City of Bradenton, Florida

City Council Agenda Memorandum

Agenda Item:

Refuse and Recycling Carts, Schaefer Systems International Inc.
(Bid piggyback acceptance notification)

Agenda Date:

JANUARY 25, 2017

Originated by:

Dave Beauchamp, Public Works and Utilities

Agenda Placement:

Consent Agenda

Explanation

Schaefer Systems International, Inc. agrees to enter into an agreement with the City of Bradenton, Florida to provide the City of Bradenton with 95 Gallon Refuse and Recycling Carts for the City of Bradenton Solid Waste Division. This agreement is in accordance with the specifications per The City of Fort Lauderdale, Bid Number 862-11702 for a base contract period dated from the authorized signing of this document by Wayne H. Poston, Mayor through the remainder of the contract ending on May 18, 2019. There are two additional one year renewals remaining for this contract solicitation. Schaefer Systems International, Inc. will provide the City of Bradenton with the same pricing as set forth in the City of Fort Lauderdale's Bid # 862-11702 documents.

Financial Impact

N/A

Requested action to be taken by Council

Approval authorizing Mayor to execute the agreement

Staff Recommendation

Recommend approval of the requested action.

Attachments

Schaefer Systems International, Inc. Agreement

Agreement # PB-17-06RW

CITY OF BRADENTON
BRADENTON, FLORIDA

Schaefer Systems International, Inc. agrees to enter into an agreement with the City of Bradenton, Florida to provide the City of Bradenton with 95 Gallon Refuse and Recycling Carts for the City of Bradenton Solid Waste Division. This agreement is in accordance with the specifications per The City of Fort Lauderdale, Bid Number 862-11702 for a base contract period dated from the authorized signing of this document by Wayne H. Poston, Mayor through the remainder of the contract ending on May 18, 2019. There are two additional one year renewals remaining for this contract solicitation. Schaefer Systems International, Inc. will provide the City of Bradenton with the same pricing as set forth in the City of Fort Lauderdale's Bid # 862-11702 documents.

Authorized by Chapter 2004-466, Laws of Florida, as amended by Chapter 2012-239, Laws of Florida, is legislation allowing a public body to make purchases of goods and services from contracts procured by any other federal, state, or local government entity or any tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code which is organized exclusively to assist any governmental entity in serving and representing citizens under the terms of a bid submitted to such entity or organization, provided that such contract is procured in compliance with the procuring entity's or organization's laws, bylaws, rules, regulations, or ordinances, or policies regarding competitive solicitation, which must provide for full and open competition.

Maria Frizzell

Maria Frizzell, CEO
Waste Technology Division,
Schaefer Systems International, Inc.

January 05, 2017
Date

Jim McLellan, P.E.
Director of Public Works and Utilities

1-17-17
Date

Ralph G. Ward, CPSM
Purchasing Manager

1-5-17
Date

Wayne H. Poston
Mayor

Date

ralph.ward@cityofbradenton.com

SSI SCHÄFER

January 5, 2017

City of Bradenton
1520 6th Street West
Bradenton, FL 34205

Schaefer Systems International, Inc. is pleased to present the City of Bradenton with a Piggy Back offer from the contract awarded to Schaefer by the City of Fort Lauderdale on September 7, 2016. Contract Number: IFB 862-11702.

The City of Bradenton requires approximately 2000 95 gallon carts to be purchased in truckload quantities. Colors and hot stamping to be repeated per previous orders and approved by City staff prior to manufacturing.

Contract Details:

- USD95M – unit price $49.47
- Unit price includes:
  - RFID tag
  - Freight charges

Thank you for the opportunity to bid your current cart requirement. Please feel free to call with any questions you might have.

Sincerely,

Maria Frizzell

Maria Frizzell
CEO
Waste Technology Division

Cc: Stephen Redfern, Wendy Jackson, Travis McAlister

maria.frizzell@ssi-schaefer.com
10021 Westlake Drive, Charlotte, North Carolina 28273
704-944-4500

AGREEMENT FOR
REFUSE AND RECYCLING CARTS, SEMI-AUTOMATIC

THIS AGREEMENT, made this 7th day of SEPTEMBER 2016, is by and between the City of Fort Lauderdale, a Florida municipality, ("City"), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301, and **Schaefer Systems International, Inc.**, a North Carolina corporation authorized to transact business in the State of Florida, ("Contractor") whose address is 1021 Westlake Drive, Charlotte, North Carolina 28273, Telephone: 704-944-4500, Email: travis.mcalister@ssi-schaefer.com.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

WITNESSETH:

I. DOCUMENTS

The following documents (collectively "Contract Documents") are hereby incorporated into and made part of this Agreement (Form P-0001):

(1) Invitation to Bid No. **862-11702, Refuse and Recycling Carts, Semi-Automatic,** including any and all addenda, prepared by the City of Fort Lauderdale, ("ITB" or "Exhibit A").

(2) The Contractor's response to the ITB, dated **June 14, 2016**, ("Exhibit B").

All Contract Documents may also be collectively referred to as the "Documents." In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

A. First, specific direction from the City Manager (or designee)
B. Second, this Agreement (Form P-0001) dated SEPTEMBER 7, 2016, and any attachments.
C. Third, Exhibit A
D. Fourth, Exhibit B

II. SCOPE

The Contractor shall perform the work under the general direction of the City as set forth in the Contract Documents.

Unless otherwise specified herein, the Contractor shall perform all work identified in this Agreement. The parties agree that the scope of services is a description of Contractor's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the work and the conditions under which the Work is to be performed.

III. TERM OF AGREEMENT

The initial contract period shall commence on September 7, 2016 and shall end on September 6, 2019. The City reserves the right to extend the contract for two additional one-year terms, providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

IV. COMPENSATION

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in Exhibit B. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided in the solicitation, no amount shall be paid to Contractor to reimburse Contractor's expenses.

V. METHOD OF BILLING AND PAYMENT

Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

VI. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance certificate. Any costs for adding the City as "additional insured" shall be at the Contractor's expense.

The City of Fort Lauderdale shall be given notice 10 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The Contractor's insurance must be provided by an A.M. Best's "A-"rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers' Compensation and Employers' Liability Insurance

Limits: Workers' Compensation – Per Chapter 440, Florida Statutes
Employers' Liability - $500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage $1,000,000.

This coverage must include, but not limited to:

a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
b. Coverage for Premises/Operations
c. Products/Completed Operations
d. Broad Form Contractual Liability
e. Independent Contractors

Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily injury	$250,000 each person, $500,000 each occurrence
Property damage	$100,000 each occurrence

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 North Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

G. <u>Environmental, Health and Safety</u>

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

H. Standard of Care

Contractor represents that he/she/it is qualified to perform the work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

I. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein.

J. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

K. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

L. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

M. Inspection and Non-Waiver

Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor 's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor 's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

O. <u>Conflicts</u>

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

P. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

Q. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

R. Compliance With Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

S. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

T. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of $1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of $1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of $1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

U. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

V. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

W. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

X. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Y. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

Z. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion,

strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

AA. <u>Scrutinized Companies</u>

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed, Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2016), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2016), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2016), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2016), as may be amended or revised.

BB. <u>Public Records</u>

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO

THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-6111, MDOYLE@FORTLAUDERDALE.GOV, ADDRESS: 101 NE 3RD AVENUE, SUITE 1400, FORT LAUDERDALE, FLORIDA 33301, ATTN: MELISSA DOYLE.

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this contract if the Contractor does not transfer the records to the City.

4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

ATTEST:

Jeffrey A. Modarelli, City Clerk

CITY OF FORT LAUDERDALE

By: _____
Lee R. Feldman, City Manager

FOR

Approved as to form:
Cynthia A. Everett, City Attorney

_____
Assistant City Attorney

ATTEST:

John R. Miller, Secretary

(CORPORATE SEAL)

SCHAEFER SYSTEMS INTERNATIONAL, INC.

By: _____
Maria Frizzell, CEO, Waste Technology Division

STATE OF North Carolina :
COUNTY OF Union :

The foregoing instrument was acknowledged before me this 12th day of September, 2016, by **Maria Frizzell as CEO, Waste Technology Division of Schaefer Systems International, Inc.**, a North Carolina corporation authorized to transact business in the State of Florida.

(SEAL)

_____
(Signature of Notary Public)
Notary Public, State of North Carolina

Frankie M Batts
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ OR Produced Identification _____
Type of Identification Produced _____

RFP: 862-11702
TITLE: Refuse and Recycling Carts, Semi-Automatic
DATE: 6/21/2016

VENDOR

Shaefer Systems International

ITEM No.	POSITION	Estimated Quantity		Price	Total
1	35 Gallon Recycling Cart - Pepsi Blue with in Mold Lid Label	300	X	$ 32.48	$ 9,744.00
2	64-65 Gallon Recycling Cart - Pepsi Blue with in Mold Lid Label	8160	X	$ 39.72	$ 324,115.20
3	95-96 Gallon Recycling Cart - Pepsi Blue with in Mold Lid Label	450	X	$ 49.47	$ 22,261.50
4	64-65 Gallon Garbage Cart - Black	13600	X	$ 38.75	$ 527,000.00
5	95-96 Gallon Garbage Cart - Gray	1050	X	$ 47.51	$ 49,885.50
6	95-96 Gallon Vented Yard Waste Cart - Green	8180	X	$ 48.07	$ 393,212.60
7	Lid With Markings Spare Repair Part for 95-96 Gallon Yard Waste	500	X	$ 9.60	$ 4,800.00
8	Lid With Markings Spare Repair Part for 35 Gallon Recycling	500	X	$ 8.80	$ 4,400.00
9	Lid With Markings Spare Repair Part for 64-65 Gallon Recycling	500	X	$ 8.80	$ 4,400.00
10	Lid With Markings Spare Repair Part for 95-96 Gallon Recycling	500	X	$ 9.60	$ 4,800.00
11	Lid With Markings Spare Repair Part for 64-65 Gallon Garbage	500	X	$ 8.80	$ 4,400.00
12	Lid With Markings Spare Repair Part for 95-96 Gallon Garbage	500	X	$ 9.60	$ 4,800.00
13	Lid Hinge Pin Spare Repair Part for 95-96 Gallon Yard Waste	500	X	$ 1.76	$ 880.00
14	Lid Hinge Pin Spare Repair Part for 35 Gallon Recycling	500	X	$ 1.76	$ 880.00
15	Lid Hinge Pin Spare Repair Part for 64-65 Gallon Recycling	500	X	$ 1.76	$ 880.00
16	Lid Hinge Pin Spare Repair Part for 95-96 Gallon Recycling	500	X	$ 1.76	$ 880.00
17	Lid Hinge Pin Spare Repair Part for 64-65 Gallon Garbage	500	X	$ 1.76	$ 880.00
18	Lid Hinge Pin Spare Repair Part for 95-96 Gallon Garbage	500	X	$ 1.76	$ 880.00
19	Axle Spare Repair Part for 95-96 Gallon Yard Waste	500	X	$ 4.80	$ 2,400.00
20	Axle Spare Repair Part for 35 Gallon Recycling	500	X	$ 3.20	$ 1,600.00
21	Axle Spare Repair Part for 64-65 Gallon Recycling	500	X	$ 4.60	$ 2,300.00
22	Axle Spare Repair Part for 95-96 Gallon Recycling	500	X	$ 4.80	$ 2,400.00
23	Axle Spare Repair Part for 64-65 Gallon Garbage	500	X	$ 4.60	$ 2,300.00
24	Axle Spare Repair Part for 95-96 Gallon Garbage	500	X	$ 4.80	$ 2,400.00
25	Axle Spacer Spare Repair Part 95-96 Gallon Yard Waste	500	X	$ -	
26	Axle Spacer Spare Repair Part 35 Gallon Recycling	500	X	$ 0.16	$ 80.00
27	Axle Spacer Spare Repair Part 64-65 Gallon Recycling	500	X	$ -	
28	Axle Spacer Spare Repair Part 95-96 Gallon Recycling	500	X	$ -	
29	Axle Spacer Spare Repair Part 64-65 Gallon Garbage	500	X	$ -	
30	Axle Spacer Spare Repair Part 95-96 Gallon Garbage	500	X	$ -	
31	Air Vent Spare Repair Part - Black, Green, Gray, Blue	500	X	$ -	
32	Wheel, Eight (8) Inch Spare Repair Part for 35 Gallon Recycling	500	X	$ 2.40	$ 1,200.00
33	Wheel, Ten (10) Inch Spare Repair Part for 64-65 Gallon Recycling	500	X	$ 3.20	$ 1,600.00
34	Wheel, Ten (10) Inch Spare Repair Part for 64-65 Gallon Garbage	500	X	$ 3.20	$ 1,600.00
35	Wheel, Twelve (12) Inch Spare Repair Part for 95-96 Gallon Yard Waste	500	X	$ 4.00	$ 2,000.00
36	Wheel, Twelve (12) Inch Spare Repair Part for 95-96 Gallon Recycling	500	X	$ 4.00	$ 2,000.00
37	Optional In-Mold Lid Labels-New 65/95 Gallon Carts	5300	X	$ -	
38	Optional Radio Frequency Identification (RFID) Tags	5300	X	$ -	
39	Optional Radio Frequency Identification (RFID) Ultra High Adhesive Tags	80000	X	$ 1.75	$ 140,000.00

TOTAL **$ 1,520,978.80**

NOTES:

1) Attachment on item 862-11702--01-01 (35-gal recycling cart-Pepsi blue) is supporting documents packet that includes all required information for the bid.

2) Integrated spacer on USD65B or USD95B built into wheel; Axle spacer section for 65 and 95 gallon cart intentionally left blank

3) Optional air vent spare repair part same as lid repair part for yard waste

4) In-mold Labels must be installed at the plant during manufacturing

5) All RFID tags provided will be ultra high adhesive