CITY OF GARLAND
TERMS AND CONDITIONS

1% EXEMPTION: Vendor is exempt from 1% transaction fee payable to RFP Depot.

ANNUAL CONTRACT SHIPMENTS: The Vendor will make shipments under this contract only when requested and only in the quantities requested. If there are minimum shipments or standard packaging please note the items affected.

WARRANTY STANDARDS: Successful bidder to include copy of complete warranty standards listing for unit bid.

OEM PARTS: All vehicle options to be OEM factory installed unless otherwise identified on this bid.

EASEMENT PERMISSION: The contractor shall not enter or use private property except as allowed by easements shown on the contract documents or if the contractor obtains specific written permission from the property owner.

EQUIPMENT IDENTIFICATION: All equipment used on the project shall be clearly marked with the contractor's name and LOGO. Subcontractor equipment shall also be similarly marked.

CITY PROVIDED SERVICES: The contractor, or any sub-contractor or vendor shall use only city provided services in performing this contract including but not limited to: Electric (if available), Water, Sanitation and Solid Waste Services. The rate charged by the City shall be the same as charged for the same or similar services. Commercial Solid Waste rates may be obtained from the City of Garland web site, www.ci.garland.tx.us/csw/cogswd.htm.

APPLICABLE LAW: This agreement shall be governed by the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.

ASSIGNMENT: Seller shall not assign this order or any interest herein, including any performance or any amount which may be due or become due hereunder, without Buyer's prior written consent.

PERFORMANCE: If Seller fails to comply with any provisions or terms of this order, the Buyer, may at Buyer's option, cancel this order or any other orders outstanding. In the event of cancellation Buyer retains all rights and remedies it may have.

SUBSTITUTION: Every tender or delivery of goods must comply with all the provisions of this order as to time of deliver, quality and quantity. Any tender which does not fully conform shall constitute a breach and Seller shall not have a right to make a substitute conforming tender except as agreed to by the Buyer.

DELIVERY: All goods shall be delivered F.O.B. Destination unless otherwise indicated herein. C.O.D. shipments or deliveries are not permitted or acceptable, and for any C.O.D. tender the Buyer reserves the right to terminate the contract.

INSPECTION: Goods purchased are subject to inspection and approval by Buyer. Buyer reserves the right to reject or refuse acceptance of goods which are not in accordance with Buyer's instructions, specifications, drawings and data, or Seller's warranties (express or implied). Goods not accepted will be returned to Seller at Seller's risk and expense. Payment for any goods shall not be deemed an acceptance thereof.

WARRANTY: By accepting this order Seller warrants that the goods and services to be furnished will be free from defects in materials and workmanship, be of merchantable

quality and fit for ordinary use, be in full conformance with Buyer's specifications, drawings and data, Seller's samples or models, and express warranties, and to be fit for any Buyer's particular purpose expressly or impliedly known. These warranties are in addition to all others given to the Buyer by the Seller or by law. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract void at the option of the Buyer, and any such limitations or exclusions are void.

DELIVERY PROMISE/PENALTIES: Bids MUST show the number of calendar days required to place the goods in the City's receiving dept. or Warehouse under normal conditions. DO NOT quote shipping dates. A minimum of five day better delivery promise will automatically break a tie bid. Consistent failure of a Bidder to meet delivery promises without valid reason may cause a removal from the Bid List.

PATENTS: Seller agrees to indemnify and hold harmless the Buyer against all costs and expenses, including attorneys fees and undertakes and agrees to defend at Seller's own expense, all suits, actions or proceedings in which buyer or the users of Buyer's products are made defendants of actual or alleged infringement of any U.S. or foreign patent resulting from the use or sale of the items purchased hereunder (except infringement necessarily resulting from adherence to Buyer's specifications or drawings) and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding.

INDEMNITY/INSURANCE: See attached City of Garland minimum requirements, required for all on-site work on City property.

INVOICING: Send ORIGINAL INVOICE and DUPLICATE COPY, with ORIGINAL BILL OF LADING or ORIGINAL EXPRESS RECEIPTS, to address indicated on day of shipment. If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that proper cash discount may be computed, your invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.

COMPLIANCE WITH LAWS & GOVERNMENT REGULATIONS: (a) Seller shall comply with the provisions of all Federal, State and local laws and regulations applicable to this order, or to any goods or services to be furnished hereunder, and shall, upon request by Buyer, furnish Buyer with satisfactory proof of compliance with any designated law or regulation. (b) If this order is an order within the meaning of Executive Order 11246, the nondiscrimination provisions of Section 202 of that order shall be deemed incorporated herein, and applicable to the parties hereto, and Seller will comply with all provisions of the Civil Rights Act of 1964, all pertinent rules, regulations, and orders of the Secretary of Labor and the provisions of Executive Order 11246 to the extent they are applicable to this order.

ENTIRE AGREEMENT: This order sets forth the entire agreement between the Buyer and Seller and no terms, conditions, understandings, or agreements purporting to modify or vary the terms of this order shall be binding unless made in writing and signed by the Buyer and Seller. No terms contained in Seller's invoice or statement shall serve to modify this order. If any conflict exists between written provisions on the face of, or attached to this order, and these printed Terms and Conditions, these written provisions shall prevail.

PACKAGING: Unless otherwise indicated, items will be new, not rebuilt, in first class condition, and in containers suitable for damage-free shipment.

CORRESPONDENCE: The Bid number must appear on all correspondence and inquiries pertaining to the Request for Bid. The Purchase Order number must appear on all invoices or other correspondence relating to the contract.

DELIVERY TIMES: Deliveries will be accepted only during normal working hours, i.e., 8:00a.m. to 4:00p.m., Monday through Friday at designated City receiving departments or Warehouse, unless prior arrangements have been made with the receiving department.

TIE BIDS: In case of tie bids, preference will be given to local vendors in accordance with State law.

BID LIST REMOVAL: The City reserves the right to remove a company from any Bid List for: (1) continued failure to respond when approached, (2) failure to deliver merchandise within promised time, or (3) delivery of substandard merchandise.

ACCEPTANCE: The right is reserved to accept or reject all or part of the bid, and to accept the offer considered most advantageous to the City by item or total bid.

SPECIFICATIONS-SAMPLES: If bidding on other than referenced, bid must show trade name, manufacturer name and/or catalog number, and certify article offered is equivalent. Descriptive literature must be submitted with alternate brands. Samples shall be furnished free of expense to the City and if requested, may be returned at bidder's expense.

CONTRACT QUANTITIES: The quantities in the request for bid are estimated annual requirements and the City reserves the right to increase, decrease or delete any item to be furnished. The successful bidder shall have no claim against the City for anticipated profits for quantities diminished or deleted.

CONTRACT RENEWAL OPTIONS: In the event a clause for option to renew for an additional period is included in the request for bid. Renewals will be based solely upon the option and agreement between the City and the vendor. Either party dissenting will terminate the contract in accordance with its initial specified term.

TERM CONTRACTS: Prices as stated in the purchase order shall remain firm for the entire contract period. Unforeseen changes in the economy may suggest price adjustments. Any price adjustment requested must contain specific information the relevant material in the product, actual cost of that material, the Bureau of Labor Statistics Data Description used to calculate the request, etc. Criteria may be obtained from the Purchasing Department. The City may reject any request for price adjustment.

TAXES-EXEMPTION: All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. Tax Exemption Certificate will be executed for the successful vendor.

COOPERATIVE PRICING: It is the intent of the City to consider Inter-local Cooperative Agreements and State/Federal contracts in determining the best value for the City.

INTERLOCAL AGREEMENT: Successful bidder agrees to extend prices to all entities who have entered into or will enter into joint purchasing inter-local cooperation agreements with the City of Garland. The City of Garland is a participating member of several inter-local cooperative purchasing agreements. As such, the City of Garland has executed inter-local agreements, as permitted under Chapter 791 of the Texas Government Code, with certain other political subdivision, authorizing participation in a cooperative purchasing program. The successful vendor may be asked to provide products/services based upon the bid price, to any other participant..

COUNCIL POLICY: It is the policy of the City Council to forbid any individual or business entity to conduct business with the City if such person(s) currently owe(s) the City money which is past due or delinquent on property taxes, impact fees, utility bills, Municipal Court fees, EMS fees or damage claims to City property. (City Council Policy OPNS-28). Submission of this bid/proposal or acceptance of this contract certifies compliance with the policy.

COUNCIL POLICY: By the execution and submission of this bid, bidder acknowledges that bidder has received a copy of City Council Policy OPNS-04 (enclosed) and bidder represents and warrants that bidder complies with the requirements of the City Council Policy OPNS-04 and is in no manner disqualified from doing business with the City under that policy.

CITY PROVIDED SERVICES: The contractor, or any sub-contractor or vendor shall use only city provided services in performing this contract including but not limited to: Electric (if available), Water, Sanitation and Solid Waste Services. The rate charged by the City shall be the same as charged for the same or similar services. Commercial Solid Waste rates may be obtained from City of Garland Solid Waste, Commercial Rates, 972-205-3500.

PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No City of Garland employee shall have a direct or indirect financial interest in any contract with the City, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the City.

TERMINATION: This agreement may be terminated by the City without notice and without penalty or liability in the event that (1) the City lacks sufficient funds for this agreement; (2) funds for this agreement are not appropriated by the City Council of the City; and (3) funds for this agreement that are or were to be provided by grant or through an outside service are withheld, denied or otherwise not available to the City.

The City at time of issuance of this agreement, by 30 day written notice, have the absolute right to terminate this agreement for cause or for convenience. Cause shall be the vendor's refusal or failure to perform the work or failure to meet specifications, quantity or quality of work performed within the time specified by this agreement. In such case, the vendor shall be liable for any damage suffered by the City.

However, the vendor shall not be held responsible for failure to perform is such failure is caused by acts of God, acts of the public enemy, acts of the governments, provided the vendor notifies the City within 30 days after such cause occurs. If the agreement is terminated by the City for convenience, the vendor has no further obligation under the agreement. Payment shall be made to cover the cost of material/work in progress or "cosigned" to the City as of the effective date of termination.

ELECTRONIC BIDS: The City of Garland uses RFP Depot to distribute and receive bids and proposals. There will be NO COST to the vendor for bids or proposals. Refer to www.rfpdepot.com for further information.

ELECTRONIC SIGNATURE – UNIFORM ELECTRONIC TRANSACTION ACT: The City adopts Vernon's Texas Statutes and Codes Annotated Business and Commerce Code Chapter 43. Uniform Electronic Transaction Act, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.

RIGHT TO AUDIT: Purchaser shall have the right to examine and audit the books and records of Seller-Contractor at any reasonable time. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of compliance with the provisions of this agreement.

FUNDING OUT CLAUSE: This agreement may be terminated by the City without notice and without penalty or liability in the event that (1) the City lacks sufficient funds for this agreement; (2) funds for this agreement are not appropriated by the City Council of the City; and (3) funds for this agreement that are or were to be provided by grant or through an outside service are withheld, denied or are otherwise not available to the City.

DISPUTE RESOLUTION: Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, Contractor agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the parties will first attempt to resolve the Claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the Claim shall be delivered by the Contractor to the City within one-hundred eighty (180) days after the date of the event giving rise to the Claim, which notice shall request a written response to be delivered to the Contractor not less than fourteen (14) business days after receipt of the notice of Claim;

(ii) If the response does not reasonable resolve the Claim, in the opinion of the Contractor, the Contractor shall give notice to that effect tot the City whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in a effort to resolve the Claim; (iii) If those persons cannot or do not resolve the Claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the Claim.

GARLAND

CITY COUNCIL POLICY

OPNS-04 – Qualifications for Doing Business with the City

I. Purpose and Need for Policy

The purpose of this policy is to foster the public's trust in the conduct of City business and to further insure the expenditures of public funds is beyond reproach.

II. Policy

Other than the exceptions cited below, it is the policy of the City Council to not enter into or renew a contract to purchase, sell, or lease property or services to or from any entity described in this policy.

III. Procedure to Accomplish Policy

A. The City of Garland shall not, except as provided herein, enter into or renew a contract to purchase, sell, or lease property or services to or from any person or entity who has been:

1) Convicted of any state or federal felony offense. Conviction includes a final probation, deferred adjudication or similar disposition.
2) Convicted or fined in excess of $50,000 on certain state or federal discrimination offenses. Discrimination charges include only those brought for discrimination against the race, sex, or religion or an individual or class of individuals.

B. Persons or entities doing business with the City include:

1) Individuals, corporations, partnerships, associations, or limited liability companies.
2) Owner or principal operators of entities referenced in paragraph B(1).
3) Principal officers of entities referenced in paragraph B(1).
4) Shareholders in corporations or limited liabilities companies if there are five or fewer shareholders.
5) Majority owned affiliates of any entity referenced in paragraph B(1).

C. This policy shall not apply when:

1) Three years have elapsed between the conviction and the approval of the contract.
2) The contract does not require City Council approval.
3) Anything of value is paid or given to informants or participants in a crime stopper program, or
4) The City Council determines this policy could cause grave injury or impose a severe financial hardship to the City of Garland by its application, and is waived by an affirmative vote of not less than six (6) Council members.

D. On bid applications that may result in a contract award by the City Council, the City shall require a representation by bidders that the bidder is not disqualified by the application of this policy.

E. After contract award, but prior to the commencement of the project or the delivery of the service or property, a determination that the bidder is in violation of this policy shall be cause for terminating the contract.

By the execution and submission of this bid, bidder acknowledges that bidder has received a copy of City Council Policy OPNS-04 and bidder represents and warrants that bidder complies with the requirements of the City Council Policy OPNS-04 and is in no manner disqualified from doing business with the City under that policy.

GARLAND

CITY COUNCIL POLICY

OPNS-28 – Business Conduct with Delinquent Account Holders and Litigants

I. Purpose and Need for Policy

The City conducts business with its citizens and the public at-large. In so doing, there are instances where the City may be asked to conduct business with those who are delinquent in their payment(s) to the City on various accounts or who may be involved in litigation with the City. Examples of the types of delinquent accounts which can be substantial in nature are impact fees, property taxes (generally person property), utility bills, EMS fees, and damage claims to City property. A policy is needed to ensure that the City does not conduct business with those individuals.

II. Policy

It is the policy of the City Council to forbid any individual or business entity to conduct business with the City if such person(s) currently owe(s) the City money which is past due or delinquent on property taxes, impact fees, utility bills, Municipal Court fees, EMS fees, or damage claims to City property. Unless prohibited by law, it shall further be the policy of the City Council to forbid any individual or business entity who files meritless litigation against the City from conducting business with the City.

III. Procedure to Accomplish Policy

On a monthly basis, the Managing Director of Customer Services shall produce a delinquent accounts list containing the names of those businesses and/or individuals who are delinquent in paying the City for property taxes, impact fees, utility bills, EMS fees, or damage claims. Copies of the delinquent tax history shall be distributed to the City Manager's office, Purchasing, Engineering, Planning, and Building Inspection Departments. The delinquent accounts list relating to impact fees, utility bills, EMS fees, and/or damage claims shall be housed in the Customer Service Department. These lists will be available to the City Manager, Assistant City Manager's, and other departments upon request, to be checked prior to permit issuance or other conduct of business by the City with any business or individual. The City will not do business with any business or individual until the delinquent account is paid in full. The City shall not award any contracts for services and/or goods to any business, firm, and/or individual(s) who are delinquent or have demonstrated that they are not the most responsible bidder.

IV. Responsibility and Authority

1. The Managing Director of Customer Service shall be responsible for producing and distributing a delinquent accounts list containing names of businesses and/or individuals who are delinquent in paying their property taxes, impact fees, utility bills, EMS fees, or damage claims to the City.

2. The Purchasing Manager shall be responsible for the reporting and removal of any bids submitted by any business(es), firm(s), and/or individual(s) who are delinquent in payment(s) of their utility bills, EMS fees, property taxes, impact fees, or have damage claims to the City.

3. The City Manager is responsible to ensure that this policy is upheld and that the Council is kept abreast of its effectiveness.

By the execution and submission of this bid, bidder acknowledges that bidder has received a copy of City Council Policy OPNS-28 and bidder represents and warrants that bidder complies with the requirements of the City Council Policy OPNS-28 and is in no manner disqualified from doing business with the City under that policy.

revised 8/22/05