

DATE: October 12, 2021
DEADLINE: October 26, 2021
DEPARTMENT: Fleet Maintenance Department
CONTACT: Brian Thompson, bthompson@athens.tx.gov, 903-677-6665
SUBJECT: Heavy Duty 4 Post Truck Lift and Rolling Jack

INTENT:

The City of Athens is seeking quotes for a Heavy Duty 4 Post Truck Lift and Rolling Jack for the City's Fleet Maintenance Department.

SCOPE:

Provide competitive pricing for a Heavy Duty Lift and Rolling Jack that meets the minimum specifications listed below.

MINIMUM SPECIFICATIONS:

Quote shall include a Heavy Duty 4 Post Truck Lift with the same or equivalent specifications as those listed below:

- Lifting Capacity – 30,000lbs
- Lifting Height – 74 ¾”
- Runway Width – 22”
- Width between runways – 54 ¾”
- Motor – Minimum 2.0HP, 220V/60Hz Single Phase
- Air-released safety lock
- Mechanical self-lock
- ¾” aircraft quality cable

Quote shall include Pneumatic Rolling Jack with the same or equivalent specifications as those listed below:

- Lifting Capacity 20,000lbs
- Lifting time 50 s
- Lifting height 28.6”
- Minimum Height 13.6”
- Overall Length 48.6”~76”
- Gross Weight 785lbs

Quote should include shipping, assembly, and installation of Heavy Duty Lift and Rolling Jack.

WARRANTY:

Quote will need to include a detailed warranty that matches or exceeds the following:

- 5 years on steel parts.
- 3 years on hydraulic parts/components.
- 2 years on electrical parts/components.

REQUIREMENTS:

Respondents must submit full and complete quotations by DEADLINE noted above. Quotations may be submitted prior to stated DEADLINE but will not be considered after 5pm of stated DEADLINE. Questions regarding this request may be directed to the CONTACT noted above. Any quotation submitted in response to this request must be valid for 30 days from the DEADLINE noted above.

Submission of a quote for consideration serves as Vendor's acknowledgment of the attached Terms and Conditions. Upon award Vendor agrees to complete the attached Conflict of Interest Questionnaire, IRS Form W-9 and, where applicable, to provide a Certificate of Insurance with the City of Athens listed as Certificate Holder. Forms must be approved by the City prior to the issuance of a Purchase Order or other form of purchasing agreement.



CITY OF ATHENS PURCHASING DEFINITIONS, STANDARD TERMS AND CONDITIONS

DEFINITIONS

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

1. **AGREEMENT:** A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the City to compensate in accordance with the conditions of the agreement.
2. **BID/PROPOSAL/RESPONSE:** A document submitted by a respondent in response to a solicitation to be used as the basis for negotiations or for entering into an agreement.
3. **BIDDER/PROPOSER/RESPONDENT:** The party identified throughout the solicitation document that considers themselves qualified to provide the goods, equipment or services specified and submits a response to the solicitation.
4. **CITY:** Identifies the City of Athens, located in Henderson County, Texas.
5. **GOODS:** Represent materials, supplies, commodities and equipment.
6. **IFB:** Invitation for Bid – A document used to solicit competitive or multi-step sealed bids.
7. **INTERLOCAL AGREEMENT:** A term used to identify a contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and have been extended for the use of state and local agencies and active CO-OP entities.
8. **PO:** Purchase Order – A written document by the City to a vendor formalizing all the terms and conditions of a proposed transaction, to include but not be limited to, a description of the requested item, delivery schedule, terms of payment, transportation, delivery location, price, quantity, and special instructions.
9. **RFI:** Request for Information – A non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback or reactions from potential suppliers (contractors) prior to the issuing of a solicitation. Generally, price or cost is not required. Feedback may include best practices, industry standards, technology issues.
10. **RFP:** Request for Proposal – The document used to solicit proposals from potential providers for goods and services (Respondents). Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price prior to agreement award. May include a provision for the negotiation of Best and Final Offers. May be a single step or multi-step process.
11. **RFQu:** Request for Qualification – A document which is issued by a procurement entity to obtain statements of the qualifications of potential development teams or individuals (i.e. consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation.
12. **RFQ:** Request for Quotation – A small order amount purchasing method. A request is sent to suppliers along with a description of the commodity or services needed and the supplier is asked to respond with price and other information by a pre-determined date.
13. **SERVICES:** Work performed to meet the requirements and demand of said purchase order or agreement. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.
14. **SUBCONTRACTOR:** Any person or business entity employed to perform part of a contractual obligation under the control of the principal contractor for fulfillment of a purchase order or agreement with the City. Any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or another subcontractor to fulfill their obligations with the City.
15. **VENDOR:** 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.



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TERMS AND CONDITIONS

By submitting a response to the Solicitation or accepting a PO, the Vendor agrees that these terms and conditions shall govern unless specifically provided otherwise on the face of the purchase order or in a separate agreement.

1. **ABANDONMENT OR DEFAULT:** A Vendor who abandons or defaults on work which causes the City to purchase goods or services elsewhere may be charged the difference in cost of goods, services or handling, if any, and may not be considered in the re-advertisement of the goods or services and may not be considered in future solicitations for the same type of work unless the scope of work is significantly changed.
2. **ABSENCES OF PURCHASE ORDER OR AGREEMENT:** The Vendor's delivery of goods or services without an approved purchase order or agreement may result in rejection of delivery, return of goods at the Vendor's expense and also non-payment for goods and services.
3. **ACCEPTANCE:** Acceptance inspection should not take more than five working days. The vendor will be notified within this time frame if the service provided is not in full compliance with the project scope. If any service is canceled for non-acceptance, the needed equipment or service may be purchased elsewhere and the vendor may be charged full increase, if any, in cost and handling.
4. **ACCEPTANCE OF TERMS & CONDITIONS:** A purchase order is the City's commitment to purchase the goods and/or services described from the Vendor. The City's placement of this order is expressly conditioned upon Vendor's acceptance of all the terms and conditions contained in this document and/or otherwise detailed on the purchase order.
5. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Vendor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount shall be refunded to the City by the Vendor.
6. **ADVERTISING:** The Vendor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by law.
7. **AMENDMENTS:** No agreement or understanding to modify this agreement shall be binding upon the City unless in writing and signed by the City's authorized agent. All specifications, drawings, and data submitted to the Vendor with this order are hereby incorporated and made a part hereof.
8. **ASSIGNMENT-DELEGATION:** The Agreement shall be binding upon and endure to the benefit of the City and the Vendor and their respective successors and assigns, 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 paragraph. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third- party beneficiaries to the Agreement.
9. **AWARDS:** The City may choose not to award an Agreement. Split awards between Vendors may be made at the sole discretion of the City. The City reserves the right to enter into an agreement or a purchase order with a single award, split awards, or use any combination that best serves the interest and at the sole discretion of the City.
10. **CANCELLATION:** The City reserves the right to cancel the agreement for default of all or any part of the undelivered portion of the order if Vendor breaches any of the terms hereof including warranties or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in



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addition to and not in lieu of any remedies, which the City may have in law or equity.

11. **CLARIFICATION OF PROPOSALS:** The City reserves the right to request clarification or additional information specific to any proposal after all proposals have been received and the RFP close date has passed.
12. **CODE OF FEDERAL REGULATION:** City of ATHENS agreements made under a Federal Award as defined in the CFR will adhere to the provisions described in 2 CFR §200.326 Appendix II to Part 200.
13. **CODES, PERMITS AND LICENSES:** The Vendor shall comply with all National, 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. The Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations (City of ATHENS fees and costs may be waived).
14. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** (apply only to a Solicitation to purchase Services to be performed principally at 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 by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Vendor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Vendor's obligations under this paragraph.
15. **COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES:**
 - 15.1 The successful offeror shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the resulting agreement or purchase order, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When requested, the Vendor shall furnish the City with satisfactory proof of its compliance.
 - 15.2 In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into any contract, including issuing a purchase order, with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract or purchase order. Vendor shall acknowledge and certify they do not boycott Israel and will not boycott Israel during the term of this Agreement by completing the City's Certification of No Boycott of ISRAEL form.
16. **CONFIDENTIAL CITY INFORMATION:** In order to provide the deliverables to the City, Vendor may require access to certain records of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). 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 shall substantially injure the City and/or its licensors

The Vendor (including its employees, subcontractors, agents, or representatives) agrees that it shall 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



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consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City before 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.

17. **CONFIDENTIALITY OF CONTENT:** All documents submitted in response to a solicitation shall be subject to the Texas Public Information Act. Following an 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. Pricing is not considered to be confidential under any circumstances.

17.1 Information in a submittal that is legally protected as a trade secret or otherwise confidential must be clearly indicated with stamped, bold red letters stating "CONFIDENTIAL" on that section of the document. The City will not be responsible for any public disclosure of confidential information if it is not clearly marked as such.

17.2 If a request is made under the Texas Public Information Act to inspect information designated as confidential, the Respondent shall, upon request from the City, furnish sufficient written reasons and information as to why the information should be protected from disclosure. The matter will then be presented to the Attorney General of Texas for final determination.

18. **CONFLICT OF INTEREST:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed Conflict of Interest Questionnaires may be mailed or delivered by hand to the City Secretary. If mailing a completed form, please mail to:

**City of Athens
ATTN: City Secretary
221 East Main Street
ATHENS, Texas 78664**

Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the vendor's offer.

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

20. **DEFAULT:** The Vendor shall be in default under the agreement if the Vendor:

20.1 Fails to fully, timely and faithfully perform any of its material obligations under the agreement,

20.2 Becomes insolvent or seeks relief under the bankruptcy laws of the United States or

20.3 Makes a material misrepresentation in Vendor's offer, or in any report or deliverable required to be submitted by the Vendor to the City.

21. **DELIVERY:** No substitutions or cancellations will be permitted without written approval of the City.

21.1 If delay is foreseen, Vendor shall give written notice to the City. The City has the right to extend delivery or service date or cancel the order or agreement. Vendor shall keep the



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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 purchase goods or services elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor. Default on delivery may result in legal action and recourse.

- 21.2 Delivery shall be made between 8 AM and 4 PM Monday through Friday except on regularly observed state or federal holidays, unless prior approval has been obtained from the City or otherwise stated in the solicitation.
- 21.3 All deliverables shall be delivered at the delivery point specified. If goods are incorrectly delivered, Vendor shall be held responsible for any additional expense incurred in delivering them to their correct destination.
- 21.4 Receipt of deliverables does not constitute acceptance.

22. DELAYS:

- 22.1 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 shall 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. However, nothing in this provision shall excuse the Vendor from delaying the delivery as notified.
- 22.2 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 to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

23. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped Freight On Board (FOB) Destination, freight prepaid and allowed 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 the deliverables. The place of delivery shall be that set forth in the block of the purchase order entitled "Ship To".

24. **DISCLOSURE OF 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.

25. **DISPUTE RESOLUTION:** If a dispute or claim arises under an Agreement, the parties agree to resolve the dispute or claim by appropriate internal means. If the parties cannot reach a mutually satisfactory resolution, any such dispute or claim will be sought to be resolved with the help of a mutually selected mediator. If the parties cannot agree on a mediator, City and Vendor shall each select a mediator and the two mediators shall agree upon a third mediator. Any costs and fees, other than attorney fees, associated with the mediation shall be shared equally by the parties.

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to the Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

26. **EFFECTIVE DATE/TERM:** Unless otherwise specified in the Solicitation, this Agreement shall be effective as of the date the agreement is signed by both parties and shall continue in effect until



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all obligations are performed in accordance with the Agreement.

27. **EX PARTE COMMUNICATION:** Please note that to insure the fair evaluation of a solicitation, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to a City representative evaluating or considering the solicitations prior to the time a decision has been made. Communication between Respondent and the City will be initiated by the appropriate City designee in order to obtain information or clarification needed to develop an accurate evaluation of the solicitation. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration for award.
28. **EXCEPTIONS:** Any variation from this specification shall be indicated on the solicitation or on a separate attachment to the solicitation. The sheet shall be labeled as such.
29. **FRAUD:** Fraudulent statements by a Respondent on a submittal or in any report or deliverable required to be submitted by the Respondent to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.
30. **GOODS:** The products furnished under said specification 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 equipment offered under said specification shall be new. **USED, SHOPWORN, DEMONSTRATOR, PROTOTYPE, OR DISCONTINUED MODELS ARE NOT ACCEPTABLE.**
31. **GOVERNING LAW AND VENUE:** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Henderson County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
32. **INDEMNITY:** Vendor shall indemnify, save harmless and defend the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees and any and all other costs or fees incident to the performance of the resulting agreement and arising out of a willful or negligent act or omission of the Vendor, its officers, agents, servants and employees.
33. **INDEPENDENT CONTRACTOR:** An Agreement with the City shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that an Agreement with the City does not grant any rights or privileges established for employees of the City. The Contractor 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 and effect.
34. **INSURANCE:** The Vendor shall meet or exceed all insurance requirements set forth by the City.
35. **INTERLOCAL COOPERATIVE CONTRACTING (INTERLOCAL):** Other governmental entities may be extended the opportunity to purchase from the City's Agreements, 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 a Respondent's submittal. However, all parties indicate their understanding and 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 may arise out of such independently-negotiated "INTERLOCAL" procurements.
36. **INTERPRETATION:** An Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or



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course of performance or usage of the trade shall be relevant to supplement or explain any term used in an Agreement. Although an Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in an Agreement, the UCC definition shall control, unless otherwise defined in an Agreement.

37. **INVOICING:**

37.1 The Vendor shall submit separate invoices in duplicate for each purchase order or Agreement. If partial shipments or deliveries are authorized by the City, a separate invoice shall be sent for each shipment or delivery made. Vendor shall submit invoices as required per the Agreement or purchase order to:

**City of Athens
ATTN: Finance Department
508 E. Tyler Street
Athens, TX 75751**

37.2 Proper invoices shall include a unique invoice number, the purchase order or agreement reference if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Vendor's invoice.

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

37.4 Invoicing for an Agreement containing a phased payment structure shall be submitted and based on the agreed upon schedule of events and deliverables with all supporting documentation for review and approval by the City.

38. **LABOR:** The Vendor shall provide all labor and goods necessary to perform the service. The Vendor shall employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor.

39. **LIABILITY:** A Vendor performing services pursuant to an Agreement or purchase order shall be liable for all damages incurred while in 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 every kind and character including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third person, 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 be caused by, arising out of or in connection with the issuance of the Agreement or order to Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. The City's insurance requirements apply set forth by the City as identified on the City's website under the [Doing Business with Athens](#) link.

40. **LIENS:** Vendor agrees to and shall indemnify and save harmless the City against any and all liens and encumbrances for all labor, goods and services which may be provided under the resulting agreement. At the City's request, the Vendor or subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

41. **MATERIAL SAFETY DATA SHEETS:** Under the "Hazardous Communication Act", commonly known as the "Texas Right To Know Act", a Vendor shall provide to the City with each delivery, material safety data sheets, which are applicable to hazardous substances, defined in the Act.



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42. **NO CONTINGENT FEES:** The Vendor warrants that they have not employed or retained any company or person other than a bona fide employee working solely for the Vendor to solicit or secure the agreement, and that they have not paid or agreed to pay any company or person other than a bona fide employee working solely for the Vendor any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of the agreement. For breach or violation of their warranty, the City will have the right to annul the agreement without liability or, in its discretion, to deduct from the agreement, price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage or contingent fee.
43. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Vendor represents and warrants to the City that: (i) the Vendor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Vendor in accordance with the specifications in the Agreement will 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 any person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any valid basis for any such claims. The 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: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Vendor's breach of any of 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 this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Vendor.
44. **NON-APPROPRIATION:** The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed the City shall have the right to terminate the Agreement at the end of any City fiscal year 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 affect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.
45. **SUSPENSION OR DEBARMENT CERTIFICATION:** The provisions of the Code of Federal Regulations 2 CFR part 180 suspension and debarment may apply to this agreement. The City of ATHENS is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from doing business with the Federal Government, State of Texas, or the City of Athens.
46. **OVERCHARGES:** Vendor hereby assigns to the purchaser any and all claims for overcharges associated with this agreement which arise under the antitrust laws of the United States, 15 USGA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Bus. and Com. Code, Section 15.01, et seq.
47. **PROMPT PAYMENT POLICY:** Payments will be made in accordance with the Texas Prompt Payment Law, Texas Government Code, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after the acceptance of the supplies, materials, equipment, or the day on which the performance of services was completed or the day, on which the City receives a correct invoice for the supplies, materials, equipment or services, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that which is permitted by Texas law) for payments not made in accordance with this prompt payment policy; however, this policy does not apply to payments made by the City in the event:
- 47.1 There is a bona fide dispute between the City and Vendor concerning the supplies,



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- materials, services or equipment delivered or the services performed that causes the payment to be late; or
- 47.2 The terms of a federal agreement, grant, regulation, or statute prevent the City from making a timely payment with Federal Funds; or
- 47.3 There is a bona fide dispute between the Vendor and a subcontractor or between a subcontractor and its suppliers concerning supplies, material, or equipment delivered or the services performed which caused the payment to be late; or
- 47.4 The invoice is not mailed to the City in strict accordance with instructions, if any, on the purchase order or agreement or other such contractual agreement.
48. **PLACE AND CONDITION OF WORK:** (apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way) The City will 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 the 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 materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the 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 expected conditions.
49. **PREPARATION OF RESPONSE COSTS:** 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 proposal which may be required by the City shall be the sole responsibility of the Respondent.
50. **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 Subcontractor's, facilities, or the deliverables at the Vendor's, or the Vendor's Subcontractor's, premises, the Vendor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
51. **RIGHT TO AUDIT:**
- 51.1 The Vendor agrees that the representatives of the Office of the City Auditor or other authorized 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.
- 51.2 The Vendor shall include section 49.1 above in all subcontractor agreements entered into in connection with this Agreement.
52. **SERVICE:** Vendor shall have service and maintenance available to the City and shall be able to respond to a request for service as specified.
- 52.1 Consistent failure by the vendor to respond to service calls within the allowed response time may place the vendor in default and subject to cancellation of the purchase order and, or agreement. Consistent failure is defined as not responding within the allowed response time at any or all locations on two (2) out of three (3) consecutive occurrences.
- 52.2 Service technicians shall be fully qualified to work on the listed equipment and employed



**CITY OF ATHENS
PURCHASING DEFINITIONS, STANDARD TERMS AND CONDITIONS**

by the vendor on the effective date of the agreement. Vendor shall be able to verify that service personnel have had training with a minimum of one year of "hands on" experience working on the listed equipment.

53. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Vendor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
54. **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.
55. **SUBCONTRACTORS:**

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:

 - 55.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
 - 55.2 require that all Subcontractors obtain and maintain, throughout the term of their agreement, primary insurance in the type and amounts specified for the Vendor, with the City being named as an additional insured; and
 - 55.3 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
56. **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.
57. **TAX EXEMPTION:** The City of Athens 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 will be furnished upon request. Vendors shall not charge for said taxes. If billed, City will not remit payment until invoice is corrected.
58. **TERMINATION FOR CAUSE:** In the event of a 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 reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Vendor's default, including, without limitation, solicitation cost, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Vendor, the City may remove the Vendor from the City's vendor list for three (3) years 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 are not exclusive of any other right or remedy provided by law.
59. **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.



**CITY OF ATHENS
PURCHASING DEFINITIONS, STANDARD TERMS AND CONDITIONS**

60. **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).
61. **VENDOR'S OBLIGATIONS:** The Vendor shall fully and timely provide all deliverables described in the Solicitation or Purchase Order and in the Vendor's response in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.
62. **VENUE:** Both the City and the Vendor agree that venue for any litigation arising from a resulting agreement shall lie in Henderson County.
63. **WARRANTY-PRICE:** The agreement price shall be firm for the duration of the agreement or extension periods. No separate line item charges shall be permitted for either response 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.
64. **WARRANTY:** The goods specified shall be warranted against defects in material and workmanship for a period of not less than twelve (12) months beginning with the date of acceptance. If the manufacturer's standard warranty exceeds twelve (12) months, then the manufacturer's standard warranty shall be in effect. The successful bidder shall furnish a copy of the manufacturer's warranty at time of delivery.
65. **WORKFORCE:** (apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way)
 - 65.1 The Vendor shall employ only orderly and competent workers, skilled in the performance of the services which they shall perform under the Agreement.
 - 65.2 The Vendor, its employees, subcontractors, and subcontractor's employees while engaged in participating in an Agreement or Purchase Order or while in the course and scope of delivering goods or services under a City agreement may not:
 - 65.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the agreement; or
 - 65.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or controlled substances, on the job.
 - 65.3 If the City or the City's representative notifies the Vendor that any worker proves to be disorderly, disobedient or incompetent, has knowingly or repeatedly violated safety regulations, has possessed any firearms in prohibited areas, or has possessed or was under the influence of alcohol or controlled substances on the job, the Vendor shall immediately remove such worker from the work area, and may not employ such worker again on Agreement services without the City's prior written consent.



CITY OF ATHENS GENERAL SERVICES INSURANCE REQUIREMENTS

Services performed on City property, including but not limited to: Installation, Construction, Landscape, Maintenance, Custodial, Electrical, Painting, Welding, Plumbing, Transportation, Street Sweeping, Fireworks, Moving, Uniforms, Concessions, etc.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the vendor. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

B. **MINIMUM LIMITS OF INSURANCE**

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: \$500,000 per occurrence / \$1,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease - Policy Limit, and \$100,000 Disease – Each Employee.
3. Automobile Liability: \$500,000 Combined Single Limit. Limits can only be reduced if approved by the City. Automobile liability shall apply to all owned, hired, and non-owned autos.

C. **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductible or self-insured retention in excess of \$10,000 must be declared to and approved by the City.

D. **OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages:
 - a. The City, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the vendor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.



CITY OF ATHENS GENERAL SERVICES INSURANCE REQUIREMENTS

- b. The vendor's insurance coverage shall be primary insurance in respects to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the vendor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, boards, and commissions or volunteers.
 - d. The vendor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limit of liability.
2. **Workers Compensation and Employer's Liability Coverage:**
The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.
 3. **All Coverages:**
Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the City for all occurrences, except 10 days written notice to the City for non- payment.

E. ACCEPTABILITY OF INSURERS

The City prefers that insurance be placed with insurers with an A.M. Best's rating of no less than **A- VI**, or better.

F. VERIFICATION OF COVERAGE

Vendor shall provide the City certificates of insurance indicating the coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

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 vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire. (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 on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government 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); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>	
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									
-				-					
or									
Employer identification number									
-									

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note. ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

Limited Liability Company (LLC). If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note. You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

- 1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
- 2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
- 3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
- 4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
- 5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ¹ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.