



Solicitation **COVER SHEET**

IDENTIFICATION

Number	IFB 6300 SLW1072
Title	Grounds Maintenance
Summary	The purpose of this contract is for Contractors to provide mowing, grounds maintenance and related services to various locations within the City and Extra Territorial Jurisdiction.
Type	Invitation for Bid (IFB)
Version (Addenda)	3

AUTHORIZED CONTACT PERSONS

Primary	Sandy Wirtanen, Procurement Specialist IV; 512-974-7711; sandy.wirtanen@austintexas.gov
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov
Notes	See Solicitation Instructions, 3.1 Authorized Contact Persons.

IMPORTANT DATES

OFFERS DUE

Date and Time	September 27, 2022 at 2 PM
Notes	See Solicitation Instructions, 5 Offer Submission.

BID OPENING

Date and Time	September 27, 2022 at 3 PM
Notes	See Solicitation Instructions, 5 Offer Submission.

QUESTIONS DUE

Date and Time	September 2, 2022 at 5 PM
Submission Method	Email Only
Notes	See Solicitation Instructions, 3.2 Questions.

PRE-OFFER CONFERENCE

Conference	Yes
Mandatory	No

Date and Time	Tuesday, August 30, 2022 at 10 AM
Location	Microsoft Teams: Meeting ID: 278 072 192 785 Passcode: CyminF OR Call-in for audio only: 1-512-831-7858 Conference ID: 518 625 412#
Notes	N/A

PUBLISHED

Date	August 22, 2022
Available Online	https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm
Available Hardcopy	Purchasing Office; 124 w. 8 th Street, Suite 300; Austin, TX 78701

SOLICITATION DOCUMENTS

Document name	Pages	Date
<u>Solicitation Packet – IFB 6300 SLW1072 Includes the following:</u>		
<u>Solicitation Cover Sheet</u>	2	September 20, 2022
<u>Solicitation Instructions</u>	7	August 30, 2022
<u>Terms and Conditions V2</u>	21	August 30, 2022
<u>Scope of Work</u>	13	August 22, 2022
<u>Pricing Submittal – IFB 6300 SLW1072 – Complete and return</u>	3	August 22, 2022
<u>Offer and Certifications – IFB 6300 SLW1072 – Complete and return</u>	12	August 30, 2022
<u>Equipment Inventory List – Complete and return</u>	1	August 22, 2022
<u>Addendum 1 – Complete and return</u>	1	August 30, 2022
<u>Addendum 2 – Complete and return</u>	1	September 7, 2022
<u>Addendum 3 – Complete and return</u>	1	September 20, 2022
<u>Exhibit – Mowing Schedules</u>	4 tabs	August 22, 2022

NIGP CODES**COMMODITY CODES**

Code	Description
98836	Grounds Maintenance: Mowing, Edging, Plant (not trees)
9883650	Maintenance Services, Roadside, Including Mowing
9883659	Mowing Services, Pond Sites



Solicitation INSTRUCTIONS

Solicitation No.
IFB 6300 SLW1072

1 INVITATION FOR BIDS

- 1.1 Invitation.** The City of Austin invites all Responsible Offerors to submit Bids to provide the goods and/or services described in this Solicitation.
- 1.2 Documents.** This Invitation for Bids ("IFB" or "Solicitation") is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Process.** The process described in this IFB is the Competitive Sealed Bidding process. This process is procedurally compliant with the competitive bidding processes prescribed by Texas Local Government Code Ch. 252, Ch. 271, as well as Government Code Ch. 2269.
- 1.4 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.5 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.6 Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

2 PUBLICATION AND NOTICES

- 2.1 Publication.** This Solicitation was published in the City's financial services website, Austin Finance Online, as of the Published date displayed in the Solicitation Cover Sheet section.
- 2.2 Email Notices.** On the Solicitation's Published date, email notices regarding this Solicitation were issued to all vendors registered in Austin Finance Online, that had previously selected the NIGP Codes displayed in the Solicitation Cover Sheet section. All subsequent email notices regarding this Solicitation will be limited to those vendors or other persons that subscribe to this Solicitation in Austin Finance Online.
- 2.3 Newspaper Notices.** If applicable, one or more notices of this Solicitation were published in the newspaper as required by statute.
- 2.4 Third-Party Notices.** Austin Finance Online is the only source of official notices regarding this Solicitation. Prospective Offerors shall not rely on any notices concerning this Solicitation received from sources other than Austin Finance Online.

3 COMMUNICATIONS AND MEETINGS

- 3.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office's main line at (512) 974-2500 and request assistance from any member of the Purchasing Office's management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.
- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.

- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. (https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-Offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 4 OFFER PREPARATION**
- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer and an Offer and Certifications submittal.
- 4.2 Offer Acceptance Period.** All Offers are valid for a period of 150 calendar days subsequent to the IFB closing date.
- 4.3 Alternate Offers.** Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.
- 4.4 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. With the exception of the Prices and Pricing Submittal, which shall not be kept confidential, Offerors seeking to keep any other portions of their Offer confidential shall mark each such portion as "Proprietary". The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General's Office of the State of Texas, of any Bid contents marked as "Proprietary". A copyright notice or symbol is insufficient to identify proprietary or confidential information.

- 4.5 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.
- 4.6 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.** If the solicitation includes an MBE/WBE Program Compliance Plan or Offeror intends to subcontract, the Offeror shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Utilization Plan as approved by the City (the "Plan").
- 4.7 Living Wages.** The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$20.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

5 OFFER SUBMISSION

Offers in response to this Solicitation may be submitted using one of the following methods.

- 5.1 Electronic Offers.** Electronic Offers (electronic documents) shall be submitted to the City of Austin using the Solicitation's eResponse function, available through the City's online financial system, Austin Finance Online. To submit Electronic Offers using the eResponse function, Offeror's must first be registered as a vendor with the City of Austin in Austin Finance Online. See [Instructions, Submitting Offers in Austin Finance Online](#).
- 5.1.1 Due Date and Time for Electronic Offers.** Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.
- 5.1.2 Withdrawing Electronic Offers.** Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation's Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.
- 5.1.3 Late Electronic Offers.** The Solicitation's eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation's Due Date and Time.
- 5.1.4 Opening Electronic Offers.** The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation's eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.
- 5.2 Hardcopy Offers.** Hardcopy Offers (physical documents including paper and flash drives) must be returned in a sealed envelope and shall be delivered to the City of Austin's Purchasing Office at one of the following addresses, depending on the delivery method:

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: IFB 6300 SLW1072 P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: IFB 6300 SLW1072 124 W 8 th Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

- 5.2.1 Due Date and Time for Hardcopy Offers.** Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.
- 5.2.2 Withdrawing Hardcopy Offers. See below for changes due to the COVID-19 pandemic.**
- 5.2.3 Late Hardcopy Offers.** All Hardcopy Offers received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Offer's late receipt at the designated location.
- 5.2.4 Opening Hardcopy Offers.** The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one is in attendance at the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.
- 5.3 Special procedures due to 2020 COVID-19 Pandemic.**
- 5.3.1 Confirmation of Submittals –** Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Offers when they are received or able to verify receipt of Hardcopy Offers or provide signature confirmation of Offers delivered by common carriers.
- 5.3.2 Withdrawing Hardcopy Offers –** Hardcopy Offers may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Offerors must send emails to withdraw Offers to the following email address: PurchasingAdmin@austintexas.gov
- 5.3.3 Solicitation Openings -** Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: https://www.austintexas.gov/financeonline/afo_content.cfm?s=66 . When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Offers aloud and will referring the public to the Solicitation's eResponse section to view the remaining Electronic Offers.
- 6 OFFER EVALUATION**
- 6.1 Basis of Competition.** The City may compare bids based on the prices for individual line items, the prices for categories of line items or the aggregate price bid. The City will choose the basis of competition that best meets the City's needs for the resulting contracts.
- 6.2 Price Evaluation.** Once the City determines the basis of competition, the City will sort the bids from low to high price.
- 6.3 Responsiveness Evaluation.** Once the low bid is identified, the City will evaluate the bid for responsiveness with all Solicitation requirements. A bid is responsive if it complies with all Solicitation Instructions, scope and specifications. If a bid is found to be nonresponsive, the City will set it aside and proceed with evaluating the next lowest bid for responsiveness.
- 6.4 Responsibility Evaluation.** Once the low responsive bid is identified, the City will evaluate the Offeror submitting the low responsive bid for their responsibility. An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance and positive compliance history with all City ordinances. If an Offeror is found to be non-responsible, the City will set their bid aside and proceed with evaluating the responsibility of the Offeror submitting the next low and responsive bid.

6.5 Minor Informalities. In conducting evaluations, the City may waive as an informality, any minor deviations in the Solicitation's contents or in the Offers received, in procedure or in specifications, provided such deviations do not affect the Solicitation's competition.

7 CONTRACT AWARD AND EXECUTION

7.1 Award Determination. The City will award the contract to the responsible Offeror submitting the low responsive bid. If the City receives a Bid from an offeror who has Local Business Presence and whose bid is within three percent of the lowest bid price received from an offeror who does not have Local Business Presence, the City may enter into a contract with the local vendor. Local Business Presence is determined per the form in the Offer and Certifications Section of the Solicitation.

7.2 Multiple Awards. If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the responsible Offerors submitting the next lowest responsive bids.

7.3 Contract Execution. Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

8 ADMINISTRATIVE MATTERS

8.1 Solicitation File. All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the publication of the City's recommendation of award. The recommendation of award will be posted in Austin Finance Online.

8.2 Debriefings. Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer in response to the Solicitation will be discussed.

8.3 Reservations. The City expressly reserves the right to the following: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation closing date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject or cancel any or all Offers; (ix) reissue a Solicitation; (x) procure any item by other means; (xi) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or (xii) reject an Offer if prices in the Offer are unbalanced (significantly less than cost for some items and significantly more than cost for others).

8.4 Protests. The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.

8.4.1 Protest regarding the Solicitation (Pre-Bid Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days before the opening of Bids. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.

8.4.2 Protests regarding the evaluation of Bids. Any protest regarding the evaluation of Bids by the City shall be filed with the City no later than five (5) days after the opening of Bids, or notification that the protestor's status as a Offeror has changed, such as notification that a Bid has been rejected. Any protest filed after such date which raises issues regarding the evaluation will not be considered.

- 8.4.3** Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.
- 8.4.4** You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
- 8.4.5** Your protest shall be concise and presented logically and factually to help with the City's review.
- 8.4.6** When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
- 8.4.7** The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
- 8.4.8** A decision will usually be made within fifteen (15) calendar days after the hearing.
- 8.4.9** The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- 8.4.10** When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.
- 8.5 Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures here: <https://www.ethics.state.tx.us/File/>

9 DEFINITIONS

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

"Addendum" means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.

"Bid" means a complete, properly signed Offer submitted in response to this Solicitation, which if accepted, would bind the Offeror to perform the resultant Contract.

"City" means the City of Austin, a Texas home-rule municipal corporation.

"Competitive Sealed Bidding" means the competitive process described within an Invitation for Bids, wherein the City invites Offerors to submit bids to supply the City with the Goods and/or Service describes in the Solicitation document, where the City will award the resulting contract to the responsible Offeror submitting the low responsive bid.

“Invitation for Bids (IFB)” means a complete packet of documents describing the City’s competitive sealed bidding process, including but not limited to Solicitation instructions, Standard and Special contract terms and conditions, and the submittals necessary for Offerors to respond to the Solicitation.

“Offer” means a complete signed response to a Solicitation including, but not limited to, an Invitation for Bids.

“Offeror” means a person, firm, or entity that submits an Offer in response to this Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent’s authority. The agent cannot certify as to his own agency status.

“Price and Pricing Submittal” means a document, submitted by an Offeror in response to this Solicitation, containing unit and extended Bid prices for one or more of the Goods and/or Services identified by in the Prices and Pricing Submittal document.

“Purchasing Office” refers to the Purchasing Office in the Financial Services Department of the City.

“Purchasing Officer” means the director of the Purchasing Office and the principle recipient of procurement authority from the City Manager.

“Responsible Offeror” means the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.

“Responsive” means meeting all the requirements of a Solicitation.

“Solicitation” means this Invitation for Bids or IFB.

CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS V2
GROUNDS MAINTENANCE
SOLICITATION NUMBER: IFB 6300 SLW1072

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1 GENERAL

1.1 TERM OF CONTRACT:

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, unless specified otherwise in the Scope of Work, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.2 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.3 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.**
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

1.4 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS V2
GROUNDS MAINTENANCE
SOLICITATION NUMBER: IFB 6300 SLW1072

- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. Delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
 - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
 - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

1.5 FINAL PAYMENT AND CLOSE OUT:

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

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- B. The making and acceptance of final payment will constitute:
- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

1.6 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance, including security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.7 FINANCIAL DISCLOSURES AND ASSURANCE:

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

1.8 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

1.9 STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

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1.10 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.11 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.12 ATTORNEY'S FEES:

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.13 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.14 FRAUD:

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

1.15 DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract,

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the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.16 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.17 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
 - i. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
 - ii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
 - iii. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
 - iv. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
 - v. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND

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APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.

- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
- i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
 - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

1.18 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.19 CONFIDENTIALITY:

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.20 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.21 PUBLICATIONS:

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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1.22 ADVERTISING:

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

1.23 NO CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.24 GRATUITIES:

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

1.25 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

1.26 INDEPENDENT CONTRACTOR:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

1.27 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

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1.28 WAIVER:

The claim or right arising out of a breach of the Contract cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

1.29 MODIFICATIONS:

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

1.30 INTERPRETATION:

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1.31 DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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1.32 JURISDICTION AND VENUE:

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

1.33 INVALIDITY:

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

1.34 HOLIDAYS:

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/departments/official-city-holidays>. If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

1.35 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

1.36 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

1.37 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.

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- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.38 SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager no later than the 10th calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that
 - i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

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1.39 ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the Contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the Solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The annual requested price adjustment shall not exceed 25 percent for any single line item and in no event shall the total amount of the Contract be automatically adjusted as a result of the change in one or more-line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of Contract award and remain in effect until Contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original Contracted price (the Solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or Contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- a. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- i. Utilize final Compilation data instead of Preliminary data
 - ii. If the referenced index is no longer available shift up to the next higher category index.
 - iii. Index Identification:

Weight % or \$ of Base Price: 100%	
Database Name: Employment, Hours, and Earnings from the Current Employment Statistics Survey	
Series ID: CEU6056173001	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Industry: Landscaping Services	
NAICS Code: 56173	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

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Index at time of calculation
Divided by index on Solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

1.40 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:
City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767
OR PURInsuranceCompliance@austintexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and

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exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

(1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
- b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.

- ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

(1) The policy shall contain the following provisions:

- a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
- b. Independent Contractors coverage (Contractor/Subcontracted work);
- c. Products/Completed Operations Liability for the duration of the warranty period;
- d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

(2) The policy shall also include these endorsements in favor of the City of Austin:

- a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
- b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
- c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

- iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;

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- b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

2 SERVICES

2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

2.2 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
 - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

2.3 GUARANTEE – SERVICES:

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from Final Acceptance Date. The maintenance period shall not begin until after the Final Acceptance Date and no associated maintenance fees will be charged until commencement of the maintenance period. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by

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the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.

- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

2.4 PLACE AND CONDITION OF WORK:

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and Specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor, and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

2.5 COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:

The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable Federal, State, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Paragraph.

2.6 LIVING WAGES:

The City's Living Wage Program, Rule R161-17.14, is located at:

<http://www.austinTexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$20.00 per hour, unless Published Wage Rates are included in this Solicitation. In addition, the City may stipulate higher wage rates in certain Solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$20.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant Contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act.

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- D. The Contractor shall provide to the Department's assigned Contract Manager with the first Invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the Contract. The City reserves the right to request individual Employee Certifications at any time during the Contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the Contract. The Employee Certification form is available on-line at https://www.austinTexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of Contract award with the respective Invoice to verify that employees are paid the Living Wage throughout the term of the Contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the Contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in Paragraph C above to verify compliance with this provision.

2.7 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID) REQUIRED BACKGROUND CHECK:

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the Contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel") and shall not utilize any Contractor's personnel, to fulfill the obligations of the Contract, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty.
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four- to six-week delay for receipt of a Federal report.
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City the documentation specified in the SOW affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a City-issued Contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.

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- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work under the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 calendar days of the receipt of notification of denial.
- G. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- H. **Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.
- I. **Right to Remove Individuals:** The City shall have the right at any time to require that the Contractor remove for any or no reason at all from interaction with City any Contractor representative whom the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination if reasonably possible. If the City signifies that a potential security violation or other immediate risk situation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the Contract or future work orders without the City's consent.
- J. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- K. Contractor shall retain the reports and make them available for audit by the City during regular business hours.

3 DEFINITIONS

- 1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
- 2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
- 3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
- 4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
- 5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
- 6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data, and (f) all

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other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.

7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.
11. **"Confidential Information"** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **"City Confidential Information"** is a subsets of Confidential Information.
12. **"Contract"** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **"Contract Price"** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **"Contractor"** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **"Contractor Information"** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.
16. **"Contractor Software"** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **"Data Breach"** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City's or City's customers' unencrypted Personally Identifiable Information or City Confidential Information.
18. **"Documentation"** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **"Facility"** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **"FACTA"** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **"Final Acceptance Date"** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **"IaaS Subscription Schedule"** – the document, part of the Contract, executed by both Parties that sets out the Parties' rights and obligations with respect to City's access to and use of the IaaS services.
23. **"Infrastructure-as-a-Service"** (IaaS) – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).

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- 24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
- 25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
- 26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
- 27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
- 28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
- 29. **“Party” or “Parties”** – the City and Contractor, individually or together, as applicable.
- 30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
- 31. **“Platform-as-a-Service” (PaaS)** – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- 32. **“Purchase Order”** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
- 33. **“SaaS Software Application” and “SaaS Software”** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
- 34. **“SaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the SaaS Software Application.
- 35. **“Security Incident”** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
- 36. **“Service Level Agreement” (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance

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failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

- 37. **"Service Levels"** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
- 38. **"Services"** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
- 39. **"Software"** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.
- 40. **"Software-as-a-Service" (SaaS)** – the Services provided to the City to use the Contractor's offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- 41. **"Specifications"** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
- 42. **"Statement/Scope of Work"** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City's Service needs and expectations.
- 43. **"Subscription Services"** – City's access to and use of and Contractor's provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
- 44. **"Third Party"** – any natural person or legal entity other than Contractor and City.
- 45. **"Transition Date"** – the date upon which it is established to City's satisfaction that the SaaS Software Application is stable enough to support City's production processing.
- 46. **"User Information"** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor's supervision or control.
- 47. **"User"** – City's employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
- 48. **"Work Product"** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor's Software.

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1.0 PURPOSE

The purpose of this contract is for Contractors to provide mowing, grounds maintenance and related services to various locations within the City of Austin (City) and Extra Territorial Jurisdiction (ETJ). The initial frequency and mowing description requirements are estimates only. The City reserves the right to add or remove departments, locations, acreage, services or adjust frequency at the City's discretion throughout the contract term. Additional locations added to the Contract will be invoiced at the same price as existing location similar in size and complexity.

The City intends to award two zones: North (north of Ladybird Lake) and South (south of Ladybird lake) up to four categories per zone: North of Ladybird Lake (North Zone) 1-Ponds North, 3-Creeks North, 5-Open Space North, 7-Buffers North and south of Ladybird Lake (South Zone) 2-Ponds South, 4-Creeks South, 6- Open Space South, and 8-Buffers South. Each category will have a Primary, Secondary, and Tertiary Contractor, based on lowest bidder. The lowest bidder in each zone, will be awarded as Primary Contractor. The second lowest bidder in each zone, will be awarded as the Secondary Contractor. The third lowest bidder in each zone will be awarded as Tertiary Contractor. The City reserves the right to reassign services to the Secondary or Tertiary Contractor if the Primary Contractor is unable to respond to a service request, fails to meet the listed contract requirements or is deemed in the City's best interest.

The City is currently responsible for 557 detention and water quality pond locations within Austin's Full Purpose Jurisdiction (FPJ), 64 miles open waterways in the City's FPJ that require vegetation control, that require mowing and grounds maintenance service, Subset 1 ponds that require vegetative and grounds maintenance service and debris removal. The proper functioning of 33 ponds located within Austin City limits and its (ETJ). Channel location Creeks, and 37 floodplain and erosion buyouts (Open Space) locations that require vegetative and grounds maintenance service and debris removal. The last category (Buffers) covers right of way and sidewalk areas that area adjacent to the other sites, and area mowed on a more frequent schedule. All sites are assigned a VCP Flag # which is how a site is referred to by the City. A map for each VCP flag is located on a City File Transfer Protocol (FTP) site.

Any services that have been omitted from this Scope of Work that are clearly necessary or in conformance shall be considered a requirement although not directly specified or called for in the Scope of Work.

2.0 TERM OF CONTRACT

This contract shall remain in effect for a term of 60 months, or the City terminates the Contract.

3.0 APPLICABLE SPECIFICATIONS

- 3.1 American National Standards Institute ("ANSI") A300, Standard Practices for Trees, Shrubs and Other Woody Plant Maintenance.
- 3.2 ANSI Z133.1, Pruning, Trimming, Repairing, Maintaining and Removing Trees, and Cutting Brush – Safety Requirements
- 3.3 Environmental Criterial Manual, Section 1.6.3 Maintenance and Construction Requirements, https://library.municode.com/tx/austin/codes/environmental_criteria_manual.
- 3.4 Texas Nursery and Landscape Association's (TNLA) Texas Certified Landscape Professional Manual.
- 3.5 All of the Contractor's operations shall comply with the City's "IPM Plan Maintenance Guidelines": <http://www.ci.austin.tx.us/growgreen/ipm.htm>

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- 3.6 City of Austin Environmental Regulations and other applicable Federal, State and Local ordinances and laws.
- 3.7 Any material, method, or procedure specified by reference to a specific standard or specification, such as a commercial standard, Federal or State specification, industry or government code, trade association code or standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendments or supplements thereto in effect on the date of the Contract.
- 3.8 Contractor's operations shall comply with all Federal, state, and county laws or regulations, and with applicable ordinances of the City, including all safety and environmental laws. Any regulation not specifically stated in this solicitation, but clearly necessary for performance of the work under any resulting Contract, is included.
- 3.9 The City code, specification, or standard referred to, except as modified in the specifications, shall have full force and effect as though printed in the specifications. Such specifications and standards are not furnished to bidders since manufacturers and trades involved are assumed to be familiar with their requirements. The City shall furnish, upon request, the locations where copies of the specifications and standards referred to may be obtained.
- 3.10 Contractor shall comply with all applicable Federal, State, and local laws and regulations intended to protect the safety of persons or property, including but not limited to all applicable OSHA and ANSI Z133 standards, rules, and regulations.

4.0 ENVIRONMENTAL IMPACT

- 4.1 The City values innovative approaches to reducing the impact on the natural environment through use of alternative energy, low-emission equipment, biodegradable chemicals, or items with recycled content. City Council resolutions [#20071129-045](#) and [#20070215-023](#) relate to the adoption of sustainable business practices that reduce chemical and greenhouse gas emissions, comply with LEED standards, and promote the use of recycled materials in goods and services purchased by the city.
- 4.2 The Contractor shall establish and demonstrate their landscaping and maintenance practices to limit the impact of equipment emissions, excessive noise, and use of fertilizers, insecticides, or other chemicals and any other practices that negatively affect the wildlife or environment of the areas referenced in this Scope of Work. At the request of the City, within five working days, the Contractor shall provide their equipment list, insecticide list, any other chemical list created by EPA, and any other documents the City deems related to the services provided under this contract. This will be reviewed before contract award, and semi-annually thereafter.
- 4.3 The Contractor shall not use any chemicals/herbicides without the written permission of the City Contract Manager or designee.
 - 4.3.1 No herbicides shall be used which damage non target grass, ground cover, shrubs, trees, animals, ponds, or other wildlife.
 - 4.3.2 No herbicides shall be used within 50 feet of an open waterway, except with prior written permission of the City contract manager or designee.

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- 4.3.3 If herbicides are approved for use, Contractor shall provide the Safety Data Sheets (SDS) for all chemicals to the City Contract Manager or designee prior to their use and/or within five business days of request, or at a time mutually agreed to between the Contractor and City Contract Manager or designee.
- 4.3.4 The Contractor shall apply treatment as recommended on the product label. Application shall not occur on a windy day (wind speed greater than 8 miles per hour) or prior to anticipated rainfall.

5.0 CONTRACTOR'S RESPONSIBILITIES

The Contractor shall:

- 5.1 Have a minimum of three years of experience in grounds maintenance and mowing services similar in size and scope to the City's. Proof of experience may be in the form of resumes, references and/or letters of reference which clearly demonstrate and verifies the Contractors eligibility upon request by the City within three business days.
- 5.2 Provide all labor, parts, equipment, materials, tools, supervision and transportation required to perform the services described herein successfully.
- 5.3 Begin work within 14 calendar days of notification of contract execution, or as otherwise mutually agreed by Contractor and the City Contract Manager or designee.
- 5.4 Have up to five consecutive business days to complete each site. Contractor shall notify Contract Manager or designee if inclement weather interferes with the timely completion of the work.
- 5.5 Make every effort to direct cuttings and debris picked up by rotating assemblies away from nearby vehicles and buildings. The Contractor shall ensure that cut grass does not remain against fences, buildings, walls, nearby vehicles or on sidewalks.
- 5.6 Contact the City's Spills & Complaints Program at (512) 974-2550 within two hours of discovery of suspected hazardous waste spills or any hazardous situation, condition, or structure.
- 5.7 Report occurrence of any damage done by Contractors employees to City or private property within two hours. The Contractor shall repair or replace any damage to property or loss of vegetation, at no cost to the City, within five calendar days of the occurrence or as directed by the City.
- 5.8 Properly dispose of used and contaminated lubricants, packaging materials, and filters. Costs for disposal fees shall be included in the price of the services and not charged separately on an invoice. The Contractor shall provide the City, a copy of the affidavit within three business days of request, an affidavit declaring that all used and contaminated lubricants and filters were properly disposed.
- 5.9 Perform all work with their direct employees or their sub-contractor employees.
- 5.10 Have an on-site supervisor/crew leader that can speak, read, and write English. Supervisor or crew lead shall report any problems or concerns directly to the City.
- 5.11 Ensure all crewmembers are adequately trained, and at all times supervised by the supervisor/crew lead.

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- 5.12 Satisfy to the City that the Contractor and/or its subcontractor has the number of employees necessary to satisfactorily perform the work according to the schedule. Contractor shall inform the Contract Manager or designee if there are significant changes in staffing numbers that may affect the completion of work.
- 5.13 Ensure the safety of their employees, sub-contractor employees, City employees, and the general public during performance of all services under this contract.
- 5.14 Ensure that all crews are fully and properly equipped to perform services promptly and safely.
- 5.15 Ensure work crews wear proper safety equipment, safety vests, protective hats and glasses and any other OSHA required safety equipment.
- 5.16 Ensure employees are always clearly identified and uniformed. Contractor shall furnish each employee with proper identification giving both the name of the Contractor and the employee. Such identification shall be marked on an outer garment or worn on the outer garment.

6.0 PERFORMANCE REQUIREMENTS

Prior to performing any work, the Contractor and his/her relevant employee(s) shall meet with a member of the City's Contract Management Team to ensure compliance and consistency of mowing data.

- 6.1 Contractor shall provide all equipment, materials, labor, tools, permits incidentals, expendable items, personal protective equipment, transportation necessary, including electricity and water, if not available at the service location, for proper execution and completion of the service request. The materials and services provided by the Contractor shall comply with all current Federal, State and local laws, City ordinances, rules and regulations.
- 6.2 For routine services, the Contractor shall work with the City Contract Manager or designee to establish an annual work schedule for the requested service locations. The City's Contract Manager or designee will approve the final service schedules in writing prior to the start of work.
- 6.3 Contractor shall provide a service schedule for a location within five calendar days after request by the City Contract Manager or designee, or at a time mutually agreed to between the Contractor and the City Contract Manager or designee. The schedule shall show the days, start time, and estimated duration of work for the service at each location.
- 6.4 The service schedule may be revised on an as-needed basis as required by the City, at the Contractor's recommendation, or to account for events and activities taking place at City locations. Any changes to the service schedule shall be agreed to in writing by the City Contract Manager or designee. Under no circumstances shall the Contractor change schedule without prior written approval from the City Contract Manager or designee.
- 6.5 The Contractor shall perform services Monday through Friday, from 7:00 a.m. to 6:30 p.m., excluding City Holidays. Note some locations may have further restrictions on available hours and the City reserves the right to adjust Contractors working hours whenever it is deemed in the best interest of the City.
- 6.6 Contractor shall not perform work at any service location after hours or on weekends without prior approval by the City Contract Manager or designee.

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6.7 Safety

- 6.7.1 Contractor shall designate a qualified and experienced Safety Representative at each work site whose duties and responsibilities shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs. Upon written request of City, the Contractor shall provide certifications or other documentation of the safety representative's qualifications.
- 6.7.2 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for safety and shall provide appropriate protection to prevent damage, injury or loss to all persons and property that may be affected by the work.
- 6.7.3 Contractor shall erect and maintain all necessary safeguards for such safety and protection. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, Contractor's subcontractor, Contractor's supplier, or any person or organization directly or indirectly employed by any of them, to perform or furnish any of the work or anyone for whose actions any of them may be liable, shall be remedied by Contractor.
- 6.7.4 Contractor shall prepare and deliver a safety work plan at the City's request. Safety work plan shall be provided within three business days of request.
- 6.7.5 Contractor shall be responsible for coordinating any exchange of material SDS or other hazard communication information required to be made available for exchange between or among employees at the site in accordance with laws and regulations.
- 6.7.6 In emergencies affecting the safety or protection of persons or the work at the site or adjacent thereto, Contractor, without special instruction or authorization from the City, shall promptly and reasonably act to prevent damage, injury, or loss and to mitigate damage or loss to the work.
- 6.7.7 At locations identified within the City where the Contractor may encounter a great degree of health, safety, and fire risk, Contractor shall notify the City within two hours by phone of said occurrence. After notification to the City, the Contractor shall wait for the City's determination to continue mowing the site or move to the next mowing site. If the Contractor is instructed to move to the next site, the City will notify the Contractor when it is safe to return to the original site for mowing.
- 6.7.8 If there is an altercation with a citizen or an accident involving injury to any individual on or near the work, Contractor shall notify the City within two hours by phone of the incident after ensuring the safety of the Contractor's workers and any other affected parties. Contractor shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, and other documentation that describes the event. Copies of such documentation shall be provided to the City within 48 hours of the event.
- 6.7.9 Contractor shall have two 5 lb. fire extinguishers on hand and readily accessible if any welding and/or the use of a gas cutting torch is required.

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6.8 Equipment

- 6.8.1 Contractor shall not use traditional gasoline or diesel mowers to provide services under this contract. Contractor shall use propane, bio-diesel, electric, manual, propane or natural gas powered mower equipment. When commercially available, the Contractor shall use electric, natural gas, or propane powered trimmers and leaf blowers.
- 6.8.2 Contractor shall understand that as advancements to grounds maintenance, landscaping and mowing equipment options become available in the future, the City may require the Contractor to upgrade and replace the equipment used in performing services on this contract to environmentally preferable technology for the remainder of the contract.
- 6.8.3 Contractor shall have all equipment needed to fulfill the requirements under this contract. The Contractor shall ensure their equipment is functional, safe, and maintained in good working condition. The City reserves the right to inspect the Contractors' equipment prior to the completion of the award process or at any time during the contract term.
 - 6.8.3.1 Equipment inspection may be performed at any time during a visit to a scheduled service location or at the Contractors facility with two business days' notice by the City Contract Manager or designee.
 - 6.8.3.2 Any equipment deemed unacceptable by the City for use with this contract due to failures that include, but are not limited to, continuous equipment malfunctions, excessive noise, unacceptable emissions, and leaking or spillage, shall be replaced at the Contractors expense prior to the next scheduled visit. Failure to perform services due to unsuitable equipment may be grounds for termination of this contract.
- 6.8.4 At a minimum, the Contractor shall have the following pieces of equipment available in their inventory:
 - 6.8.4.a Transportation (trucks, trailers, etc.)
 - 6.8.4.b Zero Turn Mowers
 - 6.8.4.c String Trimmers
 - 6.8.4.d Power Blowers (handheld, backpack, etc.)
 - 6.8.4.e Hand-held manual tools or saws
 - 6.8.4.f Weed eaters
 - 6.8.4.g Manual, push type, or riding mowers
 - 6.8.4.h Small tractors equipped with mowing and/or raking attachments: or
 - 6.8.4.i Any woody vegetation removal on the slope of any embankments shall be limited to hand-held equipment.
- 6.8.5 The Contractor shall not store their equipment on City property at any time.
- 6.8.6 Contractor shall provide a list of all equipment intended for use in the performance of services under this contract with your Offer and within five business days upon request by the City, or at any time mutually agreed to between the Contractor and the Contract Manager or designee. This list must include the brand, models, size, and manufacture year/age of equipment that will be used.

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6.9 Ozone Action Days

6.9.1 The Contractor shall monitor when days declared as an Ozone Action Day in Austin area. On a declared Ozone Action Day, the Contractor shall not perform services using equipment that do not use alternative fuels, such as gas-powered leaf blowers and line trimmers. For services that are delayed on declared Ozone Action Days, the Contractor shall perform the services on the next available day that has not been declared an Ozone Action Day, or at a time mutually agreed to between the Contractor and Contract Manager or designee.

6.9.1.1 For information on Austin Area Air Quality refer to the following websites:

<http://austintexas.gov/airquality>

6.9.1.2 Additional information regarding Ozone Action days can be found at:

http://www.tceq.texas.gov/agency/air_main.html or by telephone: Call TCEQ @ (512) 239-1379 or (512) 239-1804

6.10 Mowing

6.10.1 Contractor shall mow grass, which includes vegetation but not ornamental, no higher than two and one-half inches (2 1/2"), or at a height that is mutually agreed to between the Contractor and the City Contract Manager or designee. Grass mowed shall be uniform throughout the entire area, except as directed by the City Contract Manager or designee. The Contractor shall cut/mow grass in a professional manner as not to scalp or leave any areas of uncut grass.

6.10.2 Contractor shall prevent the discharge of grass clippings onto private or public property, or any paved surfaces such as streets, trails, or sidewalks, manholes or grating topped valve vaults. The Contractor shall not bag cut grass or grass clippings. Grass clippings shall remain on maintenance area lawn.

6.10.3 Contractor shall ensure that no clumped grass clipping remain after performing services to maintain a groomed appearance and promote a healthy turf.

6.10.4 After mowing, trimming and edging, all walks, driveways, and pavements shall be blown, raked, and/or swept on the same day of service. Driving the lawn mower over sidewalks or the road does not constitute "blowing or sweeping".

6.10.5 Contractor shall protect all desirable vegetative growth such as trees, shrubs and wood vines from damage, injury or loss.

6.10.6 Vegetative clippings can be left on site, evenly distributed in stream channels and in and around pond basins. Clippings spread unevenly or in a layer that is so thick they obstruct new growth shall be removed or thinned to prevent the creation of any non-vegetated areas and resulting erosion. Large cut stalks, such as ragweed or rivercane shall be removed.

6.10.7 Some of the work areas are sloped, with a significant grade, or on uneven terrain that may be difficult to access with large mechanical equipment. In this case, the required work may be accomplished using handheld equipment.

6.10.8 Contractor shall notify the City Contract Manager or designee when cutting and other trimming occurs around vehicles. The Contractor shall allow owners to relocate their vehicles, if needed

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before performing services. The Contractor shall additionally make every effort to position and operate equipment such that cuttings and debris picked up by rotating assemblies will be directed away from people, vehicles, and buildings.

6.10.9 The Contractor understands the City reserves the right to alter service dates and frequencies during extended drought conditions, for areas that may contain wildflowers such as drainage areas and retention ponds, or any other conditions deemed necessary by the City Contract Manager or designee. Any revisions to the service cycles shall be scheduled between the Contractor and the City.

6.11 Trash/Debris Removal

6.11.1 Prior to mowing, the Contractor shall remove all trash/debris and dispose of it properly at an accredited landfill or other facility approved in advance by the City. It is anticipated that such debris will have a minor presence only. If the Contractor discovers larger trash/debris (e.g., couch), they shall immediately contact the City to arrange for its removal. If a dead animal is discovered, the Contractor shall notify the City's "311" call center to arrange for removal.

6.11.2 Contractor shall remove undesirable trees and noxious weeds and treat the stumps and cut stems.

6.12 Creek Sub-Groups – All sites have one of the following categories assigned to it.

6.12.1 **"A"**: No Mowing is allowed. Manually clear all woody plants (2" or less in diameter) and ragweed from the stream channel, or mulch and evenly distribute along banks out of the flow line.

6.12.2 **"B"**: Mow stream channel no lower than 12 inches (or lower as may be directed by City, but never lower than 6 inches).

6.12.3 **"C"**: Mow only outside of stream channel, and to a height no lower than 6 inches, preserving native restoration efforts commonly indicated with flagging or fencing.

6.12.4 **"D"**: Manually clear all woody plants from the stream channel, mow to a height no lower than 6 inches only outside of stream channel (aesthetic mowing).

6.12.5 **"E"**: Mow extent of flag boundaries no lower than 12 inches, except for the 10-foot buffer around the right of way that shall be mowed to no lower than 3 inches.

6.13 Creek Requirements, Specific

6.13.1 Trees and shrubs outside the waterway flow line shall not be cut or damaged.

6.13.2 Mowing in waterways shall primarily occur between March 15th and November 15th from one to three times annually depending on growth rate and height of vegetation. If mowed more than once, there shall be **at least 60 calendar days between mowing events** to allow recovery of perennial plant communities. **See Exhibit "A"**.

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6.14 Pond Requirements, Specific

- 6.14.1 In turfgrass areas, Contractor shall mow or weed eat vegetation to a height no lower than 4 inches.
- 6.14.2 Cut vegetation shall be mulched down to a size of 2 inches or less in “Water Quality” ponds.
- 6.14.3 No equipment other than hand-held equipment e.g. weed eaters shall enter into any saturated areas.
- 6.14.4 Mowing in ponds shall occur per the schedule in Exhibit B.
- 6.14.5 When access to a work site is affected, overhanging limbs of desirable woody vegetation greater than eight inches in diameter shall be pruned to raise the canopy up to approximately 10 feet above the ground. All trimming shall be done in such a manner that does not endanger the life of such trees. Pruning shall not exceed 20% of a tree’s crown at one time.
- 6.14.6 Tall and Medium Herbaceous Plants: trimming shall not impinge on the growing tips (basal crown) of bunchgrasses. Cutting these grasses below the basal crown will severely stress and likely kill them. These plants shall only be cut in late winter and to a height no lower than 18 inches from the ground.

6.15 Invasive Woody Vegetation:

6.15.1 Wood Vegetation defined:

Woody plants, small: plants with a stem diameter less than two inches that commonly develop wood inside the stem and bark on the outside. These are usually trees and shrubs though can be large herbaceous plants.

Woody plants, large: plants with a stem diameter greater than two inches that develop wood inside the stem and bark on the outside. These are usually trees and shrubs.

- 6.15.2 Prolific woody plants, such as the Willow tree that typically colonize perimeter of ponds, shall be removed to prevent any potential future impact on the pond liner. Refer to Table 1 below for a partial list of woody plants that invade ponds. If the trees are small, the Contractor shall remove them by the roots. Please be aware that at permanent pool Wet ponds, the mowing boundary for this contract does not come closer than 15 ft from the waterline, as the riparian zone in these areas is under a different contract.

Table 1. – Woody Plant Weed List

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Common Name	Botanical Name	Weed Type
Ash	Fraxinus spp.	tree
Chinaberry	Melia azedarach	tree
Chinese Tallow	Sapium sebiferum	tree
Cottonwood	Populus deltoides	tree
Giant Cane	Arundo donax	tall woody grass
Mulberry	Morus spp.	tree
Poison Ivy	Toxicodendron radicans	vine
Rough-Leaf Dogwood	Cornus Drummondii	tree
Willow	Salix nigra	tree

- 6.15.3 Contractor shall remove undesirable woody vegetation and trees less than eight inches in diameter (measured at 4 ½ feet above grade), and saplings. Woody vegetation between two and eight inches in diameter shall be cut flush with ground, and the stump and cut stems shall be treated with an herbicide to prevent re-sprouting.
- 6.15.4 A tool similar to the discontinued Tree Wrench (or Weed Wrench) is an effective way to remove trees less than two inches in diameter without the use of chemicals. This tool is most effective when there is a hard surface against which the operator can gain leverage. Using some type of support in wet soils will help. Contractor shall not use the Tree Wrench when the vegetation is growing within five feet of a concrete structure or any other permanent struct that does not allow proper leverage to use the tree wrench, and/or may damage the permanent structure. In these cases, Contractor shall cut the woody vegetation flush with ground and treat the stump immediately.
- 6.15.5 If physical removal of weed trees is impractical, an herbicide may be necessary. To minimize the amount of chemical needed, the Contractor shall cut off the top of the tree and treat stump to prevent re-sprouting. Contractor will not be required to dispose of trees that were cut by the City or the contracted tree cutting contractor.
- 6.15.7 Contractor shall not disturb soil in the work areas unless the activities necessary to accomplish the desired work warrant such action and previous authorization has been obtained from the City Contract Manager or designee. Any work that disturbs the existing condition of the soil shall conform to the re-vegetation requirements of the City.
- 6.15.8 Contractor shall not mow for at least 24 hours after rain greater than ½ inch or when the ground is muddy or soft. To prevent tire indentations from occurring, Contractor shall not enter any saturated area with any equipment heavier than weed eaters. The City reserves the right to seek remedy from the Contractor for full reimbursement of the cost to rehabilitate any area so damaged by Contractor.
- 6.15.9 Contractor shall provide proof that clippings, brush and/or trash are being disposed of in an appropriate manner. If the material is disposed of in a landfill, the Contractor shall attach the receipt(s) to the appropriate invoice. If organic materials are disposed of at a compost site managed by the Contractor, this site shall be made available for periodic City inspection.

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6.16 Herbicide Application

- 6.16.1 The Contractor's pesticide/herbicide actions shall confirm to City Standard, Special and Provision Specification SP608S.4J.
- 6.16.2 Applications of chemicals shall be made under the on-site supervision of a Licensed Pesticide Applicator currently certified by the State of Texas Structural Pest control board.
 - 6.16.2.1 Contractor shall provide copies of certifications of their licensed employee(s) at the City's request.
 - 6.16.2.2 If the licensed employee(s) leave Contractor's employment, no herbicide application may be performed until the City approves in writing the licensed replacement(s).
- 6.16.3 All label precautions shall be adhered to, including limiting drift to non-target plants, both terrestrial and aquatic. Contractor shall follow the guidelines listed in 609S.6, SP608, AND SP609S.
- 6.16.4 At the discretion of the City, affected stakeholders shall be notified by Contractor at least 48 hours in advance of impending herbicide treatment in creeks and ponds. Contractor shall provide and use ground signs, and door hangers where appropriate. The City will provide the Contractor with the door hanger templates if given a minimum of two week notice.
- 6.16.5 When required by the City's Contract Manager or designee, the Contractor shall verify that such notification has been performed.

6.17 North Zone: Group 1 Set "A", Approximately 479 Acres Total

Buffers— North sites Approximately 50 Acres Street and sidewalk buffers along all WPD sites. These site boundaries include 19 small ponds (less than 25K sq. ft.) that fall entirely or primarily within the roadside buffer and are mowed together as a unit with the buffer they fall in. (Sites North of Ladybird Lake).

6.17.2 Open Space North sites - 31, Approximately 20 Acres

Buyouts and vacant lots, some that are wildflower meadows have two polygons associated with each flag.

6.17.3 Ponds North sites - 209, Approximately 215 Acres

Divided into:

- 6.17.3.1 Four per year schedule – 167 sites Approximately 133 Acres
- 6.17.3.2 Six per year schedule – 42 sites Approximately 82 acres

6.17.4 Creeks North sites – 126, Approximately 194 Acres

Cut frequency varies from 1-12 cuts per year, with most sites at 3 to 4 cuts per year.

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- 6.17.4.1 1 Cut – 1
- 6.17.4.2 2 Cuts – 4
- 6.17.4.3 3 Cuts – 84
- 6.17.4.4 4 Cuts – 19
- 6.17.4.5 5 Cuts – 4
- 6.17.4.6 6 Cuts – 8
- 6.17.4.7 7 Cuts – 1
- 6.17.4.8 12 Cuts – 1
- 6.17.4.9 as needed only – 4

6.18 South Zone : Approximately 974 Acres

Category 8-Buffers– South sites- Approximately 76 Acres Street and sidewalk buffers along all WPD sites; these site boundaries include 7 small ponds (less than 25K sq. ft.) that fall entirely or primarily within the roadside buffer and are mowed together as a unit with the buffer they fall in. Sites south of Ladybird Lake.

6.18.2 Category 6- Open Space South sites – 16, Approximately 135 Acres

Buyouts and vacant lots, some that are wildflower meadows have two polygons associated with each flag, as buffer and main portion have been split with the same layer.

6.18.3 Category 2 Ponds South sites – 322, Approximately 635 Acres

Divided into:

- 6.18.3.1 Four per year schedule – 244 sites Approximately 253 Acres
- 6.18.3.2 Six per year schedule – 78 sites Approximately 118 acres

6.18.4 Category 4- Creeks South sites – 104, Approximately 128 Acres

Cut frequency varies from 2-12 cuts per year, with most sites at 3 to 4 cuts per year.

- 6.18.4.1 2 Cuts – 2
- 6.18.4.2 3 Cuts – 74
- 6.18.4.3 4 Cuts – 21
- 6.18.4.4 12 Cuts – 2
- 6.18.4.5 as needed only – 5

7.0 INVOICING AND ACCEPTANCE OF WORK

- 7.1 All work is subject to review and acceptance by the City prior to payment of Contractor's invoice.
- 7.2 Contractor shall invoice no more frequently than once per month. Multiple Cuts may be put together on one invoice, including detail.
- 7.3 The City's preference is to have invoices emailed to wpdinvoices@austintexas.gov or mailed to the below address:

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	City of Austin
Department	Watershed Protection Department
Attn:	Accounts Payable
Address	505 Barton Springs
City, State, Zip Code	Austin, TX 78704

8.0 DESIGNATION OF KEY PERSONNEL

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name/ Title</u>	<u>Phone Number</u>	<u>Email Address</u>
City Contract Manager	Josie Archer	512-974-9735	Josephine.archer@austintexas.gov
City Project Manager	Chris Meyer	512-974-2702	Christopher.meyer@austintexas.gov
City Project Manager	Acayla Haile	512-974-7284	Acayla.haile@austintexas.gov
City Procurement Specialist	Sandy Wirtanen	512-974-7711	Sandy.wirtanen@austintexas.gov

9.0 CITY'S RESPONSIBILITIES

- 9.1 The City's Contract Manager or designee will provide purchase order via, phone, or email upon service request.
- 9.2 The City at its sole discretion will determine whether to execute individual projects with the selected Contractor or in-house City resources.
- 9.3 The City will provide Contractor a main point of contact.