

BID PURCHASE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2018, by the **CITY OF LIVINGSTON**, a municipal corporation organized and existing under the laws of the State of Montana, 414 E. Callender Livingston Montana, 59047, hereinafter referred to as “City,” and _____, with a mailing address of _____, hereinafter referred to as (“Seller”).

In consideration of the mutual promises and agreements hereinafter contained, the parties agree as follows:

1. PROPERTY PURCHASED: Seller agrees to sell and City agrees to purchase the property requested and described in the City’s Bid Specifications, as modified by the parts of Seller’s response accepted by City, all of which is incorporated into this Purchase Agreement by this reference. By accepting this Purchase Agreement, Seller hereby agrees that the sale, use, or incorporation into manufactured products of all machines, software, hardware, materials and other devices furnished under this Purchase Agreement which are not of the Seller’s design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, or trademark. Seller shall hold the City harmless from any and all costs and expenses, including attorney fees, liability, and loss of any kind growing out of claims, suits, or actions alleging such infringement, and Seller agrees to defend such claims, suits, or actions.

The property being purchased (“Property”) consists of:

One (1) Used Roll-Off Truck for the Solid Waste Department

TOTAL PRICE: \$ _____

2. SPECIFICATIONS: The Seller agrees that all material and workmanship in and upon this Property complies with the City’s Bid Specifications as shown on the Seller’s Bid Form and the Seller’s response thereto as accepted by the City. Unless otherwise agreed to by the City, the City’s Bid Specifications as shown on the Seller’s Bid Form govern in the event of inconsistencies with the Seller’s response to the same.

3. PRICE: The City agrees to pay _____ (written out and in dollar amount Dollars (\$ _____) as the purchase price. All prices are less any applicable local, state or federal taxes that may be applied to the Property to be purchased. This price is firm and not subject to escalation unless agreed to in writing by the City.

4. DELIVERY AND PAYMENT: Time is of the essence in the performance of this Purchase Agreement. Seller assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other served associated with delivery of the Property.

Seller agrees to deliver the above-described Property to the City in a fully operational status and all accessories properly installed no later than _____. Delivery will occur at the City of Livingston’s Public Works Complex (330 Bennett, Livingston, MT 59047), or at a place otherwise selected by City. If delivery of the Property and/or performance of services required under this Purchase Agreement cannot be made, Seller shall promptly notify the City of the earliest possible

date for delivery or performance. Notwithstanding such notice, if Seller for any reason fails to deliver the Property or perform required services within the time specific or to the City's satisfaction, the City may terminate this Purchase Agreement or any part therefore without liability except or good or services previously provided and accepted. The City's receipt or acceptance of any part of a non-conforming delivery or service shall not constitute a waiver of any claim, right or remedy the City has under this Purchase Agreement or applicable law. Upon delivery and for a reasonable period thereafter, City has the right to inspect the Property to ensure that it meets Bid Specifications as modified by Seller's responses accepted by City. If the Property meets the modified Bid Specifications, City shall tender the purchase price stated above to Seller through the City's normal claim process. Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from the date of receipt of invoice or acceptance of goods and services by the City, whichever occurs last. Payment will be made to Seller at the address previously stated unless Seller provides a different address in writing. Invoices must be mailed to: Paige Fetterhoff, Finance Officer, 110 South B Street, Livingston, Montana 59047

If City staff finds that it does not meet the specifications, it will be taken by the dealer to their facility to correct the deficiencies. If the completed unit is not returned with all the deficiencies corrected within 7 days, the successful bidder will provide the City a replacement unit to use and operate until the original unit deficiencies are corrected and returned for use.

5. NONDISCRIMINATION: Seller will not discriminate in the performance of this Agreement on the basis of race, color, religion, creed, sex, age, marital status, national origin, or because of actual or perceived sexual orientation, gender identity or disability and shall ensure this provision applies to all subcontracts let by the Seller in fulfillment of this Purchase Agreement.

6. DEFAULT/ TERMINATION/ REMEDIES: In the event of Seller's breach of this Purchase Agreement, including if Seller fails to deliver the Property as set forth herein or fails to meet City's Bid Specifications, City may, at its option, take any or all of the following actions without prejudice to any other rights or remedies available to the City by law: (i) declare the Seller in default and immediately cancel and rescind this Purchase Agreement; (ii) require Seller to repair or replace any equipment or materials used in the Property, and upon Seller's failure or refusal to do so, repair or replace the same at Seller's expense; (iii) reject any material or equipment included in the Property containing defective or nonconforming equipment or material and return for credit or replacement at Seller's option; or (iv) cancel any outstanding deliveries and treat such breach by Seller as Seller's repudiation of this Purchase Agreement. Thereafter, City may procure substitute property to replace the Property described herein. In such event, Seller is liable to City for the difference between the price set forth herein and the price paid by City for the replacement property. Additionally, the City may pursue any other remedy it has at law or in equity.

In the event of the City's breach hereunder, Seller's exclusive remedy shall be Seller's recovery of the material or equipment or of the Purchase Price or portion of the Purchase Price payable for equipment and material delivered to the City prior to such breach.

7. CHANGE ORDERS: The City shall have the right to revoke, amend, or modify this Purchase Agreement or the equipment or material included in the Bid Specifications at any time. Seller's receipt of City's written change order without response received by the City within 10 (ten)

business days or Seller's shipment or other performance reflecting the change, whichever occurs first, shall be Seller's acceptance of the change without any price or other adjustment.

8. WARRANTY: THE SELLER SHALL WARRANTY THE PROPERTY FOR A MINIMUM OF ONE (1) YEAR AND SHALL ALSO ASSIGN TO THE CITY ALL WARRANTIES FOR ALL COMPONENT PARTS OF THE PROPERTY NOT WARRANTED BY SELLER. IN ADDITION, THE SELLER AGREES THE PROPERTY IS COVERED BY IMPLIED WARRANTIES FOR MERCHANTABILITY AND FITNESS FOR THE PARTICULAR PURPOSE FOR WHICH IT HAS BEEN PURCHASED. IN ADDITION TO ANY OTHER EXPRESSED OR IMPLIED WARRANTIES AND UNLESS OTHERWISE AGREED IN WRITING, SELLER ALSO WARRANTS THAT ALL EQUIPMENT DELIVERED HEREUNDER WILL BE NEW, SUITABLE FOR USE AS DESCRIBED, OF THE GRADE AND QUALITY SPECIFIED, FREE FROM ALL DEFECTS IN DESIGN, MATERIAL AND WORKMANSHIP; IN CONFORMITY WITH ALL SPECIFICATIONS FURNISHED; IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AND FREE FROM ANY LIENS AND ENCUMBRANCES. THESE WARRANTIES SHALL NOT BE DEEMED TO EXCLUDE SELLER'S STANDARD WARRANTIES OR OTHER RIGHTS OR WARRANTIES WHICH THE CITY MAY HAVE OR OBTAIN.

9. INSURANCE/INDEMNIFICATION: The Seller shall insure the One (1) Used Vacuum Sewer Cleaning Truck for the Sewer Maintenance Department for all damages during the time the is delivered from the factory to the Seller's place of business and delivered and accepted by the City of Livingston. Seller shall defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Seller, it's agents or employees during the performance of this Purchase Agreement.

10. ASSIGNMENT: Seller may not delegate, subcontract, or assign any duties and services or assign any rights or claims under this Purchase Agreement without the express written consent of City.

11. ENTIRE AGREEMENT: This Agreement, including its appendices, if any, embodies the entire understanding between the parties relating to the subject matter contained herein. No agent or representative of either party has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications or amendments of this Agreement, including the appendices, must be in writing and signed by an authorized representative of each of the parties hereto.

12. APPLICABILITY: This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana, venue shall be in the Sixth Judicial District, Park County, Montana and the same is binding upon the parties, their heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF LIVINGSTON

SELLER (Type Name Above)

By _____
City Manager

By _____

Print Name: _____

Print Title: _____

APPROVED AS TO FORM:

By _____
City Attorney

NON-DISCRIMINATION AFFIRMATION FORM

_____ [name of entity submitting] hereby affirms it will not discriminate on the basis of race, color, religion, creed, sex, age, marital status, national origin, or because of actual or perceived sexual orientation, gender identity or disability in the performance of work performed for the city of Livingston, if a contract is awarded to it, and also recognizes the eventual contract, if awarded, will contain a provision prohibiting discrimination as described above and that this prohibition shall apply to the hiring and treatment of the _____ [name of entity submitting] employees and to all subcontracts it enters into in performance of the agreement with the city of Livingston.

Signature of Bidder: _____
Person authorized to sign on behalf of the bidder