

Purchase Agreement Between Metro Waste Authority and Toter Incorporated.

THIS AGREEMENT is made and entered into on this 18 day of December, 2008, by and between Metro Waste Authority (MWA) and Toter Incorporated (Contractor).

A. Agreement

This Agreement contains the entire agreement of the parties and no amendment or modification of the Agreement shall be valid or effective unless in writing and signed by the parties thereto. If there is a conflict between the provisions of this Agreement and the other documents comprising the Agreement, the provisions of this Agreement shall control.

B. Container Specifications

Contractor will furnish at least 70,000 containers pursuant to the provisions of this agreement. Said containers will be either 96-gallon containers (Toter Model 79296); 64-gallon containers (Toter Model 79264); or 48-gallon containers (Toter Model 79248). The exact number of each model to be delivered will be determined by MWA. The containers will be kelly green granite body with solid kelly green or black lid (both colors of lids will be required). They will have the serial number hot stamped onto the front of the cart body in white and a custom hot stamp on both sides of cart body in white. The containers will be shipped 1/3 assembled with stop bar and axle factory installed. Delivery of containers will be coordinated with Contractor and Metro Waste Authority to meet July 1, 2009, start-up date. All containers will meet or exceed the following specifications:

1. Container must be compatible with both standard American semi-automated bar locking lifts (ANSI type B) as well as automated arm lifters (ANSI type G)
2. Large capacity containers must be designed to regularly receive and dump a minimum of 300 pounds of waste materials (excluding the weight of the container) without permanent damage or deformation.
3. Containers must be available in variable sizes (for example – 48, 64, and 96 gallon sizes).
4. Containers must be able to withstand lowa temperature extremes of -25 and 100 degrees Fahrenheit.
5. Containers must be equipped with two handles to afford the user positive control of the loaded cart.
6. Containers must be equipped with a lid configured to ensure that it will not warp, bend, slump or distort to such an extent that it no longer fits the container properly or becomes otherwise unserviceable. The lid must be designed to disallow entry of rain when in a closed position. The lid must be attached to the container and must open from a closed position through a 270 degree arc.
7. Containers shall be equipped with an axle and two wheels. Wheels will be constructed of a high quality plastic starburst knobby design. Wheels will be attached to the axle with a pal nut wheel attachment. Snap-on wheels will not be acceptable. Axles must be solid galvanized steel with a 5/8" minimum diameter. All parts must carry a 10-year minimum warranty.
8. Containers shall be stable and self-balancing when in the upright position, either loaded or empty. The container must be designed to withstand winds of up to 25

- mph when empty. Containers must be easy for residents to tilt to the roll position when fully loaded.
9. Containers shall be equipped with attachment points which make it compatible on standard American semi-automated bar-locking lifters and automated arm lifters. The upper lift point must be integrally molded into the body of the container. The lower bar must be designed to withstand over ten years of lifter attachment.
 10. Containers must be marked with an individual serial number hot stamped on the front face which in some way designates the year of its manufacture.
 11. The name of MWA and the MWA logo shall be hot-stamped on the container in a single color.
 12. Instructions for safe use of the container must be molded to each lid.
 14. Carts/cart parts must be easily serviceable by solid waste route personnel. This should be able to be accomplished with minimal time, effort and parts.

C. Contractor Warranties and Representations

The Contractor warrants the carts for a period of ten years against the following defects:

1. Failure of the lid to prevent rain water from entering the container when closed on the container's body
2. Damage to the container body, the lid, or any component parts through opening or closing the lid.
3. Failure of the lower lift bar from damage during interface with lifters
4. Failure of the body and lid to maintain their original shape
5. Failure of the wheels to provide continuous, easy mobility, as originally designed

D. Contractor Compensation

During the term of this Agreement, Contractor will receive the following payment for all containers delivered to MWA pursuant to this Agreement:

- \$50.02 – Model 79296 (96 gallon Toter) Delivered
- \$44.96 - Model 79264 (64 gallon Toter) Delivered
- \$43.46 – Model 79248 (48 gallon Toter) Delivered (\$1.50 Deduction from Model 79264)

On March 1 of each year, beginning March 1, 2009, the price of each container above will increase by 3 percent. The price for each container will be the price applicable at the date of order.

E. Term of Agreement

The Agreement period will be from December 1, 2008, through September 30, 2010. This Agreement may be extended for successive term(s) by MWA, if the terms and conditions of such renewals are agreed upon by MWA and Contractor. If the Agreement is to be renewed, MWA will notify Contractor at least thirty (30) days prior to the end of the Agreement period.

F. Termination of Agreement

1. This Agreement shall terminate automatically as of 12:01 a.m. on October 1, 2010, unless renewed pursuant to Section VI of this Agreement.
2. This Agreement shall terminate automatically as of the date the Contractor makes a general assignment for the benefit of its creditors or proceedings are commenced in a court of competent jurisdiction for the reorganization, liquidation or voluntary dissolution of the Contractor, or for its adjudication as bankrupt, or for the appointment of a receiver of the property of the Contractor. Upon any termination under this provision, this Agreement shall not be or become an asset of the Contractor in the hands of any trustee or receiver.
3. Either party shall have the right to terminate this Agreement at anytime for cause. Cause is defined as any breach by the other party of any provisions of the Agreement, including the warranties and representations, or the insolvency of the Contractor. The terminating party shall exercise its right to terminate by written notice to the other party of its intent to terminate the Agreement. Such notice shall set forth the reason or reasons for such termination. The party receiving the notice shall have thirty (30) days following the receipt of such notification to remedy the cause for termination set forth in such notice and if such party shall fail within said thirty (30) days, to remedy such cause, this contract shall terminate.

G. Miscellaneous

1. **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

MWA:

By Thomas B. Hadden III
Thomas B. Hadden III
Executive Director

CONTRACTOR:

By Laura P. Gates
Laura P. Gates
Vice President, Contract Management