

**RENEWAL  
TO THE CONTRACT BETWEEN THE CITY OF GEORGETOWN  
AND AMERICAN IRRIGATION FOR  
CITY WIDE IRRIGATION MAINTENANCE AND REPAIRS**

Purchase order number 3300B021 between the City of Georgetown and American Irrigation effective October 1, 2013, allows for the Contract to be renewed.

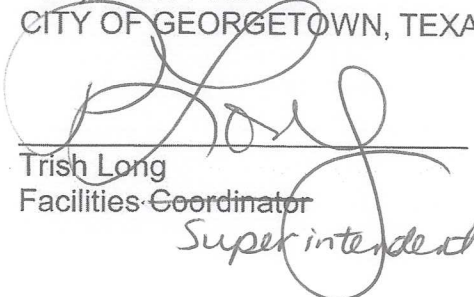
The parties agree to renew the Contract for a one (1) year period at the same price, terms and conditions of the Contract. The option to renew for one (1) additional one (1) year periods remains on the Contract.

The first renewal period was from October 1, 2014 through September 30, 2015.

The second renewal period will be from October 1, 2015 through September 30, 2016.

EXECUTED in duplicate original this 29 day of September, 2015, at Georgetown, Texas, where this Contract is performable and enforceable.

Party of the First Part:  
CITY OF GEORGETOWN, TEXAS

  
Trish Long  
Facilities Coordinator

*Superintended*

Party of the Second Part:

American Irrigation (Contractor Name)

By: Justin Wilson

Title: Manager



**PURCHASE ORDER NUMBER 3300B021**  
**CITY OF GEORGETOWN PURCHASING OFFICE**

300-1 Industrial Avenue, PO Box 490, Georgetown, TX 78626 FAX: 512-930-9027  
Original Order Date: 10/1/13

Term: 1 yr. period from date of order with option to renew for 3 additional 1 yr periods under same terms and conditions  
Renewal Term for period of 2013/2014 as per original pricing, specifications and terms and conditions

**VENDOR:** American Irrigation  
**ADDRESS:** 1611 Williams Drive  
Georgetown, Texas 78628  
Phone: 512-943-6080


**INVOICE TO:** THE CITY OF GEORGETOWN  
ACCOUNTS PAYABLE  
PO BOX 409  
GEORGETOWN, TX 78626

**VENDOR CONTACT:** Justin Wilson  
**QUOTE DATE:** 7/11/2012 Original Quote  
**REFERENCE:** Bid 201222

**SHIP TO:** City of Georgetown & nearby areas  
Sites served by Georgetown Utility Systems

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	EXTENSION
1	Citywide Irrigation Maintenance and Repairs as per bid specifications 201222 including City of Georgetown Terms and Conditions <u>Inspecitions and System Checks</u>	40	ea	1195.00	47800.00
2	<u>Annual Testing for all sites lited as per specifications</u>				1295.00
3	<u>Labor Rate for Repairs</u> Laborer rate only Emergency Repair - Business Hours Emergency Repair - After Hours/Nights		per hr. per hr. per hr. per hr.	44.50 29.50 64.50 111.25	
4	<u>Labor Rate for Minor Installations</u> Laborer rate only		per hr. per hr.	44.50 29.50	
5	<u>Monthly Reporting</u> <i>Quantities are estimates only and not guaranteed by the City</i> <i>Services provided on an as needed basis</i>  <u>CONTACT FOR THE CITY OF GEORGETOWN:</u> Paul Pausewang - 512-930-6107			N/C	
Terms 30 FOB: COG		Delivery:	TOTAL:		\$49,095.00

This order is issued under and governed by the City of  
Georgetown's standard Terms and Conditions.  
Please reference purchase order number on all  
correspondence and packages.

  
Trina Bickford, Purchasing Manager  
512-930-3647, trina.bickford@georgetown.org

10/1/13  
Date



## INVITATION TO BID

SOLICITATION NUMBER: 201222

BID OPENING DATE: July 12, 2012, 2PM, CENTRAL STANDARD TIME

VENDOR NAME: American Irrigation Repair LLC  
ADDRESS: 1611 Williams Drive Georgetown, TX 78628

RETURN SEALED BID TO:

CITY OF GEORGETOWN  
PURCHASING OFFICE  
PO BOX 409  
300-1 INDUSTRIAL AVENUE  
GEORGETOWN, TX 78627

Contact: Justin 508-4663  
PHONE: 512-868-2129  
FAX: 512-686-3799  
EMAIL: justin@fixmyheads.com

SIGNATURE AND DATE

Justin Wilson, Manager American Irrigation Repair LLC  
PRINTED NAME

**BID RESPONSE MUST BE MARKED  
WITH THE SOLICITATION NUMBER  
AND THE BID OPENING DATE.**

If not bidding, no response is required.

Failure to manually sign bid response may result in  
disqualification. Signature indicates acceptance of all terms,  
conditions and specifications.

**PAYMENT TERMS:** Net 30 \_\_\_\_\_ (Please note all discounts that may apply, including those  
for prompt payment)

**DELIVERY:** 7/17/12 \_\_\_\_\_ (Please note earliest date available for service to  
location(s) specified)

**FOB:** \_\_\_\_\_ (If not specified, FOB will be considered Destination)

**TOTAL:** \$49,095 \_\_\_\_\_ (Total of all items including any applicable freight,  
handling, etc. charges)

### 1.0 Background/Objective of Invitation to Bid

The City of Georgetown (the "City") requests bids on irrigation system services for City owned facilities and properties, in accordance with the following specifications, for a period of one year with an option to renew for up to four additional one year periods. Irrigation services include inspections, testing, repairs, emergency repairs, minor installations and periodic reports to the City's Facility Maintenance Department ("Facilities") for all outdoor irrigation systems as described in this Invitation to Bid. City owned facilities include all buildings, parking lots, pocket park areas and areas on the square in Downtown Georgetown – San Gabriel Park is not included.

### 2.0 General Requirements for Bid

Qualified bidders interested in responding to this Invitation to Bid (the "Bid") must submit the following information as part of their bid response. Failure to provide any information requested in this Bid may result in the disqualification of the bid response.

- 2.1 Bidder shall furnish complete name, mailing address and telephone number.
- 2.2 Bidder must designate the individual(s), along with respective telephone numbers, who will be responsible for answering all questions.
- 2.3 The contents of the Bid and any clarification thereto submitted by the successful bidder shall become part of the contractual obligation and incorporated by reference into any contract, agreement or purchase order resulting from this Bid.
- 2.4 The successful bidder may be required to provide an affidavit that they have not conspired with other potential suppliers in any manner to attempt to control competitive pricing.
- 2.5 Any requests for clarification or questions regarding this Bid must be submitted to the individual listed in Section 4. It is the City's intent to respond to all appropriate questions and concerns; however, the City reserves the right to decline to respond to any question or concern.
- 2.6 The bidder certifies that they are a duly qualified, capable and otherwise bondable business entity not in Receivership or contemplating same, and has not filed for bankruptcy.
- 2.7 Officials not to benefit: If a member of the governing body or an appointed board or commission of a municipality belongs to a cooperative association, the municipality may purchase equipment or supplies from the association only if no member of the governing body, board, or commission will receive pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
- 2.8 Please submit one original and one copy of bid response.

### 3.0 Determination of Award

The City reserves the right to award all line items to one bidder, split the award among two or more bidders and/or to cancel line items. Award of the contract shall be made to the responsible bidder(s) whose bid(s) represent(s) the best comprehensive value to the City. Delivery may be a factor in determining award.

### 4.0 Discussion with Bidders

All discussions with bidders during the bid process must be through the City of Georgetown Purchasing Office:

City of Georgetown  
Purchasing Office  
PO Box 409  
300-1 Industrial Avenue  
Georgetown, TX 78627  
Attn.: Trina Bickford, Purchasing Manager  
512-930-3647  
Fax: 512-930-9027

No negotiations or modifications to the bids received will be allowed.

### 5.0 Reservations

- 5.1 The City expressly reserves the right to:

- Waive minor technicalities in any bid response;
- Reject or cancel any or all bids, or part(s) of any bid;
- Accept bids from one or more bidders; and/or:
- Procure services by other means.

5.2 In considering the bids(s), the City reserves the right to select the acceptable bidder(s) who will offer contractual terms and conditions most favorable to the City.

5.3 Requirements stated in the Bid shall become part of any contract, agreement or purchase order with the bidder(s), and any deviations from these requirements must be specifically defined by the bidder in their bid response, request for clarification and the response(s) shall also become part of any contract, agreement or purchase order resulting from this Bid.

## 6.0 General Specifications and Other Conditions

### 6.1 Inspections, System Checks

Periodic inspections are required to locate potential problems and necessary repairs. In certain areas, such as Main Street and pocket park areas, the battery powered control panel must be inspected each time and the 9V battery powering the control panel must be replaced approximately every three months.

System checks will be required a twice monthly in cooler months (Jan, Feb, Nov, Dec), 4 times monthly in warmer months (March, Apr, May, June, July, Aug, Sept, Oct) for a total of forty times per year. System checks must consist of the following at a minimum:

- Verification that controller has correct time and date;
- Verification of start time(s) and of total system run time;
- Verification of correct and appropriate station run times (adjusted for seasons and City water mandates);
- Verification of correct operation of all heads to include pop up, gear drive, bubbler or drip, in all sections;
- Verification of correct and complete coverage to include all irrigated areas (turf, shrubs and individual tree bubblers);
- Inspections of the system in accordance with attached frequency schedule; and
- Submission of inspection reports to Facilities no later than the end of the week in which the reports were completed.

System checks must be performed by an Irrigator licensed in the State of Texas.

### 6.2 Testing

Backflow testing outside of normal inspections is required. Both the Georgetown Police Department and Georgetown Utility Systems must be notified prior to testing. Testing will be done annually in January. All testing must be performed in accordance with Texas Commission on Environmental Quality (TCEQ) standards. All backflow devices must be certified and certification reports must be provided to Facilities.

### 6.3 Reports of Damage, Repairs

All damage must be reported within two days to Facilities via email, and must include an estimate of the repair costs. Process for handling repairs must be noted in bid response as well as details of the method used to determine the cost of parts and labor required for repairs (i.e. hourly labor rate plus actual cost of parts, hourly labor rate plus discounted costs of parts, etc.) Repairs may include damage caused by landscaping contractors – such damage is normally billed back to the landscaping contractor and the City requires adequate documentation to present to the landscaping contractor for reimbursement of expenses associated with repairs. Repairs of damage caused by landscaping contractors must be approved in advance by Facilities.

For other required repairs, successful bidder must obtain advance approval for any repair reasonably expected to exceed \$500.00. Small repairs, below the \$500.00 limit, may be completed without advance authorization and included on the monthly status report, and a detailed invoice must be submitted for payment. If successful bidder is responsible for damage, the repairs must be made at the successful bidder's sole expense – under no circumstances will the City be responsible for repair of damage caused by successful bidder.

6.4 Emergency Repairs

Emergency repairs services must be available 24 x 7 with a maximum four hour response time. Please quote emergency labor rates and method for determining cost for parts and materials.

6.5 Minor Installations

At times, Facilities requires installation of small sections or extensions of the existing irrigation systems, such as adding a few new sprinkler heads. This bid does not cover installations of new systems but includes such minor installations.

6.6 Reporting

A monthly status report detailing the status of all irrigation systems must be submitted to Facilities.

6.7 City Facilities

Detailed information on the irrigation systems in each location are attached, including images of each location (see Exhibit 1). All sites are detailed in Exhibit 2. The following locations are included in this Invitation to Bid:

4<sup>th</sup> & Austin Ave Parking Lot (Draeger Parking Lot)

9<sup>th</sup> & Main Parking Lot (Main Street Beds & Dos Salas)

Archies, Inc.

Chamber of Commerce

City Hall

Fire Station #1

Fire Station #2

Fire Station #3

Fire Station #4

Fire Station #5

Fuel Pump Station

Georgetown Animal Shelter

Georgetown Communications and Technology (GCAT) Building

Georgetown Community Center

Georgetown Municipal Airport

Georgetown Municipal Complex (GMC)

Georgetown Public Library

Georgetown Recreation Center

GMC Overflow Parking Lot

Grace Heritage Center

Highway Monument

Main Street Islands

Municipal Court (6<sup>th</sup> & Main Parking Lot)

Old Library Building

Parks Administration

Police Department

Scenic Drive

Tasus Corporation

Tennis Center

7.0 Terms and conditions

The attached terms and conditions (reference Exhibit 3) will govern any agreement or purchase order resulting from this Invitation to Bid. Any exceptions to the standard terms and conditions must be noted in Bidder's response and may be grounds for disqualification. Any agreement or purchase order resulting from this Invitation to Bid will be governed by the laws and the Constitution of the State of Texas and the charter and ordinances of the City of Georgetown.

8.0 Specifications

In addition to the specifications for each line item, the following specifications will apply to all equipment on this Invitation to Bid.

- 8.1 Please include any and all discounts the City is entitled to, including those from group purchase contracts such as the BuyBoard, US Communities and TXMAS.
- 8.2 Any manufacturers' part numbers noted are for reference only, and are not intended to limit competition.
- 8.3 Licensing and appropriate insurance coverage for all tasks specified in this Invitation to Bid is mandatory. Proof of licensing and insurance must be provided with bid response, and successful bidder must maintain such licensing and insurance for the duration of any agreement resulting from this Invitation to Bid.

9.0 Individual line item pricing (see below). Please complete pricing on individual specification for all items bid. Please complete, sign and return this Bid Invitation form, If not bidding, no response is necessary.

**Line item #1: Inspections & System Checks per specifications listed in Section 6.1**

40 inspections/system checks per year for all sites listed

\$ 1195 inspection/system check

Annual Total: \$ 47800  
(ALL SITES)

**Line item #2: Testing**

Annual testing for all sites listed

37

Annual Total: \$ 1295

**Line item #3: Repairs**

Hourly rate for labor:  
Parts to be charged at:

\$44.5 per hour, \$29.50 per hour for laborers  
25% discount off list price

**Line item #4: Emergency Repairs**

Hourly rate for labor,  
emergency repairs:  
Parts to be charged at:

(Business hours – \$64.5 per hour) / (after hours / night - 111.25 per hour)  
25% discount off list price

Response time for emergency repairs (maximum required response time is four hours): Between 5 minutes and 4 hours depending on technician availability.

**Line item #5: Minor Installations**

Hourly rate for labor:  
Parts to be charged at:

\$44.5 per hour, \$29.50 per hour for laborers  
25% discount off list price

**Line item #6: Reporting**

Additional costs, if any, for monthly report submitted to Facilities: 0

Please list any and all additional costs associated with providing services and materials as specified under this Invitation to Bid – all charges must be included in bid response and itemized on all invoices. The City will not be liable for additional charges not included in original bid and accepted by the City.



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PO BOX 13087 MC-178 ♦ AUSTIN TEXAS 78711-3087

Pursuant to authorization from the Executive Director of the Texas Commission on Environmental Quality, the Manager of the Operator Licensing Section of the Compliance Support Division has issued the enclosed LICENSED IRRIGATOR certificate and pocket card.

## RECEIPT OF PAYMENT

Fee Type: RENEWAL APPLICATION

Date Fee Paid: 03/02/2011

Amount Paid: \$ 111.00

TEST SCORE: N/A

CONTACT INFORMATION  
LANDSCAPE IRRIGATION LICENSING  
(512)239-6719

For procedures to renew this license, or for general  
information about licensing visit:  
[www.tceq.texas.gov/licensing](http://www.tceq.texas.gov/licensing)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**JUSTIN REGINALD WILSON**

Is hereby licensed as a  
**LICENSED IRRIGATOR**

License Number

LI0006125

Expires

04/30/2014

SIGNATURE

*Max Wiley*  
EXECUTIVE DIRECTOR

TCEQ VIPP Form oee3 (09-07-06)

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Be it known that*

**JUSTIN REGINALD WILSON**

*has fulfilled the requirements in accordance with the  
laws of the State of Texas for*

**LICENSED IRRIGATOR**

License Number: LI0006125

Issue Date: 03/04/2011

Expiration Date: 04/30/2014

*Max Wiley*  
Executive Director  
Texas Commission on Environmental Quality

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PO BOX 13087 MC-178 ♦ AUSTIN TEXAS 78711-3087

Pursuant to authorization from the Executive Director of the Texas Commission on Environmental Quality, the Manager of the Operator Licensing Section of the Compliance Support Division has issued the enclosed BACKFLOW PREVENTION ASSEMBLY TESTER certificate and pocket card.

## RECEIPT OF PAYMENT

Fee Type: RENEWAL APPLICATION

Date Fee Paid: 03/16/2011

Amount Paid: \$ 111.00

TEST SCORE: N/A

### CONTACT INFORMATION

BACKFLOW PREVENTION ASSEMBLY TESTER  
LICENSING  
(512)239-6133

For procedures to renew this license, or for general  
information about licensing visit:

[www.tceq.texas.gov/licensing](http://www.tceq.texas.gov/licensing)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**JUSTIN REGINALD WILSON**

Is hereby licensed as a

**BACKFLOW PREVENTION ASSEMBLY TESTER**

License Number

BP0005823

Expires

04/04/2014

SIGNATURE

*MaZ Uicker*  
EXECUTIVE DIRECTOR

TCEQ VIPP Form oee3 (09-07-06)

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Be it known that*

**JUSTIN REGINALD WILSON**

*has fulfilled the requirements in accordance with the  
laws of the State of Texas for*

**BACKFLOW PREVENTION ASSEMBLY TESTER**

License Number: BP0005823

Issue Date: 03/18/2011

Expiration Date: 04/04/2014

*MaZ Uicker*  
Executive Director  
Texas Commission on Environmental Quality



## CITY OF GEORGETOWN Standard Terms and Conditions

By acceptance of a purchase order or agreement, or response to a solicitation, Vendor agrees the following terms and conditions, without modification, will govern:

### I. DEFINITIONS

The following definitions shall be used to identify terms throughout procurement documents:

- A. AGREEMENT/CONTRACT – A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the City to pay for them.
- B. BID/PROPOSAL/RESPONSE/OFFER/QUOTATION – A complete, properly signed response to a solicitation that, if accepted, would bind the Respondent to perform the resulting contract.
- C. BIDDER/PROPOSER/RESPONDENT/OFFERER – The Respondent identified throughout the solicitation that consider themselves qualified to provide the goods, equipment or services specified herein, and interested in making an offer to provide the goods, equipment or services.
- D. CITY – The City of Georgetown, located in Williamson County, Texas.
- E. GOODS – Materials, supplies, commodities and/or equipment.
- F. PIGGYBACK CONTRACT – A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies and active State of Texas CO-OP entities.
- G. PURCHASE ORDER – An order placed by the City for the purchase of goods or services issued on the City's standard purchase order form and which, when accepted by the Vendor, becomes a contract. The purchase order is the Vendor's authority to deliver and invoice the City for goods or services specified, and the City's commitment to accept the goods or services for an agreed upon price.
- H. SERVICES – Work performed to meet the requirements and demand of the purchase order. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.
- I. SOLICITATION/INVITATION TO BID/REQUEST FOR PROPOSALS/REQUEST FOR QUOTES – The solicitation document issued by the City containing terms, conditions and specifications for the service or commodity to be procured.
- J. SUBCONTRACTOR – Any person or business enterprise providing goods, labor, and/or services to a Vendor if such goods, equipment, labor, and/or services are procured or used in fulfillment of the Vendor's obligations arising from a contract with the City.
- K. VENDOR/CONTRACTOR – Person or business enterprise providing goods, equipment, labor and/or services to the City as fulfillment of obligations arising from an agreement or purchase order.

### II. SOLICITATIONS

#### A. CONFLICT OF INTEREST:

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (HB 914) requires an entity contracting or seeking to contract for the sale or purchase of property, goods, or services with a local governmental entity to disclose any affiliation or business relationship which might create a conflict of interest with a local government entity. The Conflict of Interest Questionnaire is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us), and completed forms must be submitted to the appropriate records administrator of the City not later than the seventh business day after the date the entity begins contract discussions or negotiations with the local governmental entity, or submits to the local governmental entity an application, response to a Request for Proposals or Bids, correspondence, or another writing related to a potential Agreement with the local governmental entity. If responding to a Solicitation, the Conflict of Interest Form may be submitted with the Response. The completed forms may be mailed or hand delivered to the City Secretary at the following address: The City of Georgetown, Office of the City Secretary, City Hall, 113 East 8<sup>th</sup> Street, Georgetown, TX 78626. This legislation is subject to change and each entity should consult its own attorney regarding the current law. Any attempt to intentionally or unintentionally conceal a conflict of interest may result in disqualification of any response to a solicitation. Failure to file the Conflict of Interest Questionnaire shall not affect the validity or enforceability of this Contract.

#### B. COMMUNICATIONS WITH THE CITY:

To insure the proper and fair evaluation of a Solicitation, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Offeror to the City Official or Employee evaluating or considering the Responses prior to the time an award decision has been made. Communication between Offeror and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Solicitation. Ex parte communication may be grounds for disqualifying the offending Offeror from consideration or award of the Solicitation then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed to the City of Georgetown Purchasing Office, Attn.: Purchasing Manager, PO Box 409, 300-1 Industrial Avenue, Georgetown, TX 78627, 512-930-3647, FAX: 512-930-9027, [purchasing@georgetown.org](mailto:purchasing@georgetown.org).

**C. DISCLOSURE OF PENDING LITIGATION:**

Each Respondent shall include in its proposal a complete disclosure of any civil or criminal litigation or investigation pending which involves the Respondent or in which the Respondent has been judged guilty.

**D. CONFIDENTIALITY OF RESPONSES, PUBLIC INFORMATION ACT:**

All Responses received as a result of a Solicitation shall be held confidential until a Contract is awarded. Following the Contract award, Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "CONFIDENTIAL" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information after the Contract is awarded.

**E. CLARIFICATIONS, WAIVER OF MINOR TECHNICALITIES OR DISCREPANCIES:**

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

**F. COST OF PREPARATION OF RESPONSE:**

All costs directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response which may be required by the City shall be the sole responsibility of the Respondent.

**G. RESPONSES BECOME PROPERTY OF THE CITY:**

Submissions received in response to a Solicitation become the sole property of the City.

**H. WITHDRAWAL OF A RESPONSE:**

A Response may be withdrawn prior to the submission deadline by submitting a written request for its withdrawal to the Purchasing Manager. A new Response may be submitted and must be received prior to the submission deadline to be considered. Modifications offered in any manner will not be considered if submitted after the submission deadline.

**I. DETERMINATION OF AWARD, RESULTING AGREEMENT:**

In determining award, the City reserves the right to select the acceptable Respondent who will offer contractual terms and conditions most favorable to the City. All requirements stated in the Solicitation shall become a part of any Contract, Agreement or Purchase Order awarded as a result of the Solicitation, and any deviations from these requirements must be specifically stated and defined by the Respondent in their Response. Requests for clarification and the responses(s) shall also become a part of any Contract, Agreement or Purchase Order resulting from the Solicitation.

**J. AFFIRMATIONS AND CERTIFICATIONS:**

By signature on and submission of a Response, Respondent certifies they have not conspired with any other potential supplier in any manner to attempt to control competitive pricing. By signature on and submission of a Response, Respondent certifies they are duly qualified, capable and a bondable business entity not in receivership or contemplating same, and has not filed for bankruptcy. By signature on and submission of a Response, Respondent affirms that they will not discriminate against any employee or applicant for employment because of race, religion, sex, sexual preference, color or national origin, and will make efforts to ensure that employment is offered to applicants without regard to their race, religion, sex, sexual preference, color or national origin.

**K. REQUIREMENTS FOR SUBMISSION OF RESPONSE:**

1. All Responses must be submitted on the form provided by the City, and accompanied by all required attachments. Each Response shall be placed in a separate envelope and properly identified with Solicitation Number and Opening Date. Responses must be time-stamped at the Purchasing Office, 300-1 Industrial Avenue, PO Box 409, Georgetown, TX 78626, on or before due date and time shown on the Solicitation form. Late Responses will not be considered.
2. If applicable, Respondent will show exact cost to deliver. Responses must specify unit price on the quantity specified, extend and show total. Unit prices shall govern, including in case of errors. Pricing will be considered firm for acceptance for a minimum of 30 days after the due date unless otherwise specified. Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.
3. The City is exempt from all federal excise, state and local taxes unless otherwise stated. The City claims exemption from under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon request. Do not include taxes in Response to any Solicitation.

4. Unless stated otherwise, any catalog, brand name or manufacturer's reference used in the Solicitation is descriptive (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered. If quoting on other than referenced specifications, the Response MUST show manufacturer brand or trade name and description of product offered. Illustrations and complete descriptions of product offered should be made part of the Response. If Respondent does not identify exceptions to the specifications shown in this Invitation, Respondent will be required to furnish brand names, numbers, etc., as shown in the Solicitation.
5. Response must show the number of days required to deliver items or provide services to the City's designated location under normal conditions. Unrealistically short or long delivery promises may cause Response to be disregarded. Failure to state delivery time obligates Respondent to complete delivery in 14 calendar days.

### III. PURCHASE ORDERS

#### A. GENERAL TERMS AND CONDITIONS

1. ACCEPTANCE:  
A Purchase Order is the City's commitment to make procurement and is subject to Vendor's acceptance of the City's terms and conditions
2. ABSENCES OF PURCHASE ORDER OR AGREEMENT:  
The City is not responsible for delivery of any materials or services without a proper Purchase Order
3. VENDOR'S OBLIGATIONS:  
The Vendor shall fully and timely provide all deliverables described in the Solicitation and in the Vendor's Offer in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.
4. EFFECTIVE DATE/TERM:  
Unless otherwise specified in the Solicitation, this Agreement shall be effective as of the date the Agreement is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Agreement.
5. SUBCONTRACTORS:  
If the Vendor utilizes Subcontractors in providing the goods and/or services under this Purchase Order, the Vendor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Vendor is responsible for the Vendor's own acts and omissions. The Vendor shall:
  - a. Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
  - b. Prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of the City and the Vendor. 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;
  - c. Require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Vendor in sufficient time to enable the Vendor to include same with its invoice or application for payment to the City in accordance with the terms of the Agreement;
  - d. Require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Vendor, with the City being a named insured as its interest shall appear;
  - e. Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City; and
  - f. Shall pay each Subcontractor its appropriate share of payments made to the Vendor not later than ten (10) calendar days after receipt of payment from the City.
6. DELAYS:  
The City may delay scheduled delivery or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor 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 Section AA. However, nothing in this provision shall excuse the Vendor from delaying the delivery as notified.
7. FORCE MAJEURE:  
Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement 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 reasonable control. In the event of default or delay in agreement 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.
8. INSURANCE REQUIREMENTS:  
Unless specific insurance requirements are noted, Vendor shall maintain insurance coverage appropriate for the fulfillment of the Purchase Order. In the event the Vendor, its employees, agents or subcontractors enter premises occupied by or under the control of the City, the Vendor agrees to maintain public liability and property damage insurance in reasonable limits covering the obligations set forth in this Purchase Order, and will maintain Workers'

Compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing on premises occupied by or under control of the City. Upon request, Vendor shall provide a copy of its liability insurance policies to the City.

9. **EXCEPTIONS TO SPECIFICATIONS:**

Any deviation from the specifications must be clearly indicated in the Response to the Solicitation or promptly documented in writing after receipt of a Purchase Order or Agreement. Any deviations or exceptions are subject to review by the City and may be grounds for rejection.

10. **TRAVEL EXPENSES:**

All travel, lodging and/or per diem expenses associated with providing the materials, equipment or services specified must be included in the original Quotation and/or the resulting Purchase Order or Agreement. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

11. **HUB REQUIREMENTS:**

The City complies with the requirements of the State of Texas *Local Government Code*, Chapter 252, Section 252.0215.

12. **DEFAULT:**

Vendor shall be in default under any Agreement or Purchase Order if the Vendor (a) fails to fully timely and faithfully perform any of its material obligations under the Agreement or Purchase Agreement, (b) fails to provide adequate assurance of performance under Section III.A.13 below, (c) becomes insolvent or seeks relief under bankruptcy laws of the United States, or (d) makes a material misrepresentation in Vendor's Offer or in any report or deliverable required to be submitted by Vendor to the City.

13. **SPECIAL TOOLS AND EQUIPMENT:**

If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

B. **SERVICES**

1. **PLACE AND CONDITIONS OF WORK, ACCESS TO SITE:**

If Services are to be performed principally on the City's premises or in public rights of way, the City shall provide the Vendor access to the sites where the Vendor is to perform the Services as required in order for the Vendor to perform in a timely and efficient manner, in accordance with and subject to applicable security laws, rules and regulations. The Vendor 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 the materials, equipment, labor and facilities necessary to perform the Services and any other conditions or states of fact which could, in any way, affect performance of the Vendor's obligations under the Agreement. The Vendor 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 the expected conditions.

2. **VENDOR TO PROVIDE ALL MATERIAL, EQUIPMENT, LABOR:**

Vendor shall provide all goods and labor necessary to perform Services. All material must be new and all equipment utilized must be in good safe working condition and suitable for Services. Vendor shall employ all personnel for Services in accordance with the requirements set forth by the United States Department of Labor.

3. **WORKFORCE:**

If Services are to be performed principally on the City's premises or on public right-of-ways:

- a. Vendor shall employ only orderly and competent workers, skilled in the performance of the Services which they will perform under the Agreement.
- b. Vendor, its employees, subcontractors and subcontractor's employees while engaged in participating in a Solicitation or while in the course and scope of delivering goods and services under City Purchase Order or Agreement may not:
  - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement; 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 while on the job.
- c. If the City or the City's representative notifies the Vendor that any work is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Vendor shall immediately remove such worker from Agreement Services and may not employ such worker again on Agreement Services without the City's prior consent.

4. **COMPLIANCE WITH ALL SAFETY AND ENVIRONMENTAL REQUIREMENTS:**

If Services are to be performed principally on the City's premises or on public rights of way, the Vendor, 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 with the City and the Occupational Safety and Health Administration (OSHA). In the case of conflict, the most stringent safety requirement shall govern. The Vendor shall defend, indemnify and

hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liabilities of any kind or nature arising from the breach of the Vendor's obligations under this paragraph.

5. **STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Vendor 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 Vendor shall cease all work until notified by the City that the violation or unsafe condition has been corrected. The Vendor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

6. **WARRANTY OF SERVICES:**

Vendor warrants and represents that all Services to be provided to the City under the Agreement will be fully and timely performed in good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions and covenants of the Agreement and all applicable Federal, State and local laws, rules or regulations. This warranty may not be limited, excluded or disclaimed and any attempt to do so will be without force or effect. Unless otherwise specified, the warranty period shall be a minimum of one year from acceptance by the City of Services. In the event any applicable warranty is breached, the Vendor shall promptly upon receipt of demand of performance, perform the Services again in accordance with the above standard at no additional costs to the City. All costs incidental to such additional performance shall be borne solely by the Vendor. The City shall endeavor to give the Vendor 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.

In the event the Vendor is unable or unwilling to perform the Services in accordance with the above standards as required by the City, the in addition to any other available remedy, the City may reduce the amount of Services originally required to purchase from the Vendor under the Agreement and procure conforming Services from other sources. In such event, the Vendor shall pay the City upon demand the increased cost, if any, incurred by the city to procure such services from an alternative source.

C. **COMMODITIES/EQUIPMENT**

1. **MATERIAL SAFETY DATA SHEETS:**

Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.

2. **GOODS:**

Goods furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all goods and equipment offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.

3. **PACKAGING OF DELIVERABLES:**

Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **WARRANTY:**

The goods or equipment specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months, then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.

5. **NO LIMITATION OF MANUFACTURERS' WARRANTIES:**

Vendor may no limit, exclude or disclaim any warranty provided by manufacturer.

D. **DELIVERY**

1. **DELIVERY TERMS, TRANSPORTATION CHARGES, FOB:**

Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor'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 deliverables. The place of delivery shall be specified in the Purchase Order.

2. **NO SUBSTITUTIONS OR CANCELLATIONS:**

Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.

3. **NOTICE OF DELAY IN DELIVERY:**

If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery, service or failure to meet specifications authorizes the City to procure the goods or services from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.

4. **DELIVERY LOCATION, HOURS, DAYS, HOLIDAYS:**



Unless otherwise specified, all deliveries must be made to City of Georgetown, Central Receiving, 300-1 Industrial Avenue, Georgetown, TX, between the hours of 8AM and 4PM (CST), Monday through Friday except regularly observed state and federal holidays (see <http://georgetown.org/contact-us/holiday-schedule/> for schedule). Receipt of goods or materials does not signify acceptance.

5. **NO SHIPMENT UNDER RESERVATION:**

Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.

6. **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 (no delivery, no sale).

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 or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.

8. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING GOODS:**

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, 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 discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

E. **PAYMENT**

1. **TAX EXEMPT STATUS:**

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. **INVOICING REQUIREMENTS:**

Unless otherwise specified, all invoices shall be submitted to City of Georgetown, Accounts Payable, PO Box 409, Georgetown, TX 78627, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable. Invoices for labor must include a copy of all time sheets with trade labor rate and Purchase Order or Agreement number clearly identified. Invoices for labor shall also include a tabulation of hours worked at the appropriate rates and grouped by work order number, if applicable. Time billed for labor shall be limited to hours actually worked at the work site.

3. **PAYMENT TERMS:**

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of goods, supplies, materials, equipment or the day of performance of services was completed, or the day of receipt of a correct invoice for goods, supplies, materials, equipment or services, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. **RIGHT TO AUDIT:**

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

5. **FIRM PRICING:**

The price shall remain firm for the duration of the Purchase Order or Contract, or extension periods. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and cost associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the Offer have been arrived at independently without



consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. **PRICE WARRANTY:**

The Vendor warrants the prices quoted are no higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. **VENDOR OWING TAXES OR FEES TO THE CITY:**

Payment will not be made to any person, firm or in arrears in taxes or fees to the City.

IV. **TERMS, CONDITIONS AND ADDITIONAL REQUIREMENTS**

A. **VENDOR'S OBLIGATION:**

Vendor shall fully and timely provide all deliverables described in Solicitation, Vendor's Offer in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

B. **DEFAULT:**

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (c) makes a material misrepresentation in Vendor's Offer, or in any report or deliverable required to be submitted by Vendor to the City.

C. **ABANDONMENT OR DEFAULT:**

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the services elsewhere may be charged the difference in service if any and may not be considered in the re-advertisement of the service and may not be considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

D. **TERMINATION/CANCELLATION:**

1. **TERMINATION FOR CAUSE:**

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies 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 Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. **TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Agreement, 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 Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, 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.

3. **NON-APPROPRIATION:**

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement at the end of any City fiscal year (September 30<sup>th</sup>) if the governing body of the City does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by the City's budget for the fiscal year in question. The City may effect such termination by giving the Vendor a written notice of termination at the end of its then current fiscal year.

4. **CANCELLATION:**

The City reserves the right to cancel the Agreement for default all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

E. **FRAUD:**

Fraudulent statements by the Vendor on any Offer or in any report or deliverable required to be submitted by the Vendor to the city shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

F. **INDEMNITY:**

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT.

IF THE VENDOR AND THE CITY ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

G. **LIABILITY:**

Any person, firm or corporation performing services pursuant to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of such services. Vendor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

H. **INFRINGEMENT:**

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, 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 an person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor 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: (a) 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 deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. 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, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under the Section, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

I. **DAMAGE TO CITY PROPERTY:**

Vendor shall be responsible for any and all damage to the City's equipment and/or property, the workplace and its contents, by its work, negligence in work, its personnel and equipment. Vendor shall be responsible and liable for the safety, injury and health of its working personnel while its employees are performing service work.

J. **OVERCHARGES:**

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

K. **CONFIDENTIALITY:**

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, 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"). Vendor 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 Vendor (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 as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor 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.

L. **CODES, PERMITS, LICENSES:**

Vendor shall comply with all federal, state and local standards, codes and ordinances and the terms and conditions of the services of the electric utility, as well as other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

M. **ADVERTISING/PUBLICITY:**

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

N. **NO CONTINGENCY FEES:**

Vendor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Vendor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedies available, to cancel the Agreement without liability and to deduct from any amounts owed to the Vendor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

O. **INDEPENDENT CONTRACTOR:**

The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

P. **LIENS:**

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all labor, goods and services provided under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

Q. **ASSIGNMENT/DELEGATION:**

The Agreement shall be binding upon and endure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Section. The Agreement is not intended to confer any 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 Agreement.

R. **INTERPRETATION:**

The Agreement is intended by both parties as the 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 Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

S. **GOVERNING LAW AND VENUE:**

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Georgetown, TX, and the venue for any action related to this Agreement shall be Georgetown, TX. All issues arising from this Agreement shall be resolved in the courts of Williamson 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 the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

T. **INTERLOCAL COOPERATIVE PURCHASING/PIGGYBACK CONTRACTS:**

Other governmental entities may be extended the opportunity to purchase from Solicitations of the City, with the consent and agreement of the awarded Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

U. **SURVIVABILITY OF OBLIGATIONS:**

All provisions of the Agreement 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 Agreement.

V. **CLAIMS:**

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered personally or by mail to the City and to the Georgetown City Attorney. Delivery shall be to PO Box 409, Georgetown, TX 78627.

W. **NOTICES:**

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US 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, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's Offer or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Georgetown, Purchasing Office, PO Box 409, Georgetown, TX 78627 and marked to the attention of the Purchasing Manager.

X. **GRATUITIES:**

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performing of the Agreement. In the event the Agreement is

cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover or without the amount of the cost incurred by the Vendor in providing such gratuities.

**Y. PERSONAL INTEREST PROHIBITED:**

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 the any Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. 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. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase equipment or supplies for the association only if no member of the governing body, board or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City.

**Z. WAIVER:**

No claim or right arising out of a breach of the Agreement 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 Vendor 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 Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

**AA. DISPUTE RESOLUTION:**

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

**BB. INVALIDITY:**

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the 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 the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

**CC. RIGHT TO ASSURANCES:**

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.