

CITY OF NORTH LITTLE ROCK, ARKANSAS
COMMERCE DEPARTMENT
Mary Beth Bowman, Director
Amy Smith, Assistant Director for Procurement
Crystal Willis, Admin. Sect. /Asst. Purchasing Agent



120 MAIN STREET - P.O. BOX 5757
NORTH LITTLE ROCK, AR 72119
501-975-8881 Telephone
501-975-8885 Fax

INVITATION FOR BID

Bid Number: 18- 3518 Date Issued: Wednesday, February 7, 2018

Date & Time Bid Opening: Wednesday, February 21, 2018 at 10:00 a.m.

THERMAL IMAGING CAMERAS North Little Rock Fire Department

Specifications are attached.

Any technical questions regarding this bid should directed to: Assistant Chief Buford: bbuford@nlr.ar.gov

General bidding questions should be directed to: Mary Beth Bowman: mbowman@nlr.ar.gov

If you are obtaining this bid from our website, please be reminded that addendums may occur. It is therefore advisable that you review our listings for attachments including any changes to the bid.

The City of North Little Rock encourages participation of small, minority, and woman own business enterprises in the procurement of goods, services, professional services, and construction, either as a general contractor or sub-contractor.

It is further requested that whenever possible, majority contractors who require sub-contractors, seek qualified small, minority, and woman businesses to partner with them.

NOTE: FAILURE TO FILL OUT AND SIGN THE INVITATION TO BID SHEET WILL RESULT IN REJECTION OF THE BID.

EXECUTION OF BID

Upon signing this Bid, the bidder certifies that they have read and agree to the requirements set forth in this bid, including specifications, conditions and pertinent information regarding the articles being bid on, and agree to furnish these articles at the prices stated.

NAME OF FIRM: _____ DATE: _____

TAX ID NUMBER: _____ PHONE NUMBER: _____

BUSINESS ADDRESS: _____

SIGNATURE OF AUTHORIZED PERSON & TITLE: _____

UNSIGNED BIDS WILL BE REJECTED

GENERAL TERMS AND CONDITIONS FOR THE CITY OF NORTH LITTLE ROCK, AR

1. When submitting an "Invitation to Bid," the bidder warrants that the commodities covered by the bid shall be free from defects in material and workmanship under normal use and service. In addition, bidder must deliver new commodities of the latest design and model, unless otherwise specified in the "Invitation to Bid."
2. Prices quoted are to be net process, and when an error is made in extending total prices, the City may accept the bid for the lesser amount whether reflected by extension or by the correct multiple of the unit price.
3. Discounts offered will be taken when the City qualifies for such. The beginning date for computing discounts will be the date of invoice or the date of delivery and acceptance, whichever is later.
4. When bidding other than the brand and/or model specified in the "Invitation to Bid," the brand and/or model number must be stated by that item in the "Invitation to Bid," and descriptive literature be submitted with the bid.
5. The City reserves the right to reject any and all bids.
6. The Purchasing office reserves the right to award items, all or none, or by line item(s).
7. Quality, time and probability of performance may be factors in making an award.
8. Bid quotes submitted will remain firm for 30 calendar days from bid opening date; however, the prices may remain firm for a longer period of time if mutually agreeable between bidder and the Department of Commerce.
9. Bidder must submit a completed signed copy of the front page of the "Invitation to Bid" and must submit any other information required in the "Invitation to Bid."
10. In the event a contract is entered into pursuant to the "Invitation to Bid," the bidder shall not discriminate against any qualified employee or qualified applicant for employment because of race, sex, color, creed, national origin or ancestry. The bidder must include in any and all subcontracts a provision similar to the above.
11. Sales or use tax is not to be included in the bid price, but is to be added by the vendor to the invoice billing to the City. Although use tax is not to be included in this bid, vendors are to register and pay tax direct to the Arkansas State Revenue Department.
12. Prices quoted shall be "Free on Board" (F.O.B.) to destination at designated facility in North Little Rock. Charges may not be added after the bid is opened.
13. In the event of two or more identical low bids, the contract may be awarded arbitrarily or for any reason to any of such bidders or split in any proportion between them at the discretion of the Department of Commerce..
14. Specifications furnished with this Invitation are intended to establish a desired quality or performance level, or other minimum dimensions and capacities, which will provide the best product available at the lowest possible price. Other than designated brands and/or models approved as equal to designated products shall receive an equal consideration.
15. Samples of items when required, must be furnished free, and, if not called for within 30 days from date of bid opening, will become property of the City.
16. Bids will not be considered if they are:
 1. Submitted after the bid's opening time.
 2. Submitted electronically or faxed (unless authorized by Purchasing Agent).

17. Guarantees and warranties should be submitted with the bid, as they may be a consideration in making an award.
18. **CONSTRUCTION**
- A. Contractor is to supply the City with evidence of having and maintaining proper and complete insurance, specifically Workman's Compensation Insurance in accordance with the laws of the State of Arkansas, Public Liability and Property Damage. All premiums and cost shall be paid by the Contractor. In no way will the City be responsible in case of accident.
 - B. When noted, a Certified check or bid bond in the amount of 5% of total bid shall accompany bid.
 - C. A Performance Bond equaling the total amount of any bid exceeding \$20,000.00 must be provided for any contract for the repair, alteration or erection of any public building, public structure or public improvement (pursuant to Arkansas Code Annotated Section 22-9-203).
19. **LIQUIDATED DAMAGES** - Liquidated damages shall be assessed beginning on the first day following the maximum delivery or completion time entered on this bid form and/or provided for by the plans and specifications.
20. **AMBIGUITY IN BID** - Any ambiguity in any bid as the result of omission, error, lack of clarity or non-compliance by the bidder with specifications, instructions, and all conditions of bidding shall be construed in the light most favorable to the City.
21. The bid number should be stated on the face of the sealed bid envelope. If it is not, the envelope will have to be opened to identify.
22. Whenever a bid is sought seeking a source of supply for a specified period of time for materials and services, the quantities of usage shown are estimated ONLY. No guarantee or warranty is given or implied by the participants as to the total amount that may or may not be purchased from any resulting contracts. These quantities are for the bidders information ONLY and will be used for tabulation and presentation of bid and the participant reserves the right to increase or decrease quantities as required.
23. The City of North Little Rock reserves the right to reject any and all bids, to accept in whole or in part, to waive any informalities in bids received, to accept bids on materials or equipment with variations from specifications in those cases where efficiency of operation will not be impaired, and unless otherwise specified by the bidder, to accept any item in the bid. If unit prices and extensions thereof do not coincide, the City of North Little Rock may accept the bid for the lesser amount whether reflected by the extension or by the correct multiple of the unit price.
24. Additional information or bid forms may be obtained from:
COMMERCE DEPARTMENT, 120 Main Street, P.O. Box 5757, North Little Rock, Arkansas 72119 (501)975-8881
www.nlr.ar.gov

Bidding documents must be submitted on or before the bid's opening date and time. Unless noted, bids must be sealed and mailed or delivered to:

**Mary Beth Bowman
Director of Commerce
120 Main Street (P.O. Box 5757)
North Little Rock, AR 72119**

BID

THERMAL IMAGING CAMERA GENERAL SPECIFICATIONS

North Little Rock Fire Department

SCOPE OF WORK

General Thermal Imaging Camera Requirements:

The purpose of this bid specification is to establish the minimum requirements for Thermal Imaging Camera (TIC). The Fire Department is proposing to purchase 16 (sixteen) Thermal Imaging Cameras if funds are available.

The successful bidder agrees to provide, at their own expense, a factory trained instructor for such time as the TIC user shall require complete instruction in the operation and maintenance of the TIC. Any exceptions to these specifications must be detailed in a separate attachment. Failure to do so will automatically disqualify the bidder.

The successful bidder must be a sales distributor, authorized by the manufacturer, to sell the equipment specified herein. A signed document from the manufacturer confirming this must be included with the bid.

Warranty

The manufacturer shall make standard a warranty for the thermal imager, all features and accessories installed in the thermal imager to be free of defects in material and workmanship, under normal use and service, for a period of five years. As part of this warranty, the manufacturer must provide free inbound and outbound shipping for transport within the continental United States for all repair service. The manufacturer must provide a warranty which covers all required battery replacements for a period of five years. In addition, the imager's housing shall carry a limited lifetime warranty.

_____ Comply _____ Exception

Service

The manufacturer must be located in the U.S.A. and provide a full-service repair center in the U.S.A. to ensure timely and efficient processing of any service related issues concerning the imager. Warranty repairs must carry a guaranteed 48-hour turnaround (2 full business days from the time of receipt at the service center to the time that the manufacturer ships the imager). Non-warranty repairs must carry a guaranteed 48-hour (2 full business days) turnaround from the time the manufacturer receives purchase order authorization to complete the repairs to the time the manufacturer ships the imager.

_____ Comply _____ Exception

Standards / Quality

The manufacturer must ensure quality design and manufacturing methods through third party certification to ISO 9001, or its equivalent. To ensure that the product is of the highest quality, documentation must be presented upon request illustrating a battery of tests that have been conducted to verify water resistance, heat resistance, and shock/ impact resistance. The imager must be compliant to NFPA 1801, Standard on Thermal Imagers for the Fire Service 2013 Edition, at the time of delivery. The imager must be suitable for use in Class I, Division 2, Groups C and D hazardous locations.

_____ Comply _____ Exception

Physical Configuration

The imager shall be a hand-held design with a total weight not exceeding 2.4 pounds (1.1 kg) with all standard features installed. The imager’s physical dimensions shall not exceed 5.4 (137 mm) tall, 4.6 (117 mm) wide, and 8.2 (208 mm) long. The imager shall ship in a reusable delivery case.

_____ Comply _____ Exception

Durability

The imager shall remain operational after being submerged under 3 feet of water for 30 minutes. The imager shall withstand a 2-meter drop in any orientation and sustain no operational damage. The imager shall be able to withstand an environment temperature of 350° F (177° C) for 15 minutes without operational impact or damage to the unit. The manufacturer must perform these tests in front of designated department representatives at a mutually determined time and location. Failure to perform these tests in front of designated department representatives shall constitute non-compliance with this portion of the specification.

_____ Comply _____ Exception

Technology

The imaging array shall utilize a 240x180 or 320x240 pixel uncooled vanadium oxide (VOx) focal plane array. The Noise Equivalent Temperature Difference (NETD) shall be less than 30 mK. The imager shall exhibit an ability to evade whiteout when pointed directly at flames. The detector shall operate with core temperature ranges of -40°F to 175°F (-40°C to 79°C). The dynamic range of the detector and associated electronics shall be nominally 1100°F (592°C). The detector spectral response shall be 7 to 14 microns. Mid-wave or short-wave infrared products that operate below this portion of the infrared spectrum (below 7.5 microns) are not acceptable due to unreliable performance in smoky conditions. The frame rate of the infrared engine shall be no less than 60 Hertz.

_____ Comply _____ Exception

Monitor/Screen

The imager shall have a 3.5" (89 mm) diagonal LED backlit Liquid Crystal Display (LCD) screen. The display shall consist of no less than 76,800 pixels for high quality resolution. The screen must be visible in thick smoke to the operator while using it at arms-length. In addition, a clear polycarbonate cover must protect the display screen. This cover must be field-replaceable and watertight.

_____ Comply _____ Exception

Lens

The imager shall possess an f/1.3 lens fabricated of germanium and have no less than a 31° (V) x 40° (H) field of view. The lens shall be protected with a watertight, sealed 2 mm thick germanium cover window.

_____ Comply _____ Exception

Visual Indicators

The imager shall have a battery status indicator on the viewing display to reduce imager size. Battery indicators that are not located on the display, such as separate LED based indicators, are unacceptable as they increase imager size. The imager shall be capable to provide, on the viewing display, surface temperature measurement of objects. The imager must be able to provide simultaneous presentation of bar graph and numeric temperature indicators as well as separate presentation of either indicator.

_____ Comply _____ Exception

The Camera shall incorporate a hot spot tracking system that identifies and tracks the hottest object in the field of view and displays the temperature of the hottest object via an on-screen digital readout. Users shall have the option of turning the hot spot tracker on and off.

_____ Comply _____ Exception

The Camera shall be capable of incorporating a cold spot tracking system that identifies and tracks cold objects (down to -40°C) in the field of view and displays the temperature of the coldest object via an on-screen digital readout. Users shall have the option of turning the cold spot tracker on and off.

_____ Comply _____ Exception

Switches, Features, and Modes of Operation

The imager shall use only one switch to activate the unit. The switch shall employ an electronic press-and-hold protection mechanism which prevents accidental shut-off. The imager must employ a secondary switch which enters TI BASIC PLUS mode allowing access to advanced features. During operation, a single press of the main power switch must always return the imager to TI BASIC mode regardless of current operational state or mode. Additionally, the imager must utilize a pair of switches which enable the activation and adjustment of a manual colorization mode, and/or digital zoom, as applicable to the imager’s installed configuration.

_____ Comply _____ Exception

To facilitate high quality image representation, the Camera shall refresh the imaging sensor no less than 50 times per second.

_____ Comply _____ Exception

The Camera shall be equipped with a built in laser pointer powered by the supply voltage from the Camera’s battery.

_____ Comply _____ Exception

Strap Systems

To reduce bulk, the imager must not have an integral strap system; however, the imager shall accommodate an available self-retracting strap. This retractable strap shall be attachable to a D-ring at the base of the thermal imager, under the display, and must be capable of holding the unit to the firefighter’s body with the full weight of the imager, with battery, hanging unsupported from the strap. All straps must be field replaceable.

_____ Comply _____ Exception

Power Supply

When fully charged, the imager shall provide a minimum of 3 hours of continuous use.

_____ Comply _____ Exception

Operation

The imager must be fully operational no more than ten seconds after activating the power switch. The imager must not have a standby switch or mode.

_____ Comply _____ Exception

Truck Mount

The manufacturer must offer a truck mounted charging system to mount the imager and internal charging system in a vehicle or fire apparatus or on the wall of a fire station. The system must be compliant to NFPA 1901 when properly mounted in a vehicle or fire apparatus. The truck mount must carry a one-year warranty.

_____ Comply _____ Exception

The Camera’s truck mounted charging system shall have the option of a drive away detection system to prevent the user from leaving the camera behind. The system shall be powered from the charging system and contain a reset button to override the system when not in use.

_____ Comply _____ Exception

Submission of Bids

Three (3) copies of the sealed bid must be submitted to:

City of North Little Rock
Commerce Department
120 Main Street
North Little Rock, AR 72114

Firm Pricing for City Acceptance

Bid price must be firm for City acceptance for a minimum of ninety (90) days from bid opening date.

No Contact Policy

Any contact with any City representatives, related officials, or representatives other than those outlined in the Bid is prohibited. Such unauthorized contact may disqualify the Contractor from this procurement.

W-9 Form Required

Each bidder shall submit a completed W-9 form with their bid.

Acknowledgement of Contract

By submitting a bid, the bidder acknowledges that it understands and agrees to the terms and conditions contained herein.

Bid Questions and Clarification

All questions must be submitted in writing via email. Response to relevant questions will be posted on the Commerce web page at nlr.ar.gov, click on the “Business” tab, then click on the “Bids and Vendors” tab, then click on “Current Bids”.

Questions related to the Bid Specifications should be directed to:

Assistant Fire Chief Buford

bbuford@nlr.ar.gov

Proposer’s Certification

By signature on the bid, the respondent certifies that it complies with:

- The laws of the state of Arkansas.
- All applicable local, state, and federal laws, codes, and regulations.
- All terms, conditions, and requirements set forth in this Bid.
- A condition that the Bid submitted was independently arrived at without collusion.

If any Respondent fails to comply with the provisions stated in this paragraph, the City reserve the right to reject the bid, terminate the contract, or consider the company/contractor in default.

Conflict of Interest

Respondent, by responding to this Bid, certifies that to the best of his/her knowledge or belief, no elected/appointed official or employee of the City is financially interested, directly or indirectly, in the services specified in this Bid.

The City reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the respondent’s proposal. The City’s determination regarding any questions of conflict of interest is final.

Public Records

Respondent understands that the bid is a “public record”, and the public shall have access to all documents and information pertaining the Response and the Bid, subject to the provisions of Arkansas’ FOIA. The Respondent, by submitting a bid, acknowledges that the City may provide public access to and/or copies of all documents subject to disclosure under applicable law.

Cost of Preparing Bid

Any costs incurred in the preparation of the bids are solely the responsibility of the respondents. The City of North Little Rock will provide no reimbursements for such costs. Any cost associated with any oral representations to the City will be the responsibility of the respondent and may not be billed to the City.

Authority to Bind Firm in Contract

Bids MUST give full firm name and address of bidder. Failure to manually sign bid may disqualify it. Person signing bid should show TITLE or AUTHORITY TO BIND THE CPMPANY/CONTTRACTOR IN AN AGREEMENT. Firm name and authorized signature must appear on cover page of bid. See Exhibit “A” for draft Contract.

Late Bids

LATE bids will be UNOPENED and disposed of in a proper manner.

Rights of City

The City reserves the right to accept or reject all or any part of any bid, waive informalities and award the Contract to the lowest responsive and responsible bidder to best serve the interest of the City.

Basis for Award

Contract award will be made to the lowest responsive and responsible bidder based upon the lump sum and meeting the specifications. (For clarification purposes, included in the lump sum is the unit item pricing and extended unit price items if applicable.)

Negotiation with the Lowest Responsible Bidder

Unless all bids are cancelled or rejected, the City reserves the right to negotiate with the lowest responsive, responsible bidder to obtain a Contract price within the funds available whenever such low bid exceeds the available funds. Negotiations with the low bidder may include both modifications of the low price and the specifications/scope of work to be performed.

BID

Quantity	Item	Per Item	Total
16	Thermal Imaging Camera (TIC), warranty and training as described in the specifications.		
TOTAL BID			\$

PURCHASE AND SALE CONTRACT

FOR

THERMAL IMAGING CAMERAS, WARRANTY AND TRAINING

THIS PURCHASE AND SALE CONTRACT is entered into this _____ day of _____, 2018, by and between the City of North Little Rock, Arkansas (hereinafter "City"), a municipal corporation, and _____ (hereinafter "Company"), a domestic/foreign corporation or a sole proprietor, authorized to do business in the State of Arkansas.

RECITALS:

WHEREAS, Company is in the business of selling and servicing thermal imaging cameras and providing training, where applicable;

WHEREAS, City desires to purchase such equipment, installation of equipment and training, if applicable.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted by and between the parties to this Contract, under seal, as follows:

1. **Sale and Installation of Equipment.** Company hereby sells to City and City hereby purchases from Company the equipment described in the bid hereto and incorporated herein (hereinafter "Equipment"). Additionally, included in the purchase price, Company shall install the equipment and provide in-person led training sessions, if applicable. If provision of training is applicable, Company shall provide a reasonable number of training sessions on the operation of the equipment to ensure proficiency. "Reasonable" will be determined by the City.

2. **Contract Documents.** The Contract Documents shall consist of:
 - (a) The fully executed Contract;
 - (b) The entire Bid Documents dated: _____, 2018;
 - (c) The Contractor's Bid dated _____, 2018 all of which documents are incorporated herein.

3. **Purchase Price.** City shall pay to Company for the Equipment and for all obligations specified herein, as full and complete consideration therefore, the sum of _____ (\$_____) (hereinafter "Purchase Price")

4. **Payment.** Payment of the Purchase Price shall be made by City to Company in accordance with the following schedule:

A. _____ Percent (___%) of the Purchase Price within thirty (30) days after Delivery and Installation of the Equipment at City's place of business;

B. Remaining _____ Percent (___%) of the Purchase Price within thirty (30) days after training for the City has been completed by Company, if applicable.

In the event that City does not accept the Equipment, Company shall refund all prior payments within fifteen (15) days of receipt of written notification from City that it does not accept the Equipment.

All invoices submitted to City by Company shall list the items of Equipment purchased thereunder in the same sequence used in City's Purchase Order for such Equipment. City's Purchase Order Number shall appear on all invoices submitted to City hereunder.

5. **Non-Appropriation of Funds or Change in Law.** Notwithstanding any other provision of this Contract, and subject to the limitations set forth below, the Owner shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

(A) Appropriation of funds sufficient to allow the Owner to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under Contract; or

(B) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed or if any funds or revenues needed by the Owner to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Owner in its sole discretion; or

(C) If the Owner's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

(D) If the Owner's duties, programs or responsibilities are modified or materially altered; or

(E) If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely

affects the Owner's ability to fulfill any of its obligations under this Contract. The Owner shall provide Contractor with written notice of termination pursuant to this section.

As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of availability of sufficient funds for the performance of fiscal obligations arising under this Contract.

6. **Warranties and Representations.**

(a) The Company represents and warrants that Company has full power and authority to enter into this Contract and to carry out the Project contemplated by this Contract.

(b) The Company represents and warrants that Company will comply with all laws applicable to the performance of the Project under this Contract.

(c) The Company represents and warrants that Company's execution, delivery, and performance of this Contract will not constitute: (i) a violation of any judgment, order, or decree binding on Company; (ii) a breach under any contract by which Company is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.

(d) The Company represents and warrants that the Project will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Project is performed, and that all work on the Project meet the specifications set forth herein. Contractor further represents and warrants that Contractor and all personnel used to perform the Project, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Project.

(e) The Contractor represents and warrants that Contractor has, and shall maintain in effect for the duration of this Contract, all licenses, permits qualifications, and approvals of whatsoever nature which are legally required for Contractor to complete the Project. Contractor shall also ensure that all permitted subcontractors are similarly licensed and qualified.

7. **Site Evaluation, if Applicable.** At no cost or expense to City, Company shall evaluate the proposed site for the Equipment, and furnish City with site preparation studies, which shall include, but not be limited to, operational considerations with respect to the Equipment. Company's personnel shall coordinate their activities with and avoid interference with City's employees and/or contractors working to prepare the Installation Site (as hereinafter defined) for receipt of the Equipment. If applicable, a pre-installation instruction manual will be provided to City by Company.

8. **Site Preparation, if Applicable.** City, based on the site evaluation and site preparation studies provided by Company, shall be responsible for preparing a site suitable for the installation and operation of the Equipment (hereinafter "Installation Site").

9. **Delivery.** Delivery of the Equipment to City by Company, at Company's sole cost and expense, shall be made within _____ (#) weeks after receipt of a purchase order (hereinafter "Delivery Date"). The Equipment shall be packaged appropriately and all cartons shall be clearly stamped with City's Purchase Order Number. City must be able to identify easily all items of the Equipment contained within each carton, if applicable. Delivery of the Equipment in an undamaged condition to City's Installation Site shall constitute "Delivery" to City. Risk of loss during transit shall remain with Company.

All items "not found" shall be noted and the anticipated availability of the items shall be indicated clearly on the packing list. No substitutions shall be made without prior authorization by City's Purchasing.

10. **Installation.** Company shall install the Equipment at the Installation Site. Company shall be responsible for all costs associated with delivery and installation of the Equipment.

Company shall comply with all permits and licenses required by Federal, State, or local authorities in connection with the delivery and installation of the Equipment.

11. **Testing and Certification.** Upon completion of installation of the Equipment, Company shall perform all prescribed tests to determine that the Equipment is operating in conformance with Company's published performance specifications for the Equipment and any other requirements agreed to by the parties. (hereinafter "Specifications"). When Company and City are satisfied that the Equipment is operating in conformance with the Specifications, acceptance will be approved.

12. **Acceptance.** "Acceptance" of the Equipment shall be deemed to occur on the date when, in the reasonable opinion of City, the Equipment conforms to the Specifications.

13. **Training.** If applicable, prior to Acceptance of the Equipment or at such other time as the parties may mutually agree, Company shall provide, at no cost or expense to City, training in operation of the Equipment for employees designated by City, as defined in paragraph 1 herein.

14. **Equipment Warranty.** A warranty shall be provided to City by Company as outlined in the Invitation For Bid.

15. **Recall of Equipment.** If recall or modification of any of the Equipment City purchased is voluntarily recommended or required by the Company, Company shall, at its sole cost and expense, immediately notify City in writing of such recall or modification; remove, package, and ship to Company's plant the affected Equipment; and at no additional charge to City replace such Equipment with Company Equipment which have been evaluated and accepted by City as substantially comparable.

16. **Indemnification.**

A. Company shall indemnify and hold City its trustees, officers, employees, and agents harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against City that the Equipment has caused damage to property or bodily injury (including death); or (ii) the acts or omissions of the Company, its agents or employees in connection with this Agreement; or (iii) any defects in any Equipment supplied by the Company; or (iv) any breach or default in the performance of the obligations of Company hereunder including any breach of warranty. Company's indemnification obligations hereunder shall not apply to the extent that any claim is caused by the gross negligence or misconduct of City.

B. The invalidity, in whole or in part, of any of the foregoing paragraph will not affect the remainder of such paragraph.

17. **Default by Company.** Upon the occurrence of any of the following events, and except as is otherwise provided for in this Agreement, Company shall be deemed to be in default under this Contract if:

A. The scheduled performance dates, including the Delivery Date and Installation Schedule, shall be exceeded by more than thirty (30) days; or

B. Company fails or defaults in the performance of any material obligation or covenant under this Contract and does not correct or substantially cure such failure, default, or breach within thirty (30) days from and after Company's receipt of written notice from City of such default or breach; or

C. Any material representation or warranty made by Company hereunder is breached and remains uncured from and after thirty (30) days following Company's receipt of written notice from City of such breach.

If any event of default occurs and is not cured within any applicable period specified above, City, at its sole option, may employ any remedy then available to it, whether at law or in equity, including, but not limited to, the following:

1. Proceed by appropriate court action to enforce performance by Company of the applicable covenants and obligations of this Contract and to recover damages for the breach thereof, and/or to enforce the indemnification set forth in Paragraph 15 hereof; or
2. Terminate this Contract as to all or any part as City in its sole discretion may

determine; or

3. Pursue any other rights or remedies available to City under the laws of the State of Arkansas.

18. **Default by City.** Default by City in payment (except in the case of a bona fide dispute) or performance of any material duty or obligation under this Contract, shall, at the sole option of Company, constitute a default of this Contract, if the default is not cured within thirty (30) days from and after City's receipt of written notice from Company of the default. In such an event, Company, at its sole option, may employ any remedy then available to it, whether at law or in equity, including, but not limited, to the following:

A. Withhold performance or further performance hereunder until all such defaults have been cured, provided, however, that Company shall continue to perform hereunder in the event of a bona fide payment dispute, which has been communicated to Company; or

B. Pursue any other rights and remedies available to Company under the laws of the State of Arkansas.

19. **General.**

A. **Compliance with Laws.** Company shall perform this Contract in compliance with all applicable Federal, State, and local laws, rules, regulations, and ordinances, and represents that it shall have obtained all licenses and permits required by law to engage in the activities necessary to perform its obligations under this Contract.

B. **Notices.** All notices and other communications pertaining to this Contract shall be in writing and shall be deemed duly to have been given if personally delivered to the other party or if sent by the United State Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel or other nationally recognized overnight carrier. All notices or communication by City and Company pertaining to this Contract shall be addressed as follows:

If to City: _____

Attention: _____

[ADDRESS]

North Little Rock, AR 72114

With a copy to: North Little Rock City Attorney
Attention: City Attorney
116 Main Street
North Little Rock, AR 72114

If to Company: _____
Attention: _____

Either party may change its notification address by giving written notice to that effect to the other party in the manner provided herein.

20. **MISCELLANEOUS TERMS.**

A. Choice of Law and Venue. The parties hereto agree that this Contract shall be construed under Arkansas law, excluding its conflict of laws rules. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Contract shall be vested in either the U.S. District Court for the Eastern District of Arkansas or the Circuit Court of Pulaski County, Arkansas.

B. Non-Waiver. No delay or failure to exercise any right under this Contract shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be a waiver of such right on any other occasion. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

C. No Assignment. The Services to be rendered pursuant to this Contract are personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Contract without the prior written consent of Owner.

D. Merger. This Contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement, related to the services provided hereunder. All prior agreements, negotiations, dealings and understandings, whether written or oral, regarding the subject matter hereof, are superseded by and merged into this Contract.

E. No Presumption Against Drafter. Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

F. Modification. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Contract.

G. Authority. The persons executing this document each represent that he or she is duly authorized by his or her respective organization to bind the same to the terms contained herein.

H. Counterpart Execution. This Contract may be executed in two or more counterparts, each of which is deemed as original but all constitute one and the same instrument.

I. Filing. This document shall be filed in the official records of the City Clerk of the City of North Little Rock, Arkansas. Either party may additionally file this document in any other governmental office deemed appropriate; however, the parties waive all claims and defenses in law or equity based upon such additional filing.

J. Survival. The representations and warranties contained in Paragraphs 5 shall survive termination of this Contract.

K. Counterparts. Provided that all parties hereto execute a copy of this Contract, this Contract may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Contract may be delivered by facsimile or electronic transmission. This Contract shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.

L. Specification Conflicts. In the event of any ambiguity or conflict among the provisions of this Contract and Attachments hereto, requests for proposals issued by the City relating to the purchase of the Equipment, Purchase Orders issued by the City, the Company's proposals, quotes or order acknowledgments, manufacturers' product specifications, and other documents relating to the Company's sale of the Equipment to the City, the Company shall be required to comply with the most stringent requirement which provides the highest quality and greatest benefit to the City, unless otherwise specifically directed by the City in writing. The terms and conditions of this Contract are intended to govern the purchase and sale of the Equipment, including Training, if applicable, and any conflicting terms and conditions, or additional terms and conditions, in any vendor prepared document shall not apply.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, _____ and _____ have signed this Contract as of the day and year first written above, and the person executing this Contract on behalf of each party represents and warrants that this Contract has been authorized by all necessary parties, is validly executed by an authorized officer or agent, and is binding upon and enforceable against the company in accordance with its terms.

City of North Little Rock

Company

By: _____
Joe A. Smith, Mayor

By: _____

Name/Title

ATTEST:

Diane Whitbey, City Clerk

Contract reviewed and approved as to

CITY OF NORTH LITTLE ROCK

Amy Beckman Fields
North Little Rock City Attorney

BY: _____
Deputy City Attorney Date