

Attachment A3-City's Standard Terms & Conditions

Terminology - Throughout this document, the terms Contractor, Bidder, Proposer, and/or Vendor may be used interchangeably. Reference to any of these terms throughout this document should be construed by the reader as meaning any bidder for the products/services being requested (e.g., Bidder, Proposer); or the bidder who has been awarded a bid/RFP or contract (e.g., Contractor, Vendor).

1. RFP INSTRUCTIONS

- A. Completed RFPs will be received until 3:00 p.m., Thursday, August 18, 2022, through the City of Keller website purchasing e-bid system, at the Town Hall Receptionist's Desk OR Public Works Department, 1100 Bear Creek Parkway, Keller, Texas, 76248. RFP responses received after the closing time and date will be returned unopened to the Contractor.
- B. The City WILL NOT ACCEPT an RFP response or alterations to an RFP response via Fax or e-mail. Fax and e-mail communications are available for informational inquiries only. No RFP responses received via Fax or e-mail will be considered under any circumstances.
- C. The City will not release any information of Vendor's who have received the RFP Specifications until such RFP's have been opened and/or awarded.

2. SIGNATURES

All RFP responses must be signed by an authorized representative of the Contractor. Unsigned RFP responses will not be considered under any circumstances. Signatures on all RFP responses acknowledge Contractor's agreement to comply with all stipulations and requirements contained in the Invitation for RFP and RFP Specifications, unless stated otherwise in writing by Contractor under "Deviations."

3. DEVIATIONS BETWEEN RFP SPECIFICATIONS AND DELIVERED ITEM(S)

Prior to acceptance of the quoted commodity, the City reserves the right to perform a visual inspection and physical demonstration to verify compliance with all RFP specifications and operational requirements. Should the products/services fail to meet the specifications as required in the RFP, Contractor agrees that the City may elect to do one of the following

- A. Reject the RFP and void the purchase as to any and all RFP items;**

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- B. Require specific performance by the successful Contractor at no additional cost to the City; or
- C. Hire outside sources to correct deviations at Contractor's expense.

4. RFP AWARD/EVALUATION CRITERIA

- A. The City reserves the right to reject any or all RFPs, in whole or in part; to waive any informality in any RFP; and to accept the RFP, which, in its sole discretion, is in the best interest of the City. The City further reserves the right to award RFPs by item, combination or groups of items, or total RFP. **Vendors submitting on an "All or None" basis must so indicate on the RFP.**
- B. The RFP award shall be based on, but not necessarily limited to, the following factors:
 - a) total price
 - b) special needs and requirements of the City
 - c) results of reference checks
 - d) Contractor's past performance with the City
 - e) City's evaluation of Contractor's ability to perform
- C. RFP's do not become contracts until they are awarded by the City Council and accepted by issuance of a Purchase Order or Contract by the City of Keller.
- D. The City may make such investigations as it deems necessary to determine the ability of the Contractor to provide satisfactory performance in accordance with specifications, and the Contractor shall furnish to the City all such information and data for this purpose as the City may request. The proposer may be required before the award of any contract to show to the complete satisfaction of the City of Keller that it has the necessary facilities, ability, human and financial resources to provide the work specified therein in a satisfactory manner. The proposer may also be required to give a past history and references in order to satisfy the City of Keller in regard to the proposer's qualifications. The City of Keller reserves the right to reject any RFP if the evidence submitted by, or investigation of, the proposer fails to satisfy the City of Keller that the proposer is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the proposer's qualifications shall include:
 - 1. The ability, capacity, skill and financial resources to perform the work or provide the service required;

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2. The ability of the proposer to perform the work promptly or within the time specified, without delay or interference;
 3. The character, integrity, reputation, judgment, experience and efficiency of the proposer; and
 4. The quality of performance on previous contracts or work.
- E. Continuing non-performance of the Contractor by failure to meet the terms of the Specifications shall be a basis for the termination of the contract by the City.
- F. The City of Keller accepts no responsibility for any expense incurred in the preparation and presentation of a RFP. Such expenses shall be borne exclusively by the proposer.

5. GRIEVANCE PROCEDURE

The City of Keller provides for a grievance procedure for Contractors relating to specifications, terms, conditions, and instructions. Contractors with questions relating to the above matters are to contact Ryan Lee, Support Services Manager (817) 743-4095. If such matters have not been brought to the attention of the City staff prior to five days before the opening date, the City considers the RFP request to be acceptable to all Contractors in all respects.

6. EXCEPTIONS/ALTERNATES TO RFP

Any interlineation, alteration, or erasure made before the deadline must be initialed by the signer of the RFP, guaranteeing authenticity. Any exceptions or alternates to the RFP are to be clearly indicated on the page entitled, "**EXCEPTIONS/ALTERNATES TO RFP**" Any exceptions/alternate from specifications and alternate RFP must be clearly shown with complete information provided by the Contractor. Exceptions/alternates to RFP may or may not be considered by the City.

Changes prior to opening of RFP must be submitted before the opening deadline. Changes must be noted on the outside of the RFP envelope as follows: "**Changes to RFP 22-022**"

7. RFP WITHDRAWAL OR REJECTION

The City reserves the right to withdraw the Invitation to RFP for any reason or to reject any and all RFPs, or parts of all or any specific RFP or RFPs. The City further reserves the right to accept part or all of any specific RFP or RFPs, or any combination of RFPs, and to accept any RFP or RFPs with or without trade-in.

After opening, proposers shall not be allowed to withdraw their RFPs unless an obvious mistake, supported by objective evidence that the mistake was unintentional, and

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approval by the City of Keller. Any request for withdrawal must be made in writing and substantiated by all original work papers, documents and other materials used in the preparation of the RFP. Such request shall be received by the City within 1day after opening. If permitted to withdraw its RFP, the proposer shall not supply any material or labor, or perform any subcontract or other work in connection with the resulting contract. No partial withdrawals are permitted. Prior to opening, proposers may withdraw simply by making a written request to the City of Keller, Attn: Purchasing Technician, PO Box 770, Keller, TX 76244; no explanation is required.

8. LATE RFPS

RFPs received after the official RFP opening date and time will not be considered. The City is not responsible for lateness or non-delivery of mail, courier, etc. to the City, and the time and date recorded by the City shall be the official time of receipt of the RFP. It is the policy of the City that late RFPs will be returned to the sender unopened provided there is a return address on the envelope. However, if a late RFP is opened in the mail room by City staff in error, or the RFP invitation is improperly addressed or labeled, and subsequently opened by City staff in error, under no circumstances will the late RFP be considered, even if opened. **Contractor is solely responsible for insuring that RFPs are received by the City on or before the RFP due date and time.**

9. PRICES HELD FIRM

- A. All prices quoted shall remain firm for the duration of the contract, unless otherwise specified by the City or Contractor. See Special Terms and Conditions.
- B. Each RFP shall be valid for two hundred seventy (270) calendar days after the opening date of the RFP and shall constitute an irrevocable offer to the City of Keller for the 270 calendar day period. The 270 calendar day period may be extended by mutual agreement of the parties.

10. PRICE DECLINE

Should there be a decline in the market price of the commodities provided during this agreement, then the City shall receive the benefit of such decline.

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11. **SAMPLES**

Samples of items, when required, must be furnished to the City at no cost and if Contractor has not requested the return of the samples within thirty (30) days from the RFP opening date, the samples may be either kept by or disposed of by the City.

12. **QUANTITIES**

- A. To assist in establishing a total RFP amount for RFP tabulation purposes, estimated quantities may have been listed in the specifications, or on the RFP tabulation form for each item. Proposer acknowledges that estimated quantities have been used, and further acknowledges that the City reserves the right to increase or decrease these quantities during this contract depending upon the City's needs and operations.
- B. Materials delivered in error or in excess of the quantity ordered may, at the City's option, be returned to Contractor at Contractor's expense.

13. **UNIT PRICES AND EXTENSIONS**

If unit prices and their extensions do not coincide, the City will accept the RFP price(s) resulting in the lesser amount(s).

14. **PACKING, CRATING AND CARTAGE**

- A. The cost of all special packing, boxing, crating, or cartage shall be included in the pricing specified on the response, unless otherwise specifically stated in the City's request. All packing, crating, or other debris resulting from the delivery or set-up of the commodity purchased shall be removed and properly disposed of by the successful Contractor.
- B. A packing list or delivery ticket shall accompany each shipment and shall include, at a minimum, the following information:
 - 1) name and address of vendor
 - 2) name of receiving department
 - 3) job site or delivery location
 - 4) Complete description of material(s) shipped, including quantity
 - 5) purchase order number (if applicable)

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15. DESTINATION CHARGES

All products offered shall be RFP F.O.B., final destination (e.g., City of Keller), as designated, with all delivery charges to be prepaid by the successful Contractor. The City WILL NOT ACCEPT C.O.D. or collect shipments.

16. TITLE/RISK OF LOSS

The title and risk of loss of the goods shall not pass to the City until the City actually receives, takes possession, and accepts the goods at the point of delivery.

17. DELIVERY DATE(S) AND LOCATION

The maximum number of days to begin the project after execution of contract shall be 180 days. This date may determine the award. Should contractor be unable to begin the project by the established deadline, a 2% fee for delay per day will be assessed beginning on the first day following the established start date.

18. IDENTICAL RFPS

In the event of two or more identical low RFPs, the RFP will be awarded as prescribed by Section 252.043 (h) of the Texas Local Government Code.

19. WARRANTY

Guarantees and warranties, when required, should be included as a part of the RFP as they may be a consideration in awarding the RFP.

20. TERMINATION OF AGREEMENT

A. This agreement shall remain in effect until the date of expiration, delivery, and/or acceptance of products and/or performance of services ordered. This agreement may be terminated by either party with a thirty (30) day written notice to the other party. If terminated by Contractor, Contractor must state therein the reasons for such cancellation. Upon delivery of such notice, Contractor shall discontinue all services in connection with the performance of this agreement and shall proceed to immediately cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this agreement. As soon as practical after receipt of notice of

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termination, the Contractor shall submit a statement to the City for payment of that portion of the agreement successfully performed.

- B. Breach of contract or default authorizes the City to exercise any or all of the following remedies:
 - 1) take possession of the assigned premises and any fees accrued or becoming due to date.
 - 2) take possession of all goods, fixtures, and materials of Contractor therein and may foreclose its lien against such personal property, applying the proceeds toward any fees due or thereafter becoming due.
- C. The City reserves the right to cancel the contract immediately if the City determines in its sole discretion that the successful Contractor is not fulfilling the assigned responsibilities under the agreement and work or contract would be awarded to the next qualifying Contractor.
- E. In the event the Contractor should fail to perform satisfactorily, keep or observe any of the terms and conditions to be performed, kept, or observed, the City shall provide the successful Contractor written notice of such default by certified mail; and in the event such default is not remedied to the satisfaction and approval of the City within two (2) working days of receipt of such notice by the successful Contractor, default shall be declared and all the successful Contractor's rights shall terminate. Contractor, in submitting this RFP, agrees that the City shall not be liable to prosecution for damages in the event that the City declares the Contractor in default.
- F. The City reserves the right, in case of default, to procure the services from other sources and hold the defaulting Contractor responsible for any excess costs occasioned thereby.

21. ASSIGNMENT OF CONTRACT

The Contractor's rights and duties awarded by the agreement may not be assigned to another without written consent of the City, and signed by the City Manager, or his authorized designee. Such consent shall not relieve the assigner of the liability in the event of default by the assignee.

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22. RFP AMBIGUITY

Any ambiguity in the RFP resulting from an omission, error, lack of clarity or non-compliance by the Contractor with specifications, instructions and all conditions of RFP shall be construed in the favor of the City. **Proposer is solely responsible for understanding all aspects of RFP specifications and RFP instructions.**

For clarification of these specifications, call Ryan Lee at (817) 743-4095 or email rlee@cityofkeller.com.

23. CONTRACT DELETIONS/ADDITIONS

The City of Keller reserves the right to make changes to the contract. If this occurs, City will negotiate deletions/additions and issue a change order. A thirty (30) day written notice will be issued. **Additionally, the City reserves the right to cancel contract, based upon available funding.**

24. CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications. All change orders to this agreement will be made in writing and shall not be effective unless signed by an authorized representative of the City. **Payment requests that exceed the contract/RFP amount will not be processed until signed change order(s) are submitted to the Finance Department.**

25. MODIFICATIONS, AMENDMENTS AND ADDENDA

The City shall have the right to modify the RFP specifications, instructions, and terms and conditions prior to the RFP submission deadline. The City will endeavor to notify all potential proposers that have received a copy of the RFP specifications. **However, failure to notify potential proposers shall impose no obligation or liability on the City.**

The City may publish notice of such modification or addenda in the *Star Telegram* in the same manner as the original notice may have been published, in accordance with Section 252.041 of the Texas Local Government Code. The City may also provide such notice of modification or addenda on the City's Internet web site at www.cityofkeller.com. It is the proposer's responsibility to contact the City of Keller to obtain the addenda information.

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26. PATENT INDEMNITY

The Contractor hereby warrants that the use or sale of the products and materials delivered hereunder will not infringe on the rights of any patent, copyright, or registered trademark, covering such materials and the Proposer agrees to indemnify and hold harmless the City for any and all costs, expenses, judgments, and damages which the City may have to pay or incur.

27. GRATUITIES/GIFTS

The City may, by written notice to the Contractor, cancel this agreement without liability to the Contractor if it is determined by the City that gratuities or bribes in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor, or its agent or representative to any City officer, employee, appointed or elected official, with respect to the award and/or performance of the agreement. In addition, the successful Contractor may be subject to penalties stated in Title 8 of the Texas Penal Code.

28. RESPONSE FORM(S) TO BE USED

The RFP quote must be submitted on the form(s) provided in the RFP package in compliance with all conditions listed thereon, unless otherwise specified in the RFP specifications. RFPs may be rejected if they show any omission, alterations, conditional clauses, or irregularities.

In the event you elect not to bid on this requirement, please fill out and return the attached "STATEMENT OF NO PROPOSAL" response form.

29. SPECIAL TOOLS

In the event that special tools are required for routine maintenance of equipment or products proposed, or to provide access to compartment areas, the Contractor shall provide these tools to the City at Contractor's expense.

30. OPERATIONAL MANUALS

If requested by the City, Contractor shall provide a complete set of operational instructions and descriptive literature for proper evaluation of the products and/or services quoted.

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31. SAFETY DATA SHEETS (SDS)

If required, RFP shall include an SDS for each product quoted, if applicable.

32. EMPLOYEE TRAINING

The Contractor shall provide on-site (or classroom, if applicable) instruction to the designated City employee(s) as required to safely operate and maintain the item(s) purchased. This instruction and training shall be provided to the City at Contractor's expense. **See section 6.10 Training in the specification section**

33. ORDERS AND PAYMENT TERMS

A. All RFPs shall specify terms and conditions of payment, which will be considered as part of, but not solely control, the award of RFP. City review, inspection, and processing procedures ordinarily require thirty (30) days after receipt of invoice, products and/or services. RFPs which call for payment before 30 days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the City, the review, inspection, and processing procedures can be completed as to the specific purchases within the specified time frame. Orders will be placed by authorized City personnel, and those orders exceeding three thousand dollars (\$3,000.00) must be provided a Purchase Order Number to be valid. The Purchase Order number shall appear on all itemized invoices and packing slips. The City will not be responsible for any orders placed and/or delivered without a valid, current Purchase Order.

B. Payment(s) to Contractor will be made after satisfactory receipt of the product and/or services, as determined by the City, and receipt of invoice or other billing statement used by the Contractor. No payments will be made in advance of receipt of products and/or services, unless specified otherwise in the contract. It is the intention of the City to make payment on completed orders within thirty (30) days of receiving invoicing unless unusual circumstances arise. Prices quoted shall include all charges, including delivery, labor, equipment, and set-up fees. Likewise, invoices shall be fully documented as to labor, materials, equipment provided, set-up fees, and taxes (if applicable). Invoices are to be submitted to the following address:

City of Keller
ATTN.: Accounts Payable
P.O. Box 770
Keller, Texas 76244

C. the City operates on a fiscal year that ends September 30th. All invoices including work/services through September 30th must be submitted by October 31st. Invoices

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not received by this deadline may be subject to an Administrative Fee to be deducted from the payment request.

- D. It is the policy of the City of Keller that **ALL** vendor checks will be mailed through the U.S. Post Office.
- E. Contractor may choose payment via ACH to Contractor's bank account. Should this payment method be preferred Contractor is required to complete Authorization to Wire Funds form. This form is attached as Attachment II.

34. USE OF PURCHASING CARDS

Contractor is encouraged to accept payment by Purchasing Card in order to expedite the ordering and payment process.

35. PRICE FIXING

In submitting a RFP response, Contractor thereby certifies that he has not participated in nor been party to any collusion, price fixing, or any other agreement or agreements with any company, firm or person(s) concerning the pricing on the enclosed RFP.

36. REFERENCES

Contractor must provide a minimum of (3) verifiable references, where services are presently being performed by their firm through contract, and have been provided for a minimum of the last twelve (12) months, preferably municipalities in the Dallas/Fort Worth Metroplex area. **List references in A1-Proposal Response Form, Section One – Qualifications and References.**

37. CONFIDENTIALITY OF DOCUMENTS

After RFP opening, except for RFP amounts, names, and addresses of contractors, all other RFP documents and information will be deemed confidential during the evaluation process until formal action to award the RFP or reject all RFPs has been taken by the City Council. Following award of the RFP or rejection of all RFPs by the City Council, all RFPs shall then become public documents, available for public view upon written request. Copies of RFPs may then be requested by interested contractors, citizens, or City officials.

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38. CONTACTS WITH CITY EMPLOYEES AND OFFICERS

In order to ensure fair and objective evaluation of RFPs, all questions related to this RFP should be addressed only to the person(s) so named herein or in the RFP Specifications. Contact with any other City employee, or any appointed or elected official without prior written consent of the person(s) so named herein is expressly prohibited. Contractors directly contacting other City employees, or any appointed, or elected officials without prior written consent will risk elimination of the RFP from further consideration.

39. SALES TAXES

The City is exempt from most state and local sales taxes by state law. Therefore, the City does not possess a "tax exempt number." The City will provide a sales tax exemption certificate to the vendor upon request.

The total for each RFP submitted must include any applicable taxes. It is suggested that taxes, if any, be separately identified, itemized, and stated on each RFP. The City cannot determine for the proposer whether or not the item(s) requested in the RFP are taxable to the City. The proposer, through the proposer's attorney or tax consultant, must make such determination. Bills submitted for taxes after the RFPs are awarded will not be honored.

40. TAXES, PERMITS, LICENSES

The Contractor shall obtain and pay for all licenses, permits and inspections required for the work. Upon written notification, the contractor shall provide notarized copies of all valid licenses, permits and certificates required for performance of the work. The notarized copies shall be delivered to the City of Keller, Attn: Purchasing Technician, P O Box 770, Keller, TX 76244 within (10) days of notification.

41. ANNUAL CONTRACT FUNDING

The City operates on a fiscal year that ends on September 30th. Because state law mandates that a municipality may not commit funds beyond a fiscal year, this RFP/contract is subject to cancellation if funds for this commodity/service are not approved in the next fiscal year.

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45. CONTRACT ADMINISTRATION

Under this contract, the City of Keller will appoint the City Manager or his/her designee as contract administrator with the designated responsibility to ensure compliance with performance of contract requirements. Such responsibilities will include, but will not be limited to, the inspection and acceptance of all products/services to be provided under this contract. If a product/service is found to be unsuitable or as required by this contract, the CONTRACTOR will be required to remedy the product/service at Contractor's expense. Proposer will furnish written plan of action as to how and when correction of discrepancies will be accomplished in order to eliminate complaints. Proposer shall not handle any complaints or request from citizens. Any citizens' concerns should be directed to the City Manager, his designee, or the appropriate City Department.

46. FAILURE TO ENFORCE

Failure by the City of Keller at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the City of Keller to enforce any provision at any time in accordance with its terms.

47. QUALITY OF SUPPLIES/COMPONENTS

Except as to any supplies or components, which the specifications provide need not be new, all supplies and components to be provided under this contract/RFP shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production, and of the most suitable grade for the purpose intended. If at any time during the performance of this contract, the Contractor believes that furnishing of supplies or components which are not new is necessary or desirable, they shall notify the City immediately, in writing, including the reasons therefore, and proposing any consideration which will flow to the City if authorization to use supplies or components is granted.

48. INSURANCE REQUIREMENTS

Except as otherwise specified in this contract, the contractor and his subcontractors of any tier will be required at their own expense, to maintain in effect at all times during the performance of the work, insurance coverage with limits not less than those set forth below, with insurers and under forms of policies satisfactory to the City of Keller. It shall be the responsibility of the contractor and subcontractors to maintain adequate insurance coverage and to assure that all subcontractors are adequately insured at all times. Failure of the contractor and his subcontractors to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation. Deductibles, of any type, are the responsibility of the vendor/contractor.

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49. CERTIFICATES OF INSURANCE

At the time of the execution of this contract and each subcontract, but in any event, prior to commencing work at the job site, the contractor and his subcontractors shall furnish the City with certificates of insurance with an Endorsement naming the City of Keller as additional insured as evidence that the policies providing the required coverage and limits of insurance are in full force and effect. Contracts less than \$4,999.99 do not require an Insurance Endorsement; however, a **Certificate of Insurance** is required naming the City of Keller as additional insured. Contracts exceeding \$5,000.00 shall be required to provide a copy of the Certificate of Insurance and the Insurance Endorsement naming the City of Keller as additional insured. The certificates of insurance provide that any company issuing an insurance policy for the work under this contract shall provide not less than 30 days advance notice in writing of cancellation, non-renewable, or material change in the policy of insurance. In addition, the contractor shall provide written notice to the City of Keller upon receipt of notice of cancellation of any insurance policy. All certificates of insurance shall clearly state that all applicable requirements have been satisfied including certification that the policies are of the "occurrence" type. Certificates of insurance and Endorsements for contractor and subcontractor, terminations, or alterations of such policies shall be mailed to Karla Parker, Purchasing Agent, Finance Department, P O. Box 770, Keller, TX 76244.

50. COMPREHENSIVE GENERAL LIABILITY

This insurance shall be an occurrence type policy written in comprehensive form and shall protect the contractor and his subcontractors and the Additional Insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the contractor's employees or damage to property of the City of Keller or others arising out of the act or omission of the contractor or his subcontractors or their agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, a (protective liability) endorsed to insure the contractual liability assumed by the contractor and his subcontractors under the article entitle indemnification and completed operations, products liability, contractual liability, broad form property coverage, premises/operations, and independent contractors.

Bodily Injury and Property Damage - \$500,000 per person

\$1,000,000 per occurrence

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51. COMPREHENSIVE AUTOMOBILE LIABILITY

This insurance shall be written in the comprehensive form and shall protect the contractor and his subcontractors and the additional insured against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they were owned, non-owned, or hired, the liability shall not be less than:

Bodily Injury and Property Damage - \$500,000 per person

\$1,000,000 per occurrence

52. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

The contractor shall provide all workers' compensation insurance for its employees as required by law.

53. INDEMNIFICATION

For consideration included in the RFP price, contractor and his subcontractors shall pay, indemnify, and hold harmless, the City, its agents, guests, consultants, invites, and employees, from all suits, actions, claims, demands, losses, expenses, including attorney's fees, costs and judgments of every kind and description to which the City, its agents, guests, consultants, invites, or employees may be subjected to by reason of injury to persons or death or property damage, resulting from or growing out of any act of commission, omission, negligence, or fault of the contractor and his subcontractors, their agents or employees, committed in connection with this contract, contractor's performance hereof, or of any work performed hereunder.

The Contractor agrees to and shall indemnify and hold harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the City's request, by seller or seller's vendor(s), and if the City requests, a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

Contractor and his subcontractors shall indemnify and hold harmless the City, its agents, or employees and consultants from and against all claims, demands, actions, suits, damages, losses, expenses, costs including attorney's fees, and judgments of every kind and description arising from, based upon, or growing out of the violation of any Federal, state, county, or city law, bylaw, ordinance, or regulation by the contractor, its agents, trainees, invites, servants, and employees.

54. WAIVER OF SUBROGATION

The contractor and his subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the City of Keller, its commissioners, partners, officials, agents, and employees and against all other contractors and subcontractors.

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55. BONDS

RFP Bond. Unless specified otherwise in RFP specifications, all RFPs shall be accompanied by an RFP bond acceptable to the City in the amount of **\$1500.00**. **The City will accept only a bond from a surety/insurance company or a cashier's check issued by a national or state bank.** All RFP bonds shall be retained by the City until completion of project.

If submitting RFP documents through the eBID system, Vendors shall be required to submit the RFP bond either through mail or in-person to the address indicated in the Community Development System RFP, section 1.6.4.

56. DEBARMENT

By submitting a RFP, the proposer certifies that it is not currently debarred from receiving contracts from any political subdivision or agency of the State of Texas and that it is not an agent of a person or entity that is currently debarred from receiving contracts from any political subdivision or agency of the State of Texas.

57. BANKRUPTCY

If seller becomes bankrupt or insolvent, or if a petition in bankruptcy or insolvency is filed by or against Seller, or if a receiver, trustee or assignee for the benefit of creditors is appointed for Seller, the City shall have the right, at its sole discretion, to treat such occurrence as a breach thereof.

58. CONTRACT WITH PERSON INDEBTED TO MUNICIPALITY

A municipality by ordinance may establish regulations permitting the municipality to refuse to enter into a contract or other transaction with a person indebted to the municipality.

59. PRE-ESTABLISHED CONTRACTS

The City has access to "Pre-Established Contracts" such as US Communities, State Contracts and Local Buying Agreements. The City will evaluate the RFP amount with what is offered through these contracts and determine which is the most advantageous to the City.

60. GOVERNING LAW

This solicitation and any resulting contract(s) shall be construed in accordance with the laws of the State of Texas. Any section regarding a dispute arising from this agreement shall be brought in federal or state courts within the State of Texas and the parties consent to the exclusive personal jurisdiction of such courts in the event of a dispute.

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69. CONFLICT OF INTEREST QUESTIONNAIRE

Effective January 1, 2006, House Bill 914 requires any vendor that wishes to conduct business or to be considered for business with any political subdivision, to complete a "Conflict of Interest" questionnaire (attached). Please complete the attached questionnaire and return with the RFP specifications. Additional information regarding this requirement may be obtained at www.ethics.state.tx.us.

H.B. 491 changed section 176.006 to read as follows: "(a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and: (1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); or (2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1)).

70. CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity of state agency. The law applies only to a contract of a governmental entity or state agency that either

- (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or
- (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015. The commission also adopted new rules (Chapter 46) on November 30, 2015 to implement the law.

Attachment A3-City's Standard Terms & Conditions

Filing Process:

On January 1, 2016, the commission made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be returned with this BID documentation.

Information regarding how to use the filing application is available at <https://www.ethics.state.tx.us/tec/1295-Info.htm>. Please follow instructional Video for Business Entities

CONTRACT TERMS

The contract period will begin the date of contract execution and award of City Council, through a **five (5) year** period. At City of Keller's option and approval by the vendor, the contract will automatically renew each year thereafter, as further explained in Renewal Options. **Prices must not exceed the RFP amount for the entire contract period.**

RENEWAL OPTIONS

This Agreement shall commence upon the day first written above and continue in full force and effect until termination in accordance with its provisions. The Vendor awarded this RFP herein recognize that the continuation of any agreement after the close of any given fiscal year which ends of September 30th of each year, shall be subject to budgetary approval. In the event that the City Council does not approve the appropriation of funds for the Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

Attachment A3 – City’s Standard Terms & Conditions

ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS

I acknowledge that by submitting an RFP for this project, I am aware of the insurance requirements outlined in these specifications (Number 48-52). If I am awarded the RFP, I will comply with all insurance requirements within 10 working days of the RFP award, including providing proof that I have insurance which may include, but not be limited to, true and accurate copies of the policies. If I fail to forward all insurance requirements within the 10 working days of the award of the RFP, I understand my RFP bond will be forfeited.

Signature

Printed name

Name of Company: _____

Address of Company: _____

City, State & Zip: _____

Telephone Number: (____) _____ Date: _____

****THIS PAGE MUST BE COMPLETED OR RFP WILL BE REJECTED****

Attachment A3 – City’s Standard Terms & Conditions

Community Development System

RFP # 22-022

Statement of No Bid

If proposer is not bidding on the goods and/or services as stated in these specifications, please complete and return this form to: The City of Keller, Attn: Purchasing Agent, P O Box 770, Keller, TX 76244.

Name of Firm: _____

Address: _____

Telephone Number: _____ Date: _____

Signature: _____

The above has declined to submit a RFP response for the following reason(s):

(Please check one or all that apply)

- Specification too “restrictive”, i.e., goods offered by our company do not meet stated specifications.
- Specifications unclear (please explain).
- We do not offer this commodity and/or service or an equivalent.
- Insufficient time to respond to the RFP.
- Our schedule would not permit us to perform.

Remarks:

Attachment A3 – City’s Standard Terms & Conditions

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of person who has a business relationship with local governmental entity.</p>	<p>Date Received</p>	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>		
<p>3 Name of local government officer with whom filer has employment or business relationship.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
<p>4</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of person doing business with the governmental entity</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Date</p>		

Adopted 06/29/2007

****THIS PAGE MUST BE COMPLETED OR RFP MAY BE REJECTED****