be submitted within five (5) business days after notice of award.

i. The City will accept a printed copy only if no electronic format is available.

ii. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the price list, the price list number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Contract and will be used to place orders and to verify the percent discount or markup throughout the term of the Contract. Price list(s) submitted must include descriptions of items listed.

D. The Price List(s) may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the documentation supporting the price revision must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least 30-calendar days after written notification. The City reserves the right to refuse any list revision.

E. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

16. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

A. Airport Security: Access to the premises must be strictly controlled. Officers, employees, or agents of the Contractor shall never enter a restricted or operational area of the airport without the express permission of ABIA or any governmental bodies having jurisdiction. Contractor assumes full liability from any such unauthorized incursions.

B. Security Badges: Contractor personnel will be required to display company/employer-issued photo ID at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule.

C. 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.

17. **ECONOMIC PRICE ADJUSTMENT – SPECIFIED PARTS**

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
FOR
OEM PARTS FOR TORO LAWN EQUIPMENT

A. Price Adjustments: Prices shown in this Contract shall remain firm for the first twelve (12) calendar months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-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.

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

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

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

i. The following definitions apply:

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

(2) Base Price: Initial price quoted, proposed and/or contracted per unit of measure.

(3) Adjusted Price: Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

(4) Change Factor: The multiplier utilized to adjust the Base Price to the Adjusted Price.

(5) Weight %: The percent of the Base Price subject to adjustment based on an index change.

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

(1) Utilize final Compilation data instead of Preliminary data

(2) If the referenced index is no longer available shift up to the next higher category index.

iii. Index Identification: Complete table as they may apply.

Weight % or $ of Base Price: 100%	
Database Name: Consumer Price Index	
Series ID: CUUR0000SEHM02	
☒ Not Seasonally Adjusted	☐ Seasonally Adjusted

Geographical Area: U.S. City Average
Description of Series ID: Outdoor equipment and supplies
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: Parts

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

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

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

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

18. **PERFORMANCE**

In the event that the Contractor cannot provide the deliverables required by this Contract, the Contractor must supply deliverables from other sources at the Contract price in accordance with the terms and conditions of the Contract. If the Contractor delays in the above, the City reserves the right to purchase the deliverables on the open market and charge the Contractor the difference between the Contract price and the purchase price (see also Paragraphs 21.D and 22.C in Section 0300 and Section 0900).

19. **NON-COMPLIANCE**

The City will not tolerate non-compliance to the City's terms and conditions and Scope of Work (Section 0500) 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 unless a longer period is specified in the City's written notice. 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 pursuant to Paragraph 27 of Section 0300.

20. **WARRANTY REQUIREMENTS - PARTS (reference Paragraph 21, Section 0300)**

A. 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.

B. 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.

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

21. **INTERLOCAL PURCHASING AGREEMENTS:**

A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.

B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

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

City of Austin

Department of Aviation

Chris Carter

Phone: 512-530-6352 or Email: chris.carter@austintexas.gov

CITY OF AUSTIN
SCOPE OF WORK FOR
OEM PARTS FOR
TORO LAWN EQUIPMENT
SOLICITATION NO. MMO0123

1. PURPOSE

1.1. The City of Austin ("City") seeks to establish a contract with a qualified vendor ("Contractor") to provide Original Equipment Manufacturer ("OEM") parts for Toro lawn equipment on an as-needed basis as stipulated in this solicitation. All parts for Toro lawn equipment orders shall be coordinated with the City's Contract Manager or designee.

1.2. This contract will support the Department of Aviation. The City reserves the right to add or delete departments as may be deemed necessary. Exhibit A outlines the Department of Aviation's current inventory of Toro Lawn Equipment. The City reserves may add additional pieces of equipment to this list.

1.3. It is the City's preference to award a single contract for OEM parts for Toro lawn equipment. However, the City reserves the right to reject all bids entirely or make multiple contract awards between the lowest and/or most responsive and responsible bidder. The City will base award on individual or groups of specific line items, cost, or any criteria deemed by the City to be most advantageous. The City also reserves the right to refrain from awarding any lines or group of specific line items as a result of this solicitation and, instead, award the entire contract to a supplier available through a cooperative purchasing agreement.

1.4. Any services that have been omitted from this scope of work, which are clearly necessary, or in conformance with normal operations, shall be considered a requirement although not directly specified or called for in this scope of work.

1.5. The City will either award a successful bidder the entire contract, the majority of the contract, or select line items.

2. CONTRACTOR QUALIFICATIONS

2.1. The Contractor must be a manufacturer-authorized representative for OEM parts for Toro lawn equipment. Contractor shall have a full-time, operational facility with a permanent business address. Contractor shall have a functional email address and telephone and be available to provide service within 24 hours of notice by the City.

2.2. The Contractor shall provide and maintain a staffed telephone dispatch system that is operational during regular business hours, defined as Monday through Friday from 7:00AM to 5:00PM. Telephone answering machines do not meet these requirements.

3. CONTRACTOR RESPONSIBILITIES FOR PARTS

The Contractor shall:

3.1. Stock or have immediate access to a parts inventory sufficient to fill parts orders 95% of the time. The stock level required shall be a 30-day supply of inventory, which the Contractor and the City will mutually agree to after contract award. The Contractor and the City shall mutually agree to any changes to the stock level list in writing. The City will order all parts on an as-needed basis.

3.2. Provide new OEM parts for Toro lawn equipment. Parts must meet all applicable federal, state and local requirements for quality and safety. If new parts are not available, or if the City requests them in writing (e.g. email), remanufactured or rebuilt parts may be used with the written consent of the Contract Manager, or designee. Used, factory seconds, remanufactured, shopworn, demonstrator, prototype, and discontinued parts or materials are not acceptable.

3.3. Submit to the City's Contract Manager two (2) CDs or electronic copies, if available, of the price list(s) upon which the discounts or markups are based on the bid sheet within five (5) business days of Contract execution. The City will accept a printed copy only if no electronic format is available.

3.4. Warrant 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. This warranty shall provide for replacement parts and shall include pickup of the defective part, delivery of the replacement part, and installation of the new part at no additional cost to the City.

3.5. Provide a copy of the manufacturer's parts warranty to the City's Contract Manager or designee upon contract award. The warranty period for all parts shall not start until the City installs the part on a unit as evidenced by the City's work order. The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.

3.6. Immediately notify the Contract Manager or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding the parts installed. Failure to report any recall, warranty replacements, safety notices or other applicable notices within fifteen (15) calendar days of manufacturer notification of such information may result in termination of the contract.

3.7. Provide a single point of contact (SPOC) who is skilled, knowledgeable, and experienced in providing OEM parts for Toro lawn equipment. A City representative from the City should have the ability to contact the Contractor by e-mail, fax, or telephone to place an order for Toro lawn equipment parts. The request will include the part number, part description, delivery requirements, and a unique delivery order number.

3.8. Confirm the quantity being shipped to the City representative who placed the order within two (2) hours after the City sends the order.

3.9. Deliver parts ordered within 24 hours after the City sends the order to the Contractor. The City will not pay shipping costs on any parts orders.

3.10. Ship all orders for parts complete unless the Contract and the City agree to partial shipments in advance. The Contractor shall provide, with each delivery, an invoice showing the description of each item, quantity, and unit price.

3.11. Deliver non-stock parts within three (3) working days after the City sends the order. The Contractor shall honor all special orders under the Contract pricing, without any additional markups.

3.12. Deliver back-ordered (or out-of-stock) Toro lawn parts to the City within five (5) working days after the City sends the order. The Contractor shall notify the City representative by telephone when the part(s) will be available. Notification shall be within two (2) hours after the City places the order. If the Contractor cannot provide the back-ordered 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 in accordance with the Section 0400 Supplemental Purchase Provisions.

3.13. Provide, upon request, a monthly and/or yearly total of all parts purchased by Aviation 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.

4. <u>Sustainability</u>

Provide any details of your organization's efforts to minimize the harmful effects upon the environment as well as any economic and equitable attributes. Specifically include any actions designed to:

- Conserve natural resources including water, energy, and raw materials throughout the product lifecycle;
- Minimize environmental impacts such as water and air pollution;
- Eliminate or reduce toxics that create hazards to workers, citizens, wildlife, and the environment;
- Support up-cycling and recycling efforts as well as utilize products with high recycled content;
- Reduce environmental impacts in your organization's production and distribution systems;
- Support worker health, safety, and fair wages;
- Consider total cost of ownership during the product's useful life, including operation, supplies, maintenance, and disposal cost.

5. Deliverables/Milestones

#	Deliverables/ Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
1	Parts Inventory	Contractor shall provide part inventory to fill stock orders	30 day supply of inventory	95% of the time	3.1
2	Price List	Contract shall provide two (2) CDs or electronic copies	Within 5 days after contract execution	100% compliance	3.3
3	SPOC	Contractor shall provide a SPOC for the contract	Within 5 days of the scheduled date	100% compliance	3.7
4	Order Confirmations	Contractor shall confirm orders to be shipped	Within 2 hours after order is sent	95% compliance	3.8
5	Delivery for stock parts	Contractor shall ship all stock parts ordered	Within 1 day after order is sent	95% compliance	3.9
6	Delivery for non-stock parts	Contractor shall deliver non-stock parts	Within 3 working days after the order is sent	95% compliance	3.11
7	Delivery for back-ordered parts	Contractor shall deliver back-ordered parts	Within 5 working days after the order is sent	95% compliance	3.12
8	Service Report	Contractor shall provide a detailed report indicating parts ordered	Within one day of the scheduled date	95% compliance	3.13

BID SHEET
CITY OF AUSTIN
OEM PARTS for TORO LAWN EQUIPMENT

Soliciation No: IFB #MMO0123

Special Instructions: A bid of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to bid on that item. Failure to respond to each section of this bid sheet may result in disqualification of your bid.

The City may award the contract for any item or group of items on the solicitation, or any combination deemed most advantageous to the City. The City reserves the right to award by category. The bidder can bid on certain line items or sections listed below.

The quantities noted below are annual estimates and not a guarantee of actual volume of this Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract Term. Quantities will be as needed and specified by the City for each order. The total quoted price represents all costs that will be billed to the City. The City is not responsible for costs not included in this bid sheet. All orders must be shipped complete unless arrangements for partial shipments are made in advance.

NO MINIMUM PURCHASE REQUIRED
FOB Destination, freight prepaid and allowed are to be included in the bid price.
The City's estimated annual expenditures for the first year of this Contract are $50,000.00 (Inclusive of both Sections 1 and 2)

SECTION 1 - SPECIFIED ITEMS (MOST FREQUENTLY ORDERED ITEMS)
Bidder must be able to provide parts as specified in the Scope of Work and guarantee to hold prices firm for each twelve (12) month period per the Economic Price Adjustment-Specified Parts and/or Services provision in Section 0400 for the Specified Items listed below. These prices shall be based on the same Price List(s) and percentage discount(s) or markup(s) as identified below in Section 2 for the Non-Specified Items.

Revisions to Specified Items may only be adjusted using the Economic Price Adjustment- Specified Parts and/or Services provision in Section 0400.

LINE ITEM	MANUFACTURER PART NUMBER	ITEM DESCRIPTION	INDICATE PRICE LIST OFFERED	Estimated Quantity	Unit	Unit Price	Extended Price
1	105-7784-03	High Flow Blade 24.5"	$19.74	108	Each	$15.00	$1,620.26
2	114-4483	Blank Deck	$1,922.15	2	Each	$1,460.83	$2,921.67
3	1-603299	Wheel Toro Deck	$10.38	6	Each	$7.89	$47.33
4	110-5727	Throttle Cable Assm.	$39.45	4	Each	$29.98	$119.93
5*	~~117-2221~~ 137-4100	Ingition Switch	$17.49	5	Each	$13.29	$66.46
6*	~~116-4668~~ 132-9425	Deck Idler Pulley	$23.06	5	Each	$17.53	$87.63
7	109-8590	Deck Idler Pulley	$89.32	6	Each	$67.88	$407.30
8	~~116-4670~~ 136-5404	Deck Idler Pulley	$28.60	9	Each	$21.74	$195.62
9	109-9127	Deck Caster Wheel	$174.94	4	Each	$132.95	$531.82
10	112-4195	Blank Deck	$2,306.00	2	Each	$1,752.56	$3,505.12
11	116-4689	Mixer Propane	$2,106.66	2	Each	$1,601.06	$3,202.12
12	119-8500	Spindle Assm. Complete	$332.75	10	Each	$252.89	$2,528.90
13	114-5859	Mower Deck Belt V	$119.85	6	Each	$91.09	$546.52
14	126-8365	Deck Strut Assm	$80.74	1	Each	$61.36	$61.36
15	116-1255	Hydro Pump Idler Assm	$100.60	6	Each	$76.46	$458.74
16	109-8972	Tire & Rim	$248.46	4	Each	$188.83	$755.32
17	KAWFX801V-FS00-S	Kawasaki Replacement Engine	$2,190.00	2	Each	$1,971.00	$3,942.00
18*	~~D~~ PCV740-3016	Kohler Replacement Engine	$3,070.12	1	Each	$2,763.11	$2,763.11
19	EXM116-0234	Toro Mower/Pulley Kit	$88.03	6	Each	$66.90	$401.42
20	TLB116-9120	Toro Regulator LPG	$524.17	6	Each	$398.37	$2,390.22
21	TLB116-1712	Toro Muffler	$162.38	2	Each	$123.41	$246.82
22	109-3388	Hydraulic Belt	$21.86	9	Each	$16.61	$149.52
23	~~116-6707-01~~ 116-8888	Deck Caster Fork	$85.57	4	Each	$65.03	$260.13
24	116-1620	Clutch Kit	$359.46	2	Each	$273.19	$546.38
25	112-2320	Diesel Clutch	$705.43	2	Each	$536.13	$1,072.25
26	105-7790	Deck Belt	$121.31	6	Each	$92.20	$553.17
27	~~116-6415~~ 126-1325	LH Hydraulic Pump Assm	$1,943.11	1	Each	$1,476.76	$1,476.76
28	~~116-6416~~ 126-1326	RH Hydraulic Pump Assm	$1,943.11	1	Each	$1,476.76	$1,476.76
29	~~116-1694~~ 126-4507	CPG Tank	$688.22	2	Each	$523.05	$1,046.09
30	~~125-3107~~ 121-7595	Suspension Seat	$576.91	1	Each	$438.45	$438.45

*Kohler states PCV740-3016 is number for propane Kohler engine, part numbers marked out have superceded number replacement

*Toro does not provide suggested list price, quote prices include 24% discount from store list on Toro parts, 10% off manufacturer list price for engines

TOTAL	**$**	**33,819.19**

SECTION 2 - NON-SPECIFIED ITEMS

Bidder must be able to provide other repair parts for Toro Lawn Equipment that are not listed above. The prices for these Non-Specified Items shall be based on the Price List(s) and percentage discount(s) or markup(s) as indicated below.

The percentage discount(s) or markup(s) shall be fixed throughout the term of the Contract including any subsequent renewal periods, and are not subject to increase.

Revisions to the prices may only be adjusted using the Pricing Requirements- Non-Specified Items provision in Section 0400.

Bidder shall provide the manufacturer(s) of the parts, the latest effective date of the identified price list(s), the name and number of the identified price list(s), and either the percentage discount(s) or markup(s) to the identified price list(s).

LINE ITEM	MANUFACTURER OF THE PARTS	INDICATE PRICE LIST(S) OFFERED	DISCOUNT FROM, OR MARKUP TO PRICE LIST
31	Percent Discount based on the manufacturer's suggested price for any additional items not identified in the sections above. Toro Company Engine Brands and Parts (including, but not limited to Briggs & Stratton, Honda, Kawasaki, Kohler Engines, Robin Subaru).	$43,126.54	Toro 24% Off - Engines 10% Off

DELIVERY TERMS: FOB Destinatoin, Freight Pre-paid and Allowed

DELIVERY METHOD: COMMON CARRIER _____ VENDOR STAFF _____X___

COMPANY NAME: Top Gunn Equipment Rentals, Inc.

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	Top Gunn Equipment Rentals, Inc	
Physical Address	7920 Anderson Square, Austin, TX 78757	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

Responding Company Name Top Gunn Equipment Rentals, Inc.

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name: City of Austin Watershed Protection
   Name and Title of Contact: Wayne Lindblom
   Project Name: Field Operations
   Present Address: 505 Barton Springs Rd
   City, State, Zip Code: Austin, TX 78704
   Telephone Number: (512) 974-2650 Fax Number (512) 974-6337
   Email Address: wayne.lindblom@austintexas.gov
2. Company's Name: City of Austin Water Utility
   Name and Title of Contact: Kyle Fojtik
   Project Name: Wacker Equipment
   Present Address: 6301 Harold Court Bldg B
   City, State, Zip Code: Austin, TX 78721
   Telephone Number: (512) 972-0702 Fax Number (____)
   Email Address: Kfojtik87@gmail.com
3. Company's Name: City of Austin Urban Forestry
   Name and Title of Contact: Tanya Soans
   Project Name:
   Present Address: 2525 S Lakeshore Blvd
   City, State, Zip Code: Austin, TX 78741
   Telephone Number: (512) 417-9726 Fax Number (____)
   Email Address: tanya.soans@austintexas.gov

City of Austin, Texas

Section 0800

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 compliant, 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 filling. 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 23rd day of October, 2017

CONTRACTOR Nathaniel Thompson

Authorized Signature

Title Sales Manager

Section 0835: Non-Resident Bidder Provisions

Company Name Top Gun Equipment Rentals, Inc.

A. Bidder must answer the following questions in accordance with Vernon's Texas Statues and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

(1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

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

Answer: _____

Exhibit A					
Aviation Toro Lawn Equipment					
Item #	AV#	Model	Serial #	COA #	Engine Type
1	4404	30343	290000102	09H878	Daihatsu DM9500
2	4403	30343	290000108	09H879	Daihatsu DM9500
3	4450	74274	31600212	16H501	Kubota (0902)
4	4445	74934	315000120	15H970	Kohler
5	4402	74977	310000106		Kawasaki
6	4420	74977	311000118		Kawasaki
7	4444	74934	3150000119	15H969	Kohler
8	4419	74977	311000121		Kawasaki
9	4448	74979	30300121		Kohler
10	4443	7934	315000118	15H968	Kohler
11	4418	74977	311000117	12h385	Kawasaki
12	4417	74977	31100123	1214386	Kawasaki
13	4442	74934	315000117	15h967	Kohler
14	4425	74979	313000122		Kohler
15	4401	74977	310000101		Kawasaki