



HISTORIC
FRANKLIN
TENNESSEE

ITEM #13
BOMA
05/24/2011

MEMORANDUM

April 29, 2011

TO: Board of Mayor and Alderman

FROM: Eric S. Stuckey, City Administrator *Eric*
Russell Truell, Assistant City Administrator
Vernon Gerth, Assistant City Administrator
Lisa R. Clayton, Parks Director
Brian Wilcox, Purchasing Manager

SUBJECT: Consideration of purchase award to Utility Fleet Sales, LTD of Bryan, TX in the total of \$59,900.00 for a used 2003 International Forestry Bucket Truck for the Parks Department. (lease of new truck budgeted in 110-89520-44700 for fiscal year 2011).

Purpose

The purpose of this procurement is to purchase a used 2003 International Forestry Bucket Truck for the Parks Department to assist in the increase of tree work currently being conducted under the direction of the City Arborist and assist the Street Department when necessary with tree work in City rights-of-way. Other uses with the Parks Department vary on the maintenance of all park lighting, fencing, foul pole safety netting, foul pole signage, roofing projects, facility painting projects and multiple repairs.

Background

Tennessee law allows local governments to purchase used equipment so long as the pricing is advertised and the purchase price is not more than five percent (5%) higher than the advertised price. The vendor has offered payment terms of fifty percent (50%) upon the City placing the order and fifty percent (50%) upon delivery (with a provision that if the City rejects the delivery we will agree to pay a transport fee of \$3,429). The unit will remain for sale and may be sold to another buyer at any time until such time as final approval from the City may be provided. A full set of purchase documents is attached from the vendor.

Financial Impact

After extensive research comparing forestry bucket trucks new versus used, the vendor was identified by the City Parks Department and Fleet Maintenance Division because of the type of used trucks and demonstrator models refurbished by the company. The Fleet Maintenance Division and the City Arborist identified the lowest net price that meets or exceeds the City's needs. The Parks Department budgeted \$23,000 to purchase through a lease/purchase program originally for the next five years yet the opportunity to purchase used will meet the intention and save the City approximately \$80,000. The total value of the purchase would be \$59,900.

Options

The City reserves the right not to accept the quote and either prepare bid documents for a new truck or search for a different used truck.

Recommendation

Staff recommends that the City accept the quote from Utility Fleet Sales of Bryan Texas in the total amount of \$59,900 for the 2003 International bucket truck. Purchasing Manager Brian Wilcox and Parks Director Lisa Clayton are of the opinion that the quote for the used vehicle was chosen after careful consideration by multiple departments and that the staff recommendation appears to be made in a fair and impartial manner based on the research conducted.

COF# 2011-0070

UTILITY FLEET SALES
2801 N. Earl Rudder Fwy
Bryan, TX 77803



PHONE (979) 778-0700
FAX (979) 778-5381
www.BucketTrucks.com

UTILITY FLEET BUYER'S ORDER

Buyer Information	
Company: City of Franklin Address: 109 3rd Ave South Franklin, TN 37064	County: Williamson D.O.B.: DL #: SS/Tax I.D.:
Contact: David Barker Phone: 615-791-3217 Fax: Alt. Phone: 615-791-3252 Email:	

Order #:	CF11020
Date:	4/18/2011
P.O. #:	
Terms:	CB0
Rep:	Duane Edington

STOCK #	YEAR	MAKE	MODEL	VIN
11020	2003	International	4200	1HTMPA4P43M593944
UNIT/BODY MAKE	UNIT/BODY MODEL	UNIT/BODY SERIAL #		
Altec	LRV-55	0103CV1808		

License: N/A Odometer Reading: 51,379 ___NEW ___X_USED

Chassis Specs:
30 Day/3,000 Mile Warranty
Free Transport to Franklin, TN
50% due at order, remaining funds to be wired immediately upon delivery.
Should truck be rejected by recipient, transport fee of \$2.25 per mile for round trip will be deducted from refund, 1,524 miles @ \$2.25 = \$3,429

Sales Price:	\$59,900.00
Net Trade Allowance:	\$0.00
Customer Cash/Factory Rebate:	\$0.00
Subtotal:	\$59,900.00
Sales Tax:	\$0.00
Title:	
Weight Slip/Inspection:	
License Fee:	
Doc Fee:	
Inventory Tax:	\$0.00
Diesel Tax:	\$0.00
Extended Warranty:	\$0.00
Other:	
Subtotal:	\$59,900.00
Down Payment:	
Balance Due:	\$59,900.00

Trade Vehicle Information	
Vehicle:	Allowance:
VIN:	Payoff:
Odometer:	Net Trade: \$0.00
Good Until:	
Lien holder:	
SHIP TO ADDRESS	Same As Above

PLEASE REMIT PAYMENT TO UTILITY FLEET SALES

This Section Not Applicable to New Equipment

For "AS-IS" Sale Only: I UNDERSTAND THAT THIS VEHICLE (CHASSIS AND EQUIPMENT) IS BEING SOLD "AS IS" WITH ALL FAULTS AND IS NOT COVERED BY ANY DEALER WARRANTY. I UNDERSTAND THAT THE DEALER IS NOT REQUIRED TO MAKE ANY REPAIRS AFTER I BUY THIS VEHICLE. I WILL HAVE TO PAY FOR ANY REPAIRS THIS VEHICLE WILL NEED.

Buyer Signature	Buyer Printed Name	Date
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*Dealer DOES NOT, expressly or implicitly, certify manufacturer's specifications of any upfitted equipment. Refer to OEM equipment ratings.

DEALER MAY RECEIVE A FEE, COMMISSION, OR OTHER COMPENSATION FOR PROVIDING, PROCURING, OR ARRANGING FINANCING FOR THE RETAIL PURCHASE OR LEASE OF A MOTOR VEHICLE, FOR WHICH THE CUSTOMER MAY BE RESPONSIBLE.

ALL PRIOR ORAL STATEMENTS, NEGOTIATIONS, COMMUNICATIONS, OR REPRESENTATIONS ABOUT THE PRODUCTS SOLD HEREUNDER ARE SUPERSEDED BY THIS DOCUMENT, AND, IF NOT EXPRESSLY STATED HEREIN, ARE NOT BINDING. THIS CONTRACT IS SUBJECT ONLY TO THE LAWS OF THE STATE OF TEXAS.

By signing below, you acknowledge that you have read all pages of this contract. You also acknowledge: (1) Receipt of a true and completely filled in copy of all pages of this contract at the time you sign it and (2) Receipt of a copy of the arbitration agreement pertaining to this contract, if Arbitration is agreed upon. (3) Purchaser certifies he/she is of legal age to purchase a motor vehicle and has a valid license to operate the vehicle sold hereunder. (4) Purchaser is aware that contract is executed and agreed to in Bryan, TX (Brazos County) and is subject to the Laws of the State of Texas.

Buyer Signature	Buyer Printed Name	Date	Dealership Representative	Date
	Brian Wilcox	4/18/2011	Duane Edington	4/18/2011

BWW
BWW

2801 N Earl Rudder Fwy, Bryan, TX 77803 • www.CommercialTruckGroup.com • PHONE 866-361-3721 • FAX 979-778-5381

It is further understood and agreed that the purchase or order on page one (pg 1) is subject to the following terms and conditions:

~~1. If the used motor vehicle/equipment (hereinafter the "Trade-in") which is being traded-in as part of this consideration for the motor vehicle/equipment purchased or ordered hereunder (hereinafter the "Vehicle/Equipment") will not be delivered to Dealer until delivery to Buyer of the Vehicle/Equipment, the Trade-in may be reappraised by the Dealer at that time. The reappraised value shall determine the amount of the Trade-in allowance. The Buyer will reasonably maintain the Trade-in such that the difference between the originally estimated Trade-in allowance and the reappraised value is minimized. The Trade-in must meet all applicable D.O.T. regulations at the time it is delivered to the Dealer. Buyer Initials: NA~~

BWW

~~2. Buyer agrees to deliver to Dealer satisfactory evidence of title to the Trade-in at the time of delivery of the Trade-in, which shall constitute part of the consideration for the Vehicle/Equipment. Buyer warrants that he/she has good and marketable title to the Trade-in and that it is free and clear of all liens and encumbrances, and further, that the title is not branded, and is free and clear of all indicators that the Trade-in was a salvage or flood damaged vehicle, that it was reconstructed or subject to any other condition that would adversely affect the value of such vehicle, except as otherwise disclosed to Dealer. Buyer Initials: NA~~

BWW

~~3. Unless this Order has been cancelled by Buyer in accordance with the terms of this Order, Dealer shall have the right, upon failure or refusal of Buyer to accept delivery of the Vehicle/Equipment or to comply with any of the terms of this Order, to retain as liquidated damages any cash deposit or Trade-in, if any, tendered by Buyer. Dealer may sell the Trade-in. The liquidated damages shall be applied to any expenses and losses Dealer may have suffered as a result of Buyer's failure or refusal to complete the purchase. Buyer Initials: NA~~

BWW

4. Dealer shall not be liable for any delay or failure to deliver the Vehicle/Equipment if such delay or failure is due, in whole or in part, to circumstances or cause beyond Dealer's control, or is not caused by the negligence of Dealer. Buyer Initials: _____

5. Unless this Order expressly provides otherwise, the Vehicle/Equipment's purchase price does not include any taxes imposed by any governmental authority with respect to such Vehicle/Equipment prior to or at time of delivery of such Vehicle/Equipment to Buyer. Buyer assumes and agrees to pay any and all such taxes, and any and all other taxes, except income taxes, imposed on or incidental to the transaction covered by this Order, regardless of who may have the primary tax liability. Buyer Initials: _____

6. Any motor vehicle/equipment sold to Buyer by Dealer under this Order is sold WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE as to its condition or the condition of any part thereof except as may be specifically provided in a separate writing furnished to Buyer by Dealer. TO THE EXTENT ALLOWED BY LAW, BUYER SHALL NOT BE ENTITLED TO RECOVER FROM THE DEALER ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, LOSS OF LIFE, BODILY INJURY, OR ANY OTHER INCIDENTAL DAMAGES. The Dealer neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of such vehicle/equipment. NO LIABILITY INSURANCE IS INCLUDED IN THIS CONTRACT. Buyer Initials: _____

7. Dealer hereby assigns to Buyer, to the extent assignable by Dealer, without consent or approval and without cost to Dealer any manufacturer's standard warranty extended to Dealer by the manufacturer. Buyer Initials: _____

8. Dealer DOES NOT, expressly or implicitly, certify the safety/insulation rating of any part of the Vehicle/Equipment, including, but not limited to the chassis, aerial device, digger derrick, pressure digger or crane. Buyer should contact the original manufacturer of the Vehicle/Equipment to seek any necessary safety/insulation certification. Buyer Initials: _____

9. The Buyer recognizes that insulated aerial devices are NOT PRIMARY INSULATION SOURCES, and are intended to be secondary insulation sources only. Buyer Initials: _____

10. The Buyer will provide to Equipment Operators all necessary training and safety equipment necessary to operate the Vehicle/Equipment in accordance with all international, national and state regulations applicable. Buyer Initials: _____

X

Buyer Signature

Buyer Printed Name

Date

Addendum to Utility Fleet Buyer's Order COF Contract No. 2011-0070

This addendum shall modify and supersede the attached document Utility Fleet Buyer's Order (the "Agreement") and entered into on the ___ day of _____, 2011, by the City of Franklin, Tennessee and Utility Fleet Sales, Ltd. ("Vendor"). The Agreement together with this Addendum and the attached document(s) constitute the entire agreement ("Contract"). Acceptance of payment as stated in the Agreement constitutes Vendor's acceptance of all terms and conditions stated herein.

Standard Terms and Conditions

1. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
2. Confidentiality and Proprietary rights. Vendor waives any right to confidentiality of any document, e-mail or file it fails to clearly mark on each page (or section as the case may be) as confidential or proprietary. Proprietary rights do not extend to the data created by the City's users of the System; all rights to that data (including derivative or hidden data such as metadata) shall vest solely in City at the moment of creation and City shall retain exclusive rights, title, and ownership of all data and images created therefrom at the moment of creation and utilization, through and including image creation. City may be required to disclose documents under state or federal law. City shall notify Vendor if a request for documents has been made and shall give Vendor a reasonable opportunity under the circumstances to respond to the request by redacting proprietary or other confidential information. In exchange, Vendor agrees to indemnify, defend, and hold harmless City for any claims by third parties relating thereto or arising out of (i) the City's failure to disclose such documents or information required to be disclosed by law, or (ii) the City's release of documents as a result of City's reliance upon Vendor's representation that materials supplied by Vendor (in full or redacted form) do not contain trade secrets or proprietary information, provided that the City impleads Vendor and Vendor assumes control over that claim.
3. Warranties/Limitation of Liability/Waiver. The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by Vendor to limit its liability shall be void and unenforceable.
4. Arbitration/Mediation. No arbitration shall be required as a condition precedent to filing any legal claim arising out of or relating to the Contract. No arbitration or mediation shall be binding.
5. No Taxes, No Interest Payments. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and shall assume all liability for such taxes, if any, that should be incurred. The City does not agree to pay any interest for late payments, having agreed to pay in a timely manner.
6. Notices. Any notice provided pursuant to the Contract, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by

Addendum to Utility Fleet Buyer's Order COF Contract No. 2011-0070

next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which the Agreement or this Addendum may accompany, or such other address as either party may in the future specify in writing to the other):

In the case of the City:

City of Franklin
Attn: David Barker
109 Third Ave. South
P.O. Box 305
Franklin, TN 37065-0305
E-mail: david.barker@franklintn.gov

In the case of Vendor:

Utility Fleet Sales, Ltd.
Duane Edington
2801 N. Earl Rudder Fwy
Bryan, TX 77803

7. Waiver. Neither party's failure or delay to exercise any of its rights or powers under the Contract will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.
8. Severability. If any term or provision of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract will not be affected.
9. Precedence. In the event of conflict between this Addendum and the provisions of the Agreement, or any other contract, agreement or other document to which the Agreement or this Addendum may accompany or incorporate by reference, the provisions of this Addendum will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Addendum.
10. Entire Agreement. The Contract between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Contract. The terms and conditions of this Addendum may not be changed except by an amendment expressly referencing this Addendum by section number and signed by an authorized representative of each party.
11. Additions/Modifications. If seeking any addition or modification to the Contract, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Contract, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Contract or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Contract; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

**Addendum to Utility Fleet Buyer's Order
COF Contract No. 2011-0070**

12. Applicable Law: Choice of Forum/Venue. The Contract constitutes the entire agreement and is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.
13. Breach. Upon deliberate breach of the Contract by either party, the non-breaching party shall be entitled to terminate the Contract without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.
14. Survival. This Addendum shall survive the completion of or any termination of the Contract, agreement or other document to which it may accompany or incorporate by reference.

City of Franklin, Tennessee

Utility Fleet Sales, Ltd.

By: _____
Ken Moore
Mayor

By: *Dwain Edgington*
Print Name: Dwain Edgington
Title: Sales Mgr.

Attest:

By: _____
Eric Stuckey
City Administrator

Approved as to Form By:

Shauna R. Billingsley
Shauna R. Billingsley
City Attorney



Utility Fleet
 2801 N. Earl Rudder Frwy
 Bryan, TX 77803
 Telephone: 979-778-0700
 Facsimile: 979-778-5381

Extended Warranty Form

Utility Fleet (UF) hereby assigns to Buyer a 30 calendar day 3,000 mile extended warranty on unit detailed below. Warranty coverage begins when unit leaves a UF facility.

Warranty will cover all major mechanical components of the vehicle chassis and aerial device (i.e., engine, transmission, rear end, hydraulic pumps, hydraulic cylinders, etc). **Warranty will not cover wear items or repairs determined to be necessary due to misuse or abuse (i.e., light bulbs, brakes, tires, clutch, etc.).**

Warranty administration will be handled by the UF corporate office in Bryan, TX. All repairs must be approved by UF and UF will arrange a location at which the repairs will be performed. If customer's billing address is within 100 mile radius of the UF corporate office in Bryan, TX, customer will be required to bring unit back to UF for any required warranty repair. **If UF is not called prior to a repair being made and does not issue a warranty claim number, UF will not reimburse customer or customer's service center for repair.**

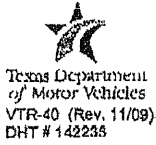
PLEASE RETURN SIGNED ORIGINAL WITH PAYMENT OR WARRANTY WILL BE VOID

 City of Franklin
 Buyer

X _____
 Authorized Signature

 04-18-11
 Date

Chassis: 2005 International 4200
 VIN #: 1H1TMAPFP43H593944
 Equipment: Altec LRV-55 s/n 0103CV1808



ODOMETER DISCLOSURE STATEMENT

Federal and State Law require that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment. This form may not be used in conjunction with title transfer documents, which comply with federal and state odometer disclosure requirements such as Texas Certificate of Titles Issued on or after April 29, 1990.

VEHICLE DESCRIPTION

Year 2005	Make International	Body Style LF	Model 4200
Vehicle Identification Number 1HTMPAFP43H593944			

I, _____, (Seller/Agent Name) certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle described above unless one of the following statements is checked:

Odometer Reading	51379	(No Tenths)
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- 1. The mileage stated is in excess of its mechanical limits.
 - 2. The odometer reading is not the actual mileage.
- WARNING - ODOMETER DISCREPANCY.**

4/18/2011 <small>Date of Statement</small>	 <small>Signature of Seller/Agent</small>	Duane Edington <small>Printed Name (Same as Signature)</small>
Utility Fleet		

If titled in a firm's name, print the firm's name on the line above.

2801 N. Earl Rudder Frwy <small>Street Address</small>	Bryan <small>City</small>	TX <small>State</small>	77803 <small>Zip Code</small>
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ACKNOWLEDGMENT OF ODOMETER DISCLOSURE BY BUYER/AGENT

I am aware of the above odometer certification made by the seller/agent.		
4/18/2011 X <small>Date of Statement</small>	 <small>Signature of Buyer/Agent</small>	Brian Wilcox <small>Printed Name (Same as Signature)</small>
City of Franklin		

If purchased by a firm, print the firm's name on the line above.

103 3 rd Ave South <small>Street Address</small>	Franklin <small>City</small>	TN <small>State</small>	37064 <small>Zip Code</small>
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WARNING: TRANSPORTATION CODE, §501.155, PROVIDES THAT FALSIFYING INFORMATION ON ANY REQUIRED STATEMENT OR APPLICATION IS A THIRD-DEGREE FELONY.

