

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT
FOR PURCHASE OF
THEMED FIREWORKS AND PYROTECHNIC SERVICES
WITH
CELESTIAL DISPLAYS, LLC**

THE STATE OF TEXAS

CITY OF ROUND ROCK

COUNTY OF WILLIAMSON

COUNTY OF TRAVIS

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KNOW ALL BY THESE PRESENTS:

This Agreement is for the purchase of themed fireworks and pyrotechnic services, and is referred to herein as the "Agreement." This Agreement is made and entered into on this the _____ day of the month of _____, 2024, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664, referred to herein as the "City," and CELESTIAL DISPLAYS, LLC, whose offices are located at 2006 Nature Park Lane, Spring, Texas 77386 referred to herein as "Services Provider." This Agreement supersedes and replaces any previous agreement between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City desires to purchase themed fireworks and pyrotechnic services; and

WHEREAS, City has issued its "Request for Proposals" for the provision of said goods and services; and

WHEREAS, City has determined the proposal submitted by Services Provider provides the best value to the City; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.0 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Services Provider whereby City is obligated to buy specified services and Services Provider is obligated to sell same. The Agreement includes the following: (a) City's Request for Proposal, designated Solicitation Number 24-008 dated October 2023 ("RFP"); (b) Services Provider's Proposal; and (c) any exhibits and/or addenda thereto. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference in the following order:

- (1) This Agreement;
- (2) Services Provider's Proposal;
- (3) City's Request for Proposals, Addenda, exhibits, and attachments.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Goods and Services** mean the specified services, supplies, materials, commodities, or equipment.

E. **Services Provider** means Celestial Displays, LLC, or any successors or assigns.

2.0 EFFECTIVE DATE AND TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto and shall remain in full force and effect unless and until it expires by operation of the term indicated herein or is terminated or extended as provided herein.

B. The term of this Agreement shall be for sixty (60) months from the effective date hereof.

C. City reserves the right to review the relationship at any time and may elect to terminate this Agreement with or without cause or may elect to continue.

3.0 CONTRACT DOCUMENTS AND EXHIBITS

City selected Services Provider to supply the services as outlined in the RFP; any Addenda to RFP; and the Proposal submitted by Services Provider, all as specified in Exhibit "A," incorporated herein by reference for all purposes. The intent of these documents is to formulate an Agreement listing the responsibilities of both parties as outlined in the RFP and any Addenda to RFP and as offered by Services Provider in its Proposal.

The services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.0 ITEMS AWARDED; SCOPE OF WORK

A. All items in "Attachment B – Cost Proposal" of Exhibit "A" are awarded to Services Provider.

B. Services Provider shall satisfactorily provide all services described in Exhibit "A," attached hereto, within the contract term specified in Section 2.0. Services Provider's undertakings shall be limited to performing services for City and/or advising City concerning those matters on which Services Provider has been specifically engaged. Services Provider shall perform its services in accordance with this Agreement, in accordance with the appended exhibits, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

5.0 COSTS

A. In consideration for the services to be performed by Services Provider, City agrees to pay Services Provider the amounts set forth in "Attachment B – Cost Proposal" of Exhibit "A."

B. The City shall is authorized to pay the Services Provider an amount not-to-exceed **Forty Thousand and No/100 Dollars (\$40,000.00) per year** for a total not-to-exceed amount of **Two Hundred Thousand and No/100 Dollars (\$200,000.00)** for the term of this Agreement.

6.0 INVOICES

All invoices shall include, at a minimum, the following information:

1. Name and address of Services Provider;
2. Purchase Order Number;
3. Description and quantity of items received; and
4. Delivery dates.

7.0 INTERLOCAL COOPERATIVE CONTRACTING / PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts,

Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City's proposal, with the consent and agreement of the successful service provider(s) and the City. Such agreement shall be conclusively inferred for the services provider from lack of exception to this clause in the service provider's response. However, all parties hereby expressly agree that the City is not an agent of, partner to, or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

8.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may affect such termination by giving Services Provider a written notice of termination at the end of its then-current fiscal year.

9.0 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Services Provider will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Services Provider may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

1. There is a bona fide dispute between City and Services Provider, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or
2. There is a bona fide dispute between Services Provider and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
3. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
4. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

10.0 GRATUITIES AND BRIBES

City may, by written notice to Services Provider, cancel this Agreement without liability to Services Provider if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Services Provider or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Services Provider may be subject to penalties stated in Title 8 of the Texas Penal Code.

11.0 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Services Provider's charges.

12.0 INSURANCE

Services Provider shall meet all City of Round Rock insurance requirements set forth in the RFP and on the City's website at:

http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

13.0 CITY'S REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Mike Hemker
Manager, Park and Recreation Department
301 West Bagdad Avenue, Suite 250
Round Rock, TX 78664
(512) 219-5541
mhemker@roundrocktexas.gov

14.0 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.0 DEFAULT

If Services Provider abandons or defaults under this Agreement and is a cause of City acquiring the specified goods elsewhere.

Services Provider shall be declared in default of this Agreement if it does any of the following and fails to cure the issue within thirty (30) days of receipt of written notice:

1. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
2. Becomes insolvent or seeks relief under the bankruptcy laws of the United States, and is unable to perform its material obligations under the Agreement.

16.0 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Services Provider.

B. In the event of any default by Services Provider, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Services Provider.

C. Services Provider has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Services Provider, Services Provider shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Services Provider shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Services Provider that portion of the charges, if undisputed. The parties agree that Services Provider is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.0 INDEMNIFICATION

Services Provider shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Services Provider, or Services Provider's agents, employees or subcontractors, in the performance of Services Provider's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Services Provider (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.0 COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

A. Services Provider, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract 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 and will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not boycott Israel and will not boycott Israel during the term of this Agreement.

C. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with Chapter 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Services Provider verifies Services Provider does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

19.0 ASSIGNMENT AND DELEGATION

The parties hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.0 NOTICES

A. All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to recipient's address as stated in this Agreement; or

2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Services Provider:

Celestial Displays, LLC
2006 Nature Park Lane
Spring, TX 77386

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephanie L. Sandre, City Attorney
309 East Main Street
Round Rock, TX 78664

B. Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Services Provider.

21.0 APPLICABLE LAW, ENFORCEMENT, AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

22.0 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Services Provider and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

23.0 DISPUTE RESOLUTION

City and Services Provider hereby expressly agree that no claims or disputes between the parties arising out of or relating to this 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.

24.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the

stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.0 MISCELLANEOUS PROVISIONS

A. Standard of Care. Services Provider represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

B. Time is of the Essence. The parties agree that, from time to time, certain unique transactions may have special requirements relative to timing and, accordingly, the parties will identify those transactions and exercise best efforts to accomplish those transactions within the stated timeframe. Other timing requirements will be met in a commercially reasonable manner. Where damage is caused to City due to Services Provider's failure to perform in the special timing requirement circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

C. Binding Agreement. This Agreement shall extend to and be binding upon and inure to the benefit of the parties' respective heirs, executors, administrators, successors and assigns.

D. Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Services Provider have executed this Agreement on the dates indicated.

Celestial Displays, LLC

By: Anne Marie Robinson
Printed Name: ANNE MARIE ROBINSON
Title: Owner/manager
Date Signed: 3-26-24

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney



City of Round Rock, Texas
Purchasing Division
221 East Main Street
Round Rock, Texas 78664-5299
www.roundrocktexas.gov

REQUEST FOR PROPOSAL (RFP)

**THEMED FIREWORKS AND PYROTECHNIC
SERVICES**

SOLICITATION NUMBER 24-008

OCTOBER 2023

Exhibit "A"

City of Round Rock
Themed Fireworks and Pyrotechnic Services
RFP No. 24-008
Commodity Code: 578-36 / 962-36
October 2023

THEMED FIREWORKS AND PYROTECHNIC SERVICES PART I GENERAL REQUIREMENTS

1. **PURPOSE AND BACKGROUND:** The City of Round Rock, herein after referred to as "the City," is seeking proposals from firms experienced in providing aerial fireworks displays for City residents in celebration of the 4th of July. The primary objective is to create an extraordinary and memorable firework show that brings joy and excitement to the residents of Round Rock.
2. **SOLICITATION PACKET:** This solicitation packet is comprised of the following:

Description	Index
Part I – General Requirements	Page(s) 2-4
Part II – Definitions, Standard Terms and Conditions, and Insurance Requirements	Page 5
Part III – Supplemental Terms and Conditions	Page(s) 6-8
Part IV – Scope of Work	Page(s) 9-10
Part V – Proposal Preparation Instructions and Evaluation Factors	Page(s) 11-13
Attachment A – Reference Sheet	Separate Attachment
Attachment B – Cost Proposal Sheet	Separate Attachment
Attachment C – Proposal Submittal Form	Separate Attachment

3. **SCHEDULE OF EVENTS:** It is the City's intention to follow the solicitation timeline below.

EVENT	DATE
Solicitation released	November 3, 2023
Optional Virtual Pre-Proposal meeting	November 8, 2023 @ 10:00AM, CST
Deadline for submission of questions	November 15, 2023 @ 5:00 PM, CST
City responses to questions or addendums	Approximately November 17, 2023 @ 5:00 PM, CST
Deadline for submission of responses	November 24, 2023 @ 3:00 PM, CST

All questions regarding the solicitation shall be submitted through Bonfire in writing by 5:00 PM, CST on the due date noted above. A copy of all questions submitted and the City's response to the questions shall be posted on the City's webpage in the form of an addendum at:
<https://roundrocktexas.bonfirehub.com>

The City reserves the right to modify these dates. Notice of date change will be posted to the City's website:
<https://roundrocktexas.bonfirehub.com>

4. **SOLICITATION UPDATES:** Respondents shall be responsible for monitoring the City's website at <https://roundrocktexas.bonfirehub.com> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancellations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

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5. **OPTIONAL VIRTUAL PRE-PROPOSAL MEETING:** A pre-proposal meeting will be conducted to fully acquaint Respondents with the facilities, difficulties and/or restrictions inherent in the services specified. The pre-proposal meeting will be conducted on the date specified in PART I, Section 3- Schedule of Events.
 - A. Attendance at the pre-proposal meeting is optional.
 - B. It is the responsibility of the Respondent to examine each facility and determine quantity, amounts, take precise measurements, determine material requirements, equipment requirements, labor requirements and other solicitation related details during said site visits.
 - C. The pre-proposal meeting will be conducted virtually at the following link: [Click here to join the meeting](#)
6. **RESPONSE DUE DATE:** Appropriately submitted responses are due at or before 3:00 PM, on the due date noted in PART I, Section 3 – Schedule of Events. The Offeror shall respond via the City's electronic bidding platform, Bonfire: <https://roundrocktexas.bonfirehub.com>
 - A. This request for proposal (RFP) does not commit the City to contract for any supply or service.
 - B. No paper or submittals outside of Bonfire will be accepted by the City.
 - C. Responses cannot be altered or amended after digital opening.
 - D. No response can be withdrawn after opening without written approval from the City for an acceptable reason.
 - E. The City will not be bound by any oral statement or offer made contrary to the written specifications.
 - F. Samples and/or copies shall be provided at the Respondent's expense and shall become the property of the City.
 - G. Late responses will not be considered.
7. **CERTIFICATE OF INTERESTED PARTIES:** Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed, and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution. Link to Texas Ethics Commission Webpage: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
8. **EX PARTE COMMUNICATION:** Please note that to insure the proper and fair evaluation of an offer, the City of Round Rock prohibits ex parte communication (e.g., unsolicited) initiated by the Offeror to the City Official, Employee, City Consultant, or Evaluation Team member evaluating or considering the offers prior to the time an award decision has been confirmed. Communication between an Offeror and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the offer. Ex parte communication may be grounds for disqualifying the offending Offeror from consideration of award in evaluation or any future bid.
9. **OPPORTUNITY TO PROTEST:** The Purchasing Manager for the City of Round Rock ("City"), in consultation with the City Attorney, shall have the authority to settle or resolve any dispute concerning the solicitation or award of a contract. The Purchasing Manager may solicit written responses to the protest from other interested parties. The aggrieved person must prepare his or her complaint in writing and send it by electronic mail to the City's Purchasing Department at protest@roundrocktexas.gov.

In the event of a timely protest, the City shall not proceed further with the solicitation or award of a contract unless it is determined that the award must take place without delay, to protect the best interests of the City. The procedures for notifying the City of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Office may dismiss your complaint or protest.

 - A. **Prior to Offer Due Date:** If you are a prospective offeror for the award of a contract ("Offeror") and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the due date for receipt of offers in response to a solicitation ("Offers"), you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation

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prior to the Offer due date.

- B. **After Offer Due Date:** If you submit an Offer to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process, or the recommended award as follows:
- i. You must file a written notice of your intent to protest within four (4) working days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
 - ii. You must file your formal written protest within ten (10) working days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Offer has been closed. If you know of the facts before those dates, you must notify the City as stated in section (A) above.
 - iii. You must submit your protest in writing and must include the following information:
 - a. your name, address, telephone number, and email address.
 - b. the solicitation number.
 - c. a specific identification of the statutory or regulatory provision that you are alleging has been violated.
 - d. a detailed statement of the factual grounds for your protest, including copies of any relevant documents.
 - e. a statement of any issues of law or fact that you contend must be resolved; and
 - f. a statement of the argument and authority that you offer in support of your protest.
 - iv. Your protest must be concise and presented logically and factually to help with the City's review.
- C. **Receipt of Timely Protest:** When the City receives a timely and complete written protest, the Purchasing Manager, with assistance from the City Attorney, shall make one of the following determinations:
- i. Determine that a violation of rules and statutes has occurred prior to the award of the contract and inform you and other interested parties of the determination. The City will prepare updated solicitation documents and will re-solicit.
 - ii. Determine that no violation of rules or statutes has occurred and inform you and other interested parties of the decision by letter. The reasons for the determination will be presented in the letter.
 - iii. Determine that a violation of rules and statutes has occurred after the award of the contract and inform you and other interested parties of the determination. However, the awarded contract will not be canceled. As needed, corrective actions may be taken with purchasing or any other pertinent City staff.
 - iv. A determination will usually be made within fifteen (15) business days after receipt of the formal protest.
 - v. **Any written decisions by the Purchasing Manager shall be the final administrative action for the City.**

All documentation pertaining to a protest will be kept on file at the City and are subject to open records requests.

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PART II DEFINITIONS, STANDARD TERMS AND CONDITIONS, AND INSURANCE REQUIREMENTS

1. **DEFINITIONS, STANDARD TERMS AND CONDITIONS:** By submitting a response to this solicitation, the Respondent agrees that the City's Definitions and Standard Terms and Conditions, in effect at the time of release of the solicitation, shall govern unless specifically provided otherwise in a separate agreement or on the face of a purchase order. These can be obtained from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>. In addition, the Supplemental Terms and Conditions listed in Section III, shall also be enforced as part of the contract.
2. **INSURANCE:** The Respondent shall meet or exceed all insurance requirements set forth in Standard Insurance Requirements. The City's Standard Insurance Requirements document can be viewed and downloaded from the City's website at: <https://www.roundrocktexas.gov/city-departments/purchasing/>

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PART III SUPPLEMENTAL TERMS AND CONDITIONS

1. **AGREEMENT TERM:** The terms of the awarded agreement shall include but not be limited to the following:
 - A. The term of the Agreement shall begin from date of award and shall remain in full force for sixty (60) months.
 - B. Upon expiration of the contract term, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period as is reasonably necessary to re-solicit and/or complete the project up to 120 days.
2. **RESPONDENT QUALIFICATIONS:** The City has established the following minimum qualifications. Respondents who do not meet the minimum qualifications will not be considered for award. The Respondent shall:
 - A. Be firms, corporations, individuals, or partnerships normally engaged in providing themed fireworks and pyrotechnic services as specified herein and have adequate organization, facilities, equipment, financial capability, and personnel to ensure prompt and efficient service to the City.
 - B. In order to confirm financial stability, the City may choose to review audited financial statements at any time throughout the RFP evaluation process. Upon request, the Respondent shall provide two years audited financial statements, including any notes or supplemental schedules within 2 business days of the original request.
 - C. The Respondent shall include in the proposal a list of all litigation the company or its principals have been involved in within the last three (3) years.
 - D. Be domiciled in or have a home office inside the United States. Respondents domiciled outside the United States, or not having a home office inside the United States will not be included for consideration in this RFP process.
3. **SUBCONTRACTORS:** Respondent shall not subcontract or otherwise engage subcontractors to perform required services.
4. **SAFETY:** The City reserves the right to remove any employee from City property for violation of federal, state, and local health, safety and environmental laws, ordinances, rules, and regulations. The Respondent shall:
 - A. Ensure that all employees comply with all Occupational Safety and Health Administration (OSHA), State and City safety and occupational health standards and other applicable federal, state, and local health, safety, and environmental laws ordinances, rules, and regulations in the performance of these services.
 - B. Be held responsible for the safety of their employees and unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site. In case of conflict, the most stringent safety requirement shall govern.
 - C. Indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
5. **WORKFORCE:** Successful Respondent shall:
 - A. Ensure Respondent's employees perform the services in a timely, professional, and efficient manner.
 - B. Ensure Respondent's employees, while working on City property, wear a company uniform that clearly identifies them as the Respondent's employee.
 - C. Employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor. The City reserves the right to verify citizenship or right to work in the United States.
6. **PRICING:** The Respondent shall determine and submit a fixed cost for the work and shall include all incidental costs, labor, overhead charges, travel, payroll expenses, freight, equipment acquisition and

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maintenance, demurrage, fuel surcharges, delivery charges, costs associated with obtaining permits, insurance, bonds, and risk management. No separate line-item charges shall be permitted for either response or invoice purposes.

7. **PRICE INCREASE:** Contract prices for Themed Fireworks and Pyrotechnic Services shall remain firm throughout the initial twelve (12) month term of the contract. A price increase to the agreement may be considered on the anniversary date of the Contract each year and shall be equal to the consumer price index for that year, but at no time can the increase be greater than 10% for any single line item unless otherwise approved by the City.
 - A. **Consumer Price Index (CPI):** Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for all Urban Consumers. The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June OR July through December), and each (January through June OR July through December six month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate. No retroactive contract price adjustments will be allowed. The Consumer Price Index (CPI) is found at the Bureau of Labor Statistics, Consumer Price Index website: <http://www.bls.gov/cpi>
 - B. **Procedure to Request Increase:**
 - i. Email the written price increase request to purchasing@roundrocktexas.gov with the rate detail comparison, a comprehensive calculation, and any supporting documentation to the designated City Contract Specialist a minimum of 45 days prior to the annual Contract anniversary date. The detailed written calculation will be verified and confirmed. All written requests for increases must include the City of Round Rock contract number, solicitation reference information and contact information for the authorized representative requesting the increase.
 - ii. Upon receipt of the request, the City reserves the right to either accept the escalation and make change to the purchase order within 30 days of the request or negotiate with the Vendor or cancel the agreement or purchase order if an agreement cannot be reached on the value of the increase.
8. **ACCEPTANCE/INSPECTION:** Acceptance/Inspection should not take more than five (5) working days. The Contractor will be notified within the time frame if the services delivered are not in full compliance with the specifications. In the event the services are not performed to the satisfaction of the City the Contractor shall agree to reperform services to specification at no additional cost to the City. If any agreement or purchase order is cancelled for non-acceptance, the needed services may be purchased elsewhere.
9. **PERFORMANCE REVIEW:** The City reserves the right to review the awarded Contractor's performance anytime during the contract term.
10. **ORDER QUANTITY:** The quantities shown on the solicitation are estimates only. No guarantee of any minimum or maximum purchase is made or implied. The City will only order the services/goods needed to satisfy requirements within budgetary constraints, which may be more or less than indicated.
11. **AWARD:** The City reserves the right to enter into an Agreement or a Purchase Order with a single award, split award, primary and secondary award, non-award, or use any combination that best serves the interest and at the sole discretion of the City. Respondents to the solicitation will be notified when City staff recommendation of award has been made. The award announcement will be posted to the City's website at <https://roundrocktexas.bonfirehub.com> once City Council has approved the recommendation of award and the agreement has been executed.
12. **POINT OF CONTACT / DESIGNATED REPRESENTATIVE:**
 - A. **Contractor's point of contact:** In order to maintain consistent standards of quality work performed across the City, the City shall be provided with a designated and identified point of contact upon award of the contract to include contact information. The City's designated representative shall be notified by the Respondent immediately should the point of contact change.
 - B. **The City's designated representative:** The City's designated representative shall be:
Mike Hemker

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Manager
Parks and Recreation
Phone: +1 (512) 218-5541
E-mail: mhemker@roundrocktexas.gov

- C. Do not contact the individual listed above with questions or comments during the course of the solicitation.

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PART IV SCOPE OF WORK

1. **CRITICAL REQUIREMENTS:** The City of Round Rock is committed to ensuring the safety of its residents during the execution of fireworks displays. To achieve this, the following critical requirements must be strictly adhered to:
 - A. The fireworks used must comply with the regulations outlined in the National Fire Protection Association (NFPA) Code 1123 for Fireworks Displays. The code can be accessed at this link: [NFPA Code 1123](#).
 - B. The Respondent shall maintain compliance with national regulatory standards regarding safe launch distances.
 - C. Prior to acceptance, the Fireworks proposal must obtain approval from the City's Fire Department.
2. **TRANSPORTATION:** The successful Respondent assumes full responsibility for the secure transportation of fireworks and associated equipment in strict compliance with all applicable Federal, State, and Local laws and regulations, including adherence to NFPA Code 1123.
3. **PERMITS:** The Respondent must possess all necessary Federal, State, and City permits and licenses required to conduct fireworks displays. Securing and maintaining these permits throughout the project's duration is the sole responsibility of the Respondent.
4. **SCHEDULE:** The fireworks display will commence at a time specified by the City when scheduling the event. The Respondent must demonstrate flexibility in accommodating the City's schedule and be prepared to closely coordinate with City officials to ensure a seamless execution of the event.
5. **FORMAT:** The City of Round Rock - Parks and Recreation Department seeks a fireworks display that adheres to a specific format designed to create a captivating and engaging experience for the audience. The format includes:
Opening Barrage: An energetic opening sequence that captivates the audience's attention.

Main Program: A well-choreographed sequence of fireworks showcasing a variety of effects, colors, and patterns to create a visually stunning display.

Finale: A grand finale that leaves a lasting impression on spectators.

In addition, the display should incorporate two separate water cake sites positioned next to the water's edge within a secure zone with a minimum radius of 75 feet. These water cake sites should be synchronized with the main 3" - 6" main launch site, enhancing the overall visual impact of the show.

- A. The Respondent shall provide pricing options for specified show lengths/time slots:
 - 15 Minutes
 - 20 Minutes
 - 25 Minutes
 - 30 Minutes
- B. The shells used in the display shall range in size from 3" to 6", in compliance with the specified regulations and safety standards.
- C. The proposal must clearly indicate the number and size of shells for each segment and show length, demonstrating a well-planned and diverse selection of fireworks.
- D. While musical accompaniment is not required, the Respondent may propose any synchronization or coordination of the fireworks display with live music or pre-recorded soundtracks, if deemed appropriate.

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6. **FIREWORKS LAUNCH:** The successful Respondent shall be responsible for managing and executing all aspects of the fireworks display, including transportation, set-up, launch, and clean-up of the fireworks and associated equipment. City staff will not be available to assist with the execution of the display.

Prior to the launch, the successful Respondent must coordinate a meeting with the City's Fire Department representatives at the launch site. This meeting aims to review the program, ensure compliance with safety regulations, and address any concerns or recommendations raised by the Fire Department.

7. **RAIN DATE OR CONTINGENCY:** To account for inclement weather, the Respondent must identify a rain date at the time of scheduling. In the event that the weather is unfavorable on the original event date, the City will decide whether to proceed with the display on the designated rain date. The Respondent must accommodate this requirement and make necessary preparations to ensure a successful show on the rain date, if needed.

Additionally, the Respondent must acknowledge that in the event of a regional fireworks ban due to drought or any other unforeseen circumstances, the City is not obligated to launch the fireworks display or bear any financial responsibility for the display on that day.

8. **DRONE DISPLAY (OPTIONAL):** In the event where a traditional fireworks display becomes unfeasible due to regulatory, safety, or environmental constraints, an optional drone display may be considered as an alternative display. The proposed drone show must adhere to all Federal Aviation Administration (FAA) regulations, local drone ordinances, and safety guidelines. The vendor is responsible for obtaining all necessary permits, licenses, and permissions required to conduct a drone show.

Vendors interested in the optional drone display must submit pricing with their separate bid document in **PART V Segment - 3 Cost Proposal** to outline any additional costs.

9. **DAMAGE:** The successful Respondent shall be fully responsible for any damage caused to the City's equipment and/or property due to negligence in work, personnel, or equipment. The Respondent must take appropriate measures to prevent damage and exercise utmost care during the entire process, including transport, setup, launch, and clean-up.

9. **EMERGENCY:** During the fireworks displays, the City shall provide emergency fire and police personnel on-site to ensure the safety of attendees and respond promptly in case of emergencies. The Respondent must cooperate and coordinate closely with the City's emergency personnel, following their instructions and guidelines to ensure a safe environment for all.

10. **CITY RESPONSIBILITIES:** The City of Round Rock will have specific responsibilities and obligations in the execution of the fireworks display project. These responsibilities include, but are not limited to:

- A. Providing the time and date for the fireworks display.
- B. Collaborating closely with the selected vendor to ensure the event's seamless execution.
- C. Furnishing on-site fire and police personnel during the fireworks display to ensure the safety of attendees.
- D. Providing clear guidelines and instructions for the vendor to follow during emergency situations.
- E. Making the final decision on whether to proceed with the display on the designated rain date in the event of unfavorable weather conditions on the original event date.
- F. Granting access to the event location, including Old Settlers Park, and any necessary equipment or facilities for the display.
- G. Collaborating with the selected vendor to ensure the protection of City property and equipment.
- H. Assisting the vendor, if necessary, in acquiring any City-specific permits or licenses required for the event.
- I. Providing clear and timely communication to the vendor regarding any changes in scheduling or event details.

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PART V PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS

1. **PROPOSAL ACCEPTANCE PERIOD:** All proposals are valid for a period of one hundred and twenty (120) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal.
2. **PROPOSAL RESPONSE:** Responses shall be clear and concise while appropriately responding to the evaluation criteria listed below in Section 3. In order to do business with the City of Round Rock you must be registered with the City's Vendor Database. To register, go to:
<https://roundrocktxvendors.munisselfservice.com/Vendors/default.aspx>

Proposal Submittal Instructions: The Respondent shall include all of the following documents in their response-

- ☐ Attachment A- Reference Sheet
- ☐ Attachment B- Cost Proposal Sheet
- ☐ Attachment C- Proposal Submittal Form
- ☐ Acknowledged Addenda (if applicable)
- ☐ Company Information- which gives in brief, concise terms, a summation of the proposal. Include the following-

Business Organization: State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.

Project Management Structure: Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.

Authorized Negotiator: Include the name, email address, and telephone number of the person(s) in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

- ☐ Segment 1, 2, and 3 requirements listed below.
- ☐ A list of all litigation the company or its principals have been involved in within the last three (3) years.
- ☐ A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities.
- ☐ List of Exceptions (if any)- Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal by the City. Exceptions to this solicitation if any, shall be submitted on a separate sheet labeled "Exceptions" with the Respondent's proposal.

3. **EVALUATION CRITERIA:**

A. **Segment 1 – Respondent's Solution, Approach, & Timeline**

- i. **System Concept and Solution:** Define in detail your understanding of the requirement presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
- ii. **Program Approach and Timeline:** Describe your technical plan for accomplishing required work and the estimated timeline for a project. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Scope of Work and your plan for accomplishment. Specifically include:
 - 1) Information on the range of shell sizes to be used in the display.
 - 2) An outline of the plan for safe transportation of fireworks and equipment, highlighting compliance with all relevant laws and regulations.

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- 3) A detailed description of the proposed fireworks display format, including plans for the opening barrage, main program, and grand finale.
- 4) Details of any proposed synchronization or coordination with live music or pre-recorded soundtracks, if deemed appropriate.
- 5) Any additional documents or information that support the proposal, such as videos of past fireworks or drone displays, additional certifications, or testimonials. Videos can be provided via weblink or thumb drive.

B. Segment 2 – Company Work Experience and Personnel

- i. Prior Experience: State the number of years the Respondent company has been providing the services requested in the solicitation. Describe only relevant municipal, governmental, corporate, and individual experience for the company and personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 2014. Supply the project title, year, and reference name, title, present address, and phone number of principal persons for whom prior projects were accomplished.
- ii. Contractors' past performance with the City may be evaluated.
- iii. Personnel: Include names, qualifications, and resumes of all personnel who will be assigned to the account. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title.

C. Segment 3 – Cost Proposal: Complete Attachment B – Cost Proposal. All bid lines must be quoted in order to be considered responsive.

- i. In a separate document include any additional services and pricing not included in Attachment B – Cost Proposal Sheet. This pricing will not be evaluated but will become part of the contract.

4. EVALUATION SCORING: The intent of the City is to award to one Respondent in accordance with the evaluation criteria below. The purpose of this evaluation criteria is to determine which proposal best meets the requirements and provides the best overall value to the City.

A. Evaluation Criteria:	Weights:
• Respondent's Solution, Approach, & Timeline (Segment 1)	40 pts
• Company Work Experience and Personnel (Segment 2)	40 pts
• <u>Cost Proposal (Segment 3)</u>	<u>20 pts</u>
Maximum Weight:	100 pts

- B. An evaluation committee will be established to evaluate the proposal. The committee will include employees of the City and may include other impartial individuals who are not City employees. The evaluation committee will determine if discussions and/or Best and Final Offers (BAFO) are necessary. Award of a contract may be made without discussions or BAFO, if in the best interest of the City. The evaluation committee may determine that discussions are necessary to clarify or verify a written proposal response. The City may, at its discretion, elect to have respondents provide oral presentations of their proposal. The City reserves the right to rescore an offer based on provided demonstrations. A request for a BAFO is at the sole discretion of the City and will be requested in writing. The evaluation committee will evaluate the finalists and make a recommendation for award.
- C. The City reserves the right to reject any or all proposals submitted, or to award to the respondent who in the City's opinion, offers the best value to the City. The City also reserves the right to cancel the RFP process and pursue alternate methods for providing the requirements.
- D. The City reserves the right to conduct studies and other investigations as necessary to evaluate any proposal.
- E. The City reserves the right to waive any minor technicality, irregularities, or informalities noted in the submission process. Submission of proposal confers no legal rights upon any Respondent.
- F. The City reserves the right to request further documentation or information and to discuss proposal response with any Respondent in order to answer questions or to clarify any aspects of the proposal.

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- G. The City may develop a "short list" of qualified proposal and may determine that the Respondent(s) should submit a Best and Final Offer (BAFO). Each "short listed" Respondent will be given a reasonable opportunity for discussion and revision of their proposal.

5. AGREEMENT NEGOTIATIONS AND AWARD PROCESS:

- A. A proposal presented in response to this RFP is subject to negotiation concerning any issues deemed relevant by the City. The City reserves the right to negotiate any issue with any party. Any unsolicited communication by the Respondent to a City official, undesignated employee, or an evaluation team member evaluating or considering the offers may be grounds for disqualifying the offending Offeror from consideration of award.
- B. Submission of proposal indicates the Respondent's acceptance of the evaluation process and recognition that the City may make subjective judgments in evaluating the proposal to determine the best value for the City.
- C. If negotiations are successful, the City and Respondent may enter into an agreement. If negotiations are unsuccessful, the City may formally end negotiations with that Respondent.
- D. The City also reserves the right to reject any or all submittals, or to accept any submittal deemed most advantageous, or to waive any irregularities or informalities in the submittal received.
- E. An independent signed authorized Contract will be sent to the successful Respondent(s). Execution of a City of Round Rock contract is required prior to starting work and processing any payments to the Contractor.

6. POST AWARD MEETING: The City and the Respondent may schedule a post award meeting to discuss, but not be limited to the following:

- A. The method to provide a smooth and orderly transition of services performed from the current Contractor.
- B. Provide City contact(s) information for implementation of the Agreement.
- C. Identify specific milestones, goals, and strategies to meet objectives.



**ADDENDUM
CITY OF ROUND ROCK, TEXAS**

Solicitation: RFP 24-008

Addendum No: 1

Date of Addendum: 11/21/23

This addendum is to incorporate the following changes to the above referenced solicitation:

- I. **Additional Information:** The contract value shall not exceed \$200,000 for the term of the contract.
- II. **Extension:** The proposal due date is hereby extended until Thursday, 11/30/23 at 3:00PM.
- III. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

By the publication of this document on the City of Round Rock Bonfire website this addendum is hereby incorporated into and made a part of the above referenced solicitation.



**ADDENDUM
CITY OF ROUND ROCK, TEXAS**

Solicitation: RFP 24-008

Addendum No: 2

Date of Addendum: 11/27/23

This addendum is to incorporate the following changes to the above referenced solicitation:

- I. **Clarifications: The additional insurance requirements have been removed from the solicitation.**
- II. **ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

By the publication of this document on the City of Round Rock Bonfire website this addendum is hereby incorporated into and made a part of the above referenced solicitation.

Attachment B - Cost Proposal

RFP 24-008

Special Instructions: All prices must be quoted in order to be considered responsive, be advised that exceptions taken to any portion of the solicitation will jeopardize acceptance of the bid. Alternative bids will not be considered and unauthorized modifications to the bid sheet format may result in the rejection of the bid. The City reserves the right to purchase more or less than the quantities indicated below

No	Description	Estimated Quantity	Unit	Unit Cost	Extended Total
1	15 Minute Display	1	EA	\$22,500.00	\$22,500.00
2	20 Minute Display	1	EA	\$28,000.00	\$28,000.00
3	25 Minute Display	1	EA	\$33,500.00	\$33,500.00
4	30 Minute Display	1	EA	\$40,000.00	\$40,000.00

COMPANY NAME:

Celestial Displays, LLC

PRINTED NAME:

Michael Hudaish

PHONE NUMBER:

(530) 919 - 9726

EMAIL ADDRESS:

**ATTACHMENT C
PROPOSAL SUBMITTAL FORM AND EXECUTION**

NOTE: RESPONDENTS SHALL COMPLETE, SIGN, AND UPLOAD THIS ATTACHMENT WITH THEIR SUBMITTAL IN BONFIRE. FAILURE TO DO SO MAY RESULT IN DISQUALIFICATION OF THE SUBMITTAL.

By signature hereon, the Respondent certifies that:

All statements, pricing and information prepared and submitted to the City's Bonfire portal in response to this solicitation are current, complete, and accurate.

He/she has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan gratuity, special discount, trip, favor, or service to a City employee, evaluator, or evaluating entity in connection with the submitted response. Signing the Execution of Solicitation Submittal Form with a false statement shall void the submitted offer or any resulting contracts.

Respondent represents and warrants that the individual signing this Execution of Solicitation Submittal Form is authorized to sign this document, represent the Respondent and to bind the Respondent under any contract resulting from this submittal.

RESPONDENT (COMPANY):	Celestial Displays, LLC		
SIGNATURE (INK/DIGITAL):	<i>Michael Hudanish</i>		
NAME (TYPED/PRINTED):	Michael Hudanish		
TITLE:	Director of Operations	DATE:	11/30/2023
STREET:	2006 Nature Park Lane		
CITY/STATE/ZIP:	Spring, TX 77386		
TELEPHONE & FAX NO.:	office (281) 363-4404 mobile (530) 919-9726		
E-MAIL ADDRESS:	michael@celestialdisplays.com		
FEDERAL TAX IDENTIFICATION NUMBER (FIN):	27-1453008		

By submitting a response to this solicitation, the Respondent agrees that the City's Definitions and Standard Terms and Conditions, in effect at the time of release of the solicitation, shall govern unless specifically provided otherwise in a separate agreement or on the face of a purchase order. In addition, the Supplemental Terms and Conditions listed in Section III, shall also be enforced as part of the contract, and can be obtained from the City's website at: <https://www.roundrocktexas.gov/city-businesses/solicitations/>