



# Solicitation **COVER SHEET**

## IDENTIFICATION

Number	IFB WJT1017
Title	Window Replacement, Maintenance and Repair
Summary	The City of Austin (City) seeks bids in response to this solicitation for the replacement or repair of any interior and/or exterior glass product used by the City of Austin. The services provided under this Contract will be for projects which are non-construction related and do not require structural or building modifications.
Type	Invitation for Bid (IFB)
Version (Addenda)	0

## AUTHORIZED CONTACT PERSONS

Primary	Billy Toler; (512) 974-2054 <a href="mailto:william.toler@austintexas.gov">william.toler@austintexas.gov</a>
Secondary	Sandy Wirtanen; (512) 974-7600; <a href="mailto:sandy.wirtanen@austintexas.gov">sandy.wirtanen@austintexas.gov</a>
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; <a href="mailto:SMBRComplianceDocuments@austintexas.gov">SMBRComplianceDocuments@austintexas.gov</a>
Notes	See Solicitation Instructions, 5.0 Authorized Contact Persons.

## IMPORTANT DATES

### OFFERS DUE

Date and Time	June 23, 2022 – 2 p.m.
Notes	See Solicitation Instructions, Offer Submission.

### BID OPENING

Date and Time	June 23, 2022 – 3 p.m.
Notes	See Solicitation Instructions, Offer Submission.

### QUESTIONS DUE

Date and Time	June 16, 2022
Submission Method	Email Only

Notes	See Solicitation Instructions, 3.2 Questions.
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**PRE-OFFER CONFERENCE**

Conference (Yes/No)	Yes
Mandatory (Yes/No)	Yes
Date and Time	June 14, 2014 – 3 p.m.
Location	Teleconference – Teams Meeting
Notes	<a href="#">Pre-Bid Teams Link</a> or join via call – 512-831-7858 – Conference ID: 912 363 160 #

**PUBLISHED**

Date	May 30, 2022
Available Online	<a href="#">Austin Finance Online (austintexas.gov)</a>
Available Hardcopy	Purchasing Office; 124 w. 8 <sup>th</sup> Street, Suite 300; Austin, TX 78701

**SOLICITATION DOCUMENTS**

Document name	Pages	Date
<b><u>Solicitation Packet – IFB 2200 WJT1017 - Includes the following:</u></b>		
<u>Solicitation Cover Sheet</u>	2	May 30, 2022
<u>Solicitation Instructions</u>	8	May 30, 2022
<u>Terms and Conditions</u>	29	May 30, 2022
<u>Scope of Work</u>	22	May 30, 2022
<u>Pricing Submittal – IFB 2200 WJT1017 – Complete and return</u>	2	May 30, 2022
<u>Offer and Certifications – IFB 2200 WJT1017 – Complete and return</u>	12	May 30, 2022

**NIGP CODES****COMMODITY CODES**

Code	Description
91030	Glass Replacement, Maintenance, and Repair

**CITY OF AUSTIN  
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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.

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- 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.
- B. The making and acceptance of final payment will constitute:

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- 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 SPECIAL TOOLS & TEST EQUIPMENT:**

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**1.7 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.

**1.8 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.

**1.9 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.

**1.10 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

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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.

**1.11 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.

**1.12 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.

**1.13 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.

**1.14 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.

**1.15 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.

**1.16 DELAYS:**

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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, 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.

**1.17 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.

**1.18 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.

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- 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 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.

**1.19 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.

**1.20 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

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measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- 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.

**1.21 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.

**1.22 PUBLICATIONS:**

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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.

**1.23 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.

**1.24 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.

**1.25 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.

**1.26 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.

**1.27 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.

**1.28 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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**1.29 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.

**1.30 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.

**1.31 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.

**1.32 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.

**1.33 JURISDICTION AND VENUE:**

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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.

**1.34 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.

**1.35 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.

**1.36 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.

**1.37 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.

**1.38 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.

**1.39 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 10<sup>th</sup> 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.

**1.40 NON-SPECIFIED ITEMS:**

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The City may purchase additional related items that are available from the Contractor. Pricing for these non-specified items will be calculated based on a percentage markup over Contractor's cost, percentage discount of list price or as otherwise identified in the Price Sheet under the Non-Specified Items Section. The percentage markup or discount shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent Contract extension options. The City may request additional information from the Contractor to substantiate the percentage markup or discount prior to placing an order.

**1.41 ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) calendar 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 requested price adjustment shall not exceed 25% 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: Complete. For multiple indexes copy the table below. Update each table with the correct information and delete these instructions.

Weight % or \$ of Base Price:
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Database Name: Employment Cost Index	
Series ID: CIU1020000000 00A	
x Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: All Civilian	
Description of Series ID: Wages and Salary	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Select the applicable method below (Single, Portion or Composite) and remove the others and these instructions. Price adjustment will be calculated as follows:

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

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.

**1.42 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](mailto:PURInsuranceCompliance@austinTexas.gov)

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- 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 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;

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- 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 f or 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;
  - 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.
- iv. **Liquor Legal Liability:** Minimum limits of \$500,000 per occurrence for bodily injury and property damage arising from the acts or omissions of Contractor or Contractor's employees, representatives, agents, or Subcontractors in the performance of this Agreement.
- v. **Professional Liability:** Contractor shall provide Professional Liability coverage, at a minimum limit of \$1,000,000 per occurrence, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.
- vi. **Property Insurance:** The Contractor shall provide All Risk (Special Form) Property coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear.

**Option: Include if Contractor will provide Technology, Hardware, Software, Website Design, Software Services or Licensing, Data Storage, etc., under this Agreement. Note: Limit amount should be adequate to cover City's exposure. Contact Risk Management for guidance.**

- vii. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private

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information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

- viii. **Environmental Impairment/Pollution Liability Insurance:** with a minimum limit of \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages including bodily injury; property damage, cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims by reason of sudden and accidental or non-sudden and accidental pollution arising out of the transportation, storage, or permanent disposal of hazardous and non-hazardous wastes, including wastes subject to the Toxic Substances Control Act (TSCA).

With respect to sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a treatment, storage and disposal facility must demonstrate financial responsibility for bodily injury and property damage to third parties and clean-up costs of at least \$1,000,000 per occurrence.

With respect to non-sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a surface impoundment, landfill or land treatment facility that is used to manage hazardous wastes, including wastes subject to the Toxic Substances Control Act (TSCA), must demonstrate financial responsibility for bodily injury and property damage to third parties and clean-up costs of at least \$1,000,000 per occurrence. The amounts of coverage must be exclusive of legal defense costs.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- 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 GOODS**

### **2.1 DELIVERY AND PACKAGING TERMS:**

- A. **DELIVERY AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. destination, prepaid and allowed unless otherwise specified. Unless otherwise stated in this Contract, the Contractor's price shall be deemed to include all delivery and transportation charges of required mode of transportation. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be set forth in the block of the Purchase Order or Delivery Order entitled "SHIP TO" and/or Offer Sheet. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays. The City expressly reserves all rights under law, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
- B. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach. However, the Contractor shall have the right to substitute a conforming tender; provided if the time for performance has not yet expired. The Contractor shall notify

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the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.

- C. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** All Deliverables must be shipped complete unless arrangements for partial shipments are made in advance. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, 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.
- D. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables
- E. **CONTRACTOR PACKAGING DELIVERABLES:** The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and Purchase Order or Delivery Order number and the price agreement number if applicable, (c) container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear the cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable Specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**2.2 WARRANTY:**

- A. **PRICE:**
  - i. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
  - ii. The Contractor warrants that its prices provided in this Contract are no higher than its current prices on orders for similar goods under similar terms of purchase.
- B. **TITLE & RISK OF LOSS:** Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables. The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
- C. **DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the Specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Contract, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
  - i. 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.
  - ii. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the

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Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by 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.

- iii. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables 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 Deliverables from another source.
- iv. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall fully assist and cooperate with the City to enforce such manufacturer's warranty for the benefit of the City.
- i. Contractor warrants that all Equipment shall be at current engineering change levels and shall be eligible for the manufacturer's standard prime shift maintenance contract upon delivery.

**2.3 WARRANTY BY CONTRACTOR AGAINST INFRINGEMENTS:**

- A. The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the Specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims.
- B. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties Stated in this Contract.
- C. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's Specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this Paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

**2.4 RESTOCKING FEES:**

- A. The Contractor may bill the City restocking fees (if specifically authorized by this Contract) for parts that are Ordered by the City under the Contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.
- B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an

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annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

**2.5 PUBLISHED PRICE LISTS:**

The Published Price List may be superseded or replaced during the Contract term only if price revisions are the result of a modification to the manufacturer's official Published Price List. Written notification from the Contractor of price changes, along with one copy of the revised manufacturer's official Published Price List must be submitted to the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision. The discounts or markups on equipment rental, material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract and are not subject to increase. Failure to submit written notification of Published Price List revisions will result in the rejection of new prices being Invoiced. The City will only pay Invoices according to the last approved price list.

**2.6 OWNERSHIP AND USE OF DELIVERABLES:**

The City shall own all rights, titles, and interests throughout the world in and to the Deliverables, except as stated below.

- A. **PATENTS:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **COPYRIGHTS:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights. In and to such Deliverables, provided however, that nothing in this Paragraph shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
- C. **ADDITIONAL ASSIGNMENTS:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, Specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Clause shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any

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of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

**2.7 HAZARDOUS MATERIALS:**

- A. If this Contract involves hazardous materials, the Contractor shall provide the City the Safety Data Sheets (SDS) on all chemicals and hazardous materials being used, specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the SDS is grounds for the City to terminate this Contract immediately.
- C. The SDS, instructions and information required in Paragraph "A" must be included with each shipment under the Contract.

**2.8 BUY AMERICAN ACT:**

In accordance with applicable Federal Regulations, the City is restricted from using Federal funds for purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate.

**2.9 WORKPLACE CONDITIONS CODE ("CODE"):**

The Austin City Council adopted Ordinance No. 20070621-152 on June 21, 2007, enacting the Workplace Conditions Code. The policy defined in this code applies to any contract for the procurement or laundering of apparel. The Contractor shall comply with this Code, for the term of this Contract. The Code is available at <https://www.austintexas.gov/edims/document.cfm?id=104087>.

**3 SERVICES**

**3.1 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.

**3.2 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.

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- 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.

**3.3 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 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.

**3.4 TRAVEL EXPENSES:**

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the current United States General Services Administration Domestic Per Diem rates as published and maintained online at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

No amounts in excess of the Travel Policy or rates shall be paid. All Invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**3.5 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

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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.

**3.6 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.

**3.7 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 \$15.00 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 \$15.00 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.
- 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](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.

**3.8 PREVAILING WAGE:**

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Contractor shall comply with the requirements of Section 00830 Prevailing Wage Rates and Payroll Reporting including the wage rates listed in Section 00830BC Wage Rates for Building Construction or Section 00830HH Wage Rates for Heavy and Highway Construction.

**3.9 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.
- 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.

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- 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.

**3.10 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Access to the Department buildings by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the buildings at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving City buildings and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

**3.11 BUSINESS CONTINUITY AND DISASTER RECOVERY:**

The Contractor shall maintain a business continuity and disaster recovery plan.

**4 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.

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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 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.

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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

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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 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.

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- 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.

**CITY OF AUSTIN  
SCOPE OF WORK/SPECIFICATIONS  
FOR  
GLASS REPLACEMENT AND REPAIR**

**1.0    BACKGROUND**

This Contract is for the replacement or repair of any interior and/or exterior glass product used by the City of Austin. The services provided under this Contract will be for projects which are non-construction related and do not require structural or building modifications. These services will be provided for the Library Department (Library) and the Austin Convention Center Department (ACCD) (each, a “Department” and collectively referred to herein as the “City”). Reference Attachment A, City Locations, for the locations to be serviced under this Contract. The City reserves the right to add or remove locations and/or City Departments to this Contract. The Contractor awarded this contract shall have the experience and technical ability to accomplish services as described within this Scope of Work.

**2.0    CONTRACTOR’S MINIMUM REQUIREMENTS**

- 2.1    To be considered eligible, the Contractor shall have provided services similar in scope and size to this Scope of Work on a continuous basis for the most recent five (5) consecutive year period.
- 2.2    Contractor shall not have significant performance deficiencies under other City contracts in the last three (3) years, including but not limited to contract terminations for cause, failure to maintain certain insurance requirements, failure to meet minimum contract requirements, or outstanding financial obligations to City.

**3.0    SCOPE OF SERVICES**

- 3.1    For the purposes of this Scope of Work, the term “glass” shall refer to glass, windows, and mirrors.
- 3.2    Contractor’s responsibility shall include, but is not limited to:
  - providing glass or window replacement and repair services; securing/boarding of windows, doors, and other glass installation prior to an emergency condition;
  - providing sufficient personnel to respond to the needs of the City; providing all materials and equipment; installing windows on ground level or multi-story buildings; replacing glass doors;
  - repairing, replacing or providing mirrors, tinted glass, Plexiglas, and custom cut glass and metal work;
  - securing buildings where there is glass or window damage;
  - ordering materials; and
  - disposing of glass and other materials as a result of providing glass replacement and repair services.
- 3.3    Contractor shall provide all labor, materials, equipment, tools, permits, supervision, transportation, and training necessary for glass replacement and repair services. Equipment shall include, but is not limited to, scissor-lifts, bucket trucks, high-reach lifting devices, narrow lift (pass through 36” door), and scaffolding. Some areas require the use of a

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Teupen LEO23GT, or City-approved equivalent, lift. Contractor shall have an adequate supply of material in inventory for emergency and non-emergency requests. Materials shall be clean, properly maintained and properly secured at the Contractor's place of business.

- 3.4 Contractor shall respond to all requests from the City for emergency and non-emergency glass replacement and repair services. Contractor shall perform all steps reasonably necessary to protect City property and persons from harm. Failure to perform repairs in a prompt and professional manner may result in termination of the Contract.

**4. INVOICE AND PAYMENT ADDRESS:**

The Contractor shall email or mail itemized invoices to the below address or to the address indicated on the Deliver Order:

	City of Austin
Department:	Public Library
Attn:	Jorge Valle
Email:	<a href="mailto:Lib.ap@ausintexas.gov">Lib.ap@ausintexas.gov</a>

	City of Austin
Department:	Austin Convention Center
Attn:	Bryan Helford
Email:	<a href="mailto:ACCD.Accountspayable@austintexas.gov">ACCD.Accountspayable@austintexas.gov</a>

	City of Austin
Department:	Austin Police Department
Attn:	Jerome Guerrero
Email:	<a href="mailto:APDAccountsPayable@austintexas.gov">APDAccountsPayable@austintexas.gov</a>

	City of Austin
Department:	Austin Public Health
Attn:	Mark Luna
Email:	<a href="mailto:hhsdapinvoices@austintexas.gov">hhsdapinvoices@austintexas.gov</a>

	City of Austin
Department:	Aviation
Attn:	Mike Robinson
Email:	<a href="mailto:Invoices@flyaustin.com">Invoices@flyaustin.com</a>

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	City of Austin
Department:	Building Services
Attn:	Marty James
Email:	<a href="mailto:BSDAPInvoices@austintexas.gov">BSDAPInvoices@austintexas.gov</a>

	City of Austin
Department:	Fleet Mobility Services
Attn:	Pamela Olivas
Email:	<a href="mailto:COAFleetAP@austintexas.gov">COAFleetAP@austintexas.gov</a>

	City of Austin
Department:	Parks and Recreation
Attn:	Gene Faulk
Email:	<a href="mailto:PARDAccountsPayable@austintexas.gov">PARDAccountsPayable@austintexas.gov</a>

	City of Austin
Department:	Austin Water
Attn:	Jessica Easley
Email:	<a href="mailto:AWFacilityMgmtAP@austintexas.gov">AWFacilityMgmtAP@austintexas.gov</a>

**5. WORK COORDINATION**

**5.1 Schedule:**

- 4.0.1 The Contractor understands and agrees that the scheduling of City events take precedence over any other schedule(s) agreed to by the City and the Contractor. The Contractor shall not hold the City liable, financially or otherwise, if an alteration in the City schedule requires the City to reschedule services with the Contractor. City will make every reasonable effort to notify the Contractor immediately of changes in the City schedule of events, which may have an impact on any other schedule agreed to by the City and the Contractor.
- 4.0.2 The City will require the Contractor to perform regular services (non-emergency) during regular and/or non-regular business hours as outlined in Labor Hours' Time-Designations of this Scope of Work.
- 4.1 Initial Services: Within 10-business days of Contract award, the Contractor shall contact the City's designated person or Departmental Contract Managers ("Contract Manager") to set up an initial meeting to identify glass in need of priority (immediate) repair or replacement.

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This includes any interior and exterior windows, glass, and mirrors.

- 4.1.1 The Contractor shall arrange for a follow-up meeting with the Contract Managers. During these meetings, the Contractor shall present to the each Department an estimate (or proposal) for each piece of glass previously identified as a priority
  - 4.1.1.1 The Contract Manager for the Library Department is Manuel Huerta (512) 974-7334.
  - 4.1.1.2 The Contract Manager for the ACCD Department is Brian Helford (512) 404-4311.
  - 4.1.1.3 The estimate/proposal shall include the location of the glass, estimated repair or replacement services, a cost estimate (based on bid prices of Section 0600, Bid Sheet), list of proposed equipment rental(s) needed to complete the service (if applicable), and recommended schedule with a proposed start and finish date/timeframe.
- 4.1.2 The Contract Manager will review the proposal and upon acceptance, will schedule start of services with the Contractor. Once services of the priority (immediate) glass repair or replacement begins, the terms of this Scope of Work will apply.
- 4.2 General Services: General services shall be performed on an as-needed basis ("General Services" or "Non-Emergency"). The Contractor shall coordinate services with the Contract Manager (or designee).
  - 4.2.1 The Contractor shall have a 24-hour answering service or a Single Point of Contact who is available to receive calls on a 24-hour basis.
  - 4.2.2 The City will request General Services (each instance, a "Notification") and Contractor will respond within 24 hours. If applicable, the Contractor shall arrange a site-visit with the Contract Manger or designee.
  - 4.2.3 The Contractor shall provide a complete cost estimate with an estimated completion time to the City within three (3) working days for General Services.
    - 4.2.3.1 The estimate for General Services shall be in writing and shall include: the location of the glass, estimated repair or replacement services, an itemized cost estimate (based on bid prices of Section 0600, Bid Sheet), list of proposed equipment rental(s) needed to complete the service (if applicable), and recommended schedule with a proposed start and finish date/timeframe.
  - 4.2.4 The Contract Manager will review the estimate and if in agreement, will issue a written notice to proceed ("Notice to Proceed"). A Notice to Proceed will be in the form of a Delivery

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Order (DO) issued by the individual City Department.

- 4.2.5 Upon receipt of the Notice to Proceed, the Contractor shall acknowledge receipt of the Notice by sending an email or fax to the Contract Manager.
- 4.2.6 The Contractor and Contract Manger will schedule a date and time for services to begin. If the Contract Manager does not agree with the estimate, the Contract Manager will contact the Contractor to discuss and resolve. Once in verbal agreement, the Contractor shall re-submit the cost estimate for review and approval by the Contract Manager.
- 4.2.7 The Contractor shall provide a Project Manager or designee to inspect, monitor, and supervise the Contractor's employees; ensuring adherence to the work schedule, safety requirements, and quality of work. The Project Manager or designee shall not be removed from the project without prior written consent by the Contract Manager.
- 4.2.8 While onsite, the Contractor and its employees shall remain in compliance to the City's Workforce and Security Clearance as described in Section 0400, Supplemental Terms and Conditions. The Contractor recognizes and understands that some City Departments have more stringent Workforce and Security Clearance requirements. As such, the Contractor agrees to adhere to each Department's unique requirements.
- 4.2.9 The Contractor shall complete the work within the time stated in the cost estimate and shall notify the Contract Manager upon completion of the services.
  - 4.2.9.1 If during the performance of services the Contractor determines that additional time is needed to complete the work, the Contractor and the Contract Manager will mutually agree to a new date for completion of work. Under no circumstances shall the Contractor leave services unfinished without prior approval/arrangement of the Contract Manager or designee.
- 4.2.10 All work is subject to inspection and acceptance by the Contract Manger or designee.
- 4.2.11 Upon completion of services, the Contractor shall be responsible for the immediate cleanup of the work area and removal of debris.

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1. **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(s) having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain written approval for the replacement. Such approval shall not be unreasonably withheld.

The City's key personnel are identified as follows:

	Name	Phone Number	Email Address
Austin Public Library	Mario Martinez	(512) 974-9621	<a href="mailto:Mario.Martinez@austintexas.gov">Mario.Martinez@austintexas.gov</a>
Austin Convention Center	Bryan Helford	(512) 404-4311	<a href="mailto:Bryan.Helford@austintexas.gov">Bryan.Helford@austintexas.gov</a>
Austin Police Department	Jerome Guerrero	(512) 974-5273	<a href="mailto:Jerome.Guerrero@austintexas.gov">Jerome.Guerrero@austintexas.gov</a>
Austin Public Health	Mark Luna	(512) 972-5126	<a href="mailto:Mark.Luna2@austintexas.gov">Mark.Luna2@austintexas.gov</a>
Austin Aviation	Mike Robinson	(512) 530-7504	<a href="mailto:Mike.Robson@flyaustin.com">Mike.Robson@flyaustin.com</a>
Building Services	Marty James	(512) 974-3519	<a href="mailto:Marty.James@austintexas.gov">Marty.James@austintexas.gov</a>
Fleet Services	Mary Ochoa	(512) 974-2629	<a href="mailto:Mary.Ochoa@austintexas.gov">Mary.Ochoa@austintexas.gov</a>
Parks and Recreation	Gene Faulk	(512) 974-9507	<a href="mailto:Gene.Faulk@austintexas.gov">Gene.Faulk@austintexas.gov</a>
Procurement Specialist	Billy Toler	(512) 974-2054	<a href="mailto:William.toler@austintexas.gov">William.toler@austintexas.gov</a>
Austin Water	Georgia Billela	(512) 972-0096	<a href="mailto:Georgia.Billela@austintexas.gov">Georgia.Billela@austintexas.gov</a>

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**4.3 Equipment Requirements**

- 4.3.1 The Contractor shall provide its own height-reducing equipment.
- 4.3.2 All equipment shall be in good operating condition and shall meet or exceed OSHA industry standards.
- 4.3.3 Any motorized or mechanical height-reducing equipment such as lifts, booms or scaffolds will be inspected and approved by the Contract Manager before use. Non-marking tires shall be cleaned before entry into the facility. In addition, the City may require a covering be laid on the floor to protect it from the equipment. The Contractor is responsible for any damage resulting from tire burns, battery leaks, oil or hydraulic leaks, scrapes or scratches.
- 4.3.4 The City may stop work at any time if inferior equipment is in use by the Contractor.
- 4.3.5 No gasoline, natural gas, diesel, or propane-powered equipment shall be allowed in the facility without the written permission of the Contract Manager.
- 4.3.6 Prior to renting any equipment, the Contractor shall have the Contract Manager's written approval. Under no circumstances shall the Contractor rent equipment without prior approval.
- 4.3.7 The Contractor shall not be reimbursed for rental costs that do not have the Contract Manager's written approval.
- 4.3.8 If the Contract Manager does not provide approval for the equipment rental, the Contractor either shall, at its own expense, purchase or rent the necessary equipment.
- 4.3.9 If the Contract Manager approves the rental of the equipment, the Contractor may charge City the cost for the rental. The Contractor may markup rental of equipment in accordance with the Bid Sheet, Section 0600. Markups shall not exceed five percent (5%) for rentals. All line-item charges for rentals will be verified by the City.
- 4.3.10 To be reimbursed for cost of rented equipment the Contractor shall submit copies of the rental agreement and receipts that clearly indicate the full cost paid by the Contractor. The Contractor shall be responsible for any loss or damage to rented or owned equipment used on a project under this contract. The City shall not be charged for expenses incurred by the Contractor for loss or damage to rented or owned equipment.

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**5.0 LABOR HOURS TIME-DESIGNATIONS AND APPLICABLE RATES**

Time designations shall be as follows:

- 5.1 REGULAR HOURS shall be 7:00 a.m. through 5:00 p.m. Monday through Friday. Hourly rates for regular hours shall be in accordance with Section 0600, Bid Sheet.
- 5.2 NON-REGULAR HOURS shall be:
- 5:01 p.m. through 6:59 a.m. Monday through Friday or 5:01 p.m. Friday through 6:59 a.m. Monday. Hourly rates for these non-regular hours may be charged to the City up to 150% (time and a half) of the regular hours as stated in Section 0600, Bid Sheet.
  - Official City of Austin holidays approved by Austin City Council beginning 12:00 a.m. through 11:59 p.m. the day of the Holiday and hourly rates for these non-regular hours may be charged to the City up to 200% (double time) of the regular hours as stated in Section 0600, Bid Sheet.
- 5.3 EMERGENCY HOURS shall be any time (24/7) and labor rates shall be in accordance with the hourly rates of either Regular Hours or Non-Regular Hours, depending when services are provided.

**6.0 EMERGENCY RESPONSE**

- 6.1 In the event of an emergency condition, such as a storm, hail, fire, breach of building security, other situations resulting in substantial damage to City property, or a situation in which the damage interferes with the business operation of a City Department or threatens public safety or health (all instances, an "Emergency"), the Contractor shall provide sufficient personnel and materials to protect City property and ensure uninterrupted service at the damaged City property (an "Emergency Service"). The City will prioritize the work and notify the Contractor.
- 6.2 The City will notify the Contractor that services are to be considered "Emergency".
- 6.3 Emergency Labor Hour Rates per Section 0600, Bid Sheet will be charged to the City only when services are designated as an "Emergency".
- 6.4 The City has the sole and final authority in determining when services will be designated as an "Emergency".
- 6.5 Emergency Services shall include, but are not limited to, securing/boarding of windows to prevent property damage, replacing or repairing damaged glass, or assistance in the clean-up and removal of large amounts of broken glass, windows, or mirrors.

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- 6.6 The Project Manager or designee and personnel shall respond within one hour of notification, and shall be onsite within four (4) hours of Notification by the City.
- 6.7 The Contractor shall provide a complete cost estimate with an estimated completion time to the City within two (2) hours of Notification. The Contract Manager and Contractor may mutually agree that a verbal cost estimate for Emergency Services will meet the needs of the City. Verbal estimates shall not release the Contractor from its responsibilities as described by the terms of this Contract.
- 6.8 The Project Manager or designee and personnel shall remain at the damaged property for the period of time necessary to complete repairs with available materials or to secure and damaged areas while materials are being ordered.
- 6.9 While onsite, the Contractor and its employees shall remain in compliance to the City's Workforce and Security Clearance as described in Section 0400, Supplemental Terms and Conditions.
- 6.10 All work is subject to inspection and acceptance by the Contract Manger.
- 6.11 After the event, the Contractor shall remove and retain all Contractor-owned property used to secure City property. All Contractor-owned property shall be clean, properly maintained and properly secured when not in use.
- 6.12 If additional service is required after, the Emergency Service is complete, all additional service will be performed and is subject to the terms and conditions outlined in General Service and Equipment Requirements of this Scope of Work.

**7.0 MATERIALS**

- 7.1 Materials furnished shall be the latest product in production to commercial trade, and shall be of the highest quality. The Contractor shall ensure that the Manufacturer furnishing the materials is experienced in the production of such items and shall furnish evidence of the Manufacturer having supplied similar materials that have been in successful operation.
- 7.2 The Contractor may markup materials in accordance with the Bid Sheet, Section 0600. All line item charges for materials will be verified by the City.
- 7.3 Within five (5) business days of request by the City, the Contractor shall provide a published price list or materials catalog used by the Contractor to purchase materials in the execution of this Contract.

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- 7.4 All materials used shall be factory new and free of defects in materials and workmanship. Repair parts and components shall conform to Original Equipment Manufacturer specifications.
- 7.5 Special Orders: For any material that the Contractor special orders, the procedure shall be as follows:
- 7.5.1 Contractor shall notify the City in writing of the need to place a special order for materials.
- 7.5.2 Contractor shall submit a complete cost estimate via e-mail or fax to the City within three (3) working days of notification. The cost estimate shall be accompanied by a supplier's' cost estimate. If the Contractor has not received a quote from its supplier within three (3) working days, the Contractor may provide a cost estimate reflecting "rough estimate". WORK SHALL NOT BE PERFORMED UNTIL A CONTRACTOR PROVIDED ACCURATE COST ESTIMATE IS APPROVED BY THE CITY.
- 7.5.3 The City shall review the cost estimate. If the City is in agreement with the cost estimate, the City will issue a Notice to Proceed (or DO).
- 7.5.4 Contractor shall acknowledge receipt of the Notice to Proceed by sending an e-mail or fax to the City. CONTRACTOR SHALL NOT PLACE ANY ORDER UNTIL THE CONTRACTOR RECEIVES A NOTICE TO PROCEED FROM THE CITY (or DO).
- 7.5.5 Contractor shall commence the work as described under Work Coordination of the Scope of Work.
- 7.6 Tint Matching:
- 7.6.1 The City will furnish the original glass specifications and/or a sample of the tint to be matched.
- 7.6.2 It shall be the responsibility of the Contractor to obtain a match as close as possible and to obtain written approval from the City prior to ordering the materials and installation.
- 7.6.3 If the Contractor's supplier anticipates any problems in matching the tint required, the Contractor shall notify the City immediately via e-mail or fax so alternatives can be explored. CONTRACTOR SHALL NOT ORDER GLASS OR OTHER MATERIALS UNTIL THE CITY APPROVES THE ALTERNATE TINT MATCH.

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**8.0 CITY BUILDING CODES**

All work performed or materials installed shall be in strict accordance with the City of Austin Building Codes (<http://www.austintexas.gov/department/building-technical-codes>). Any deficiencies discovered during work or after completion of work shall be immediately corrected by City having corrections made at the Contractor's expense.

**9.0 SILENCE OF SPECIFICATIONS**

The apparent silence of these specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of these specifications shall be made on the basis of this statement.

**10.0 DELIVERY**

The Contractor agrees to make deliveries and perform services only upon receipt of a duly signed and approved cost estimate or Notice to Proceed (or DO) from the City. If delivery is made or services are performed without such approval shall be at Contractor's risk.

**11.0 WORK STATEMENT**

All work shall be of the highest standards prevailing in the industry and in compliance with applicable codes, rules and regulations governing the work.

**12.0 WARRANTY**

- 12.1 Contractor shall provide, at a minimum, a twelve (12) month warranty on materials and workmanship. The warranty period shall begin on the day the City officially accepts the work. Warranty work shall be completed within five (5) working days of notice.
- 12.2 Contractor shall provide the manufacturer's warranty, which specifies the extent to which the quality or performance of the product is assured and states the conditions under which the product can be returned, replaced, or repaired.

**13.0 ADDITIONS & DELETIONS**

The City's Contract Administration by means of a written authorization to Contractor may add or delete locations and/or service to this Contract. Written notification shall take effect upon the Contractor's receipt of such notice or on

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such other days as specified therein. As of the effective date, each item added or deleted shall be subject to this Contract, as if it had original been a part.

**14.0 ESTIMATED QUANTITIES**

The City reserves the right to increase or decrease the quantities listed, subject to the availability of Council-approved funds.

**15.0 PERSONNEL UNIFORMS**

15.1 Contractor shall provide uniforms to all personnel. While performing work on City property, personnel shall wear uniforms with the Contractor's name clearly displayed on the shirt, photo identification badges and personal protective equipment.

15.2 The City reserves the right to approve the uniforms.

**16.0 TRANSPORTATION AND PARKING**

16.1 Contractor shall provide all transportation required to perform the work. Contractor shall park its vehicles in areas designated by the City at the Contractor's expense, if any. All vehicles shall be clearly marked with the Contractor's or Subcontractor's name on both sides of each vehicle. Magnetic signs are acceptable.

16.2 There shall be no separate charge for administrative, overhead, per diem and transportation (i.e. mileage and fuel) costs. These expenses will be included in the hourly bid rates.

**17.0 SAFETY GENERAL**

**17.1 Safety Program**

Contractor shall not require any person to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety. Contractor shall comply with all provisions of the Occupational Health and Safety Act (OSHA).

Contractor shall be completely familiar with, and shall enforce all City, State of Texas and Federal OSHA regulations and requirements as applicable, including but not limited to, the following:

17.1.1 Contractor personnel shall wear applicable personal protection equipment at all times.

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- 17.1.2 Contractor personnel operating equipment or handling materials shall be fully trained in the safe operation of the equipment or materials.
- 17.1.3 Contractor personnel shall follow and apply safety practices prevailing in their applicable industry.
- 17.1.4 Contractor shall block off and mark all work areas with appropriate safety signs and safety barricades/bollards to protect the public from injury.
- 17.1.5 Contractor shall post safety warnings as necessary to ensure safe operations.
- 17.1.6 The Contractor shall coordinate the timing and transportation of glass to the work area. If glass is transported through the interior of a facility, the Contractor shall take every precaution to ensure public safety. Under no circumstances shall the Contractor transport glass through the interior of a facility without prior coordination with the City.
- 17.2 When Contractor becomes aware of a hazardous or a potentially hazardous condition during the course of performing services, the Contractor shall immediately notify the City upon detection of the condition.
- 17.3 Regulatory Requirements: To protect the life and health of employees and other persons; to prevent damage to property, materials, supplies, and equipment; and to avoid work interruptions, Contractor shall comply with the latest 29 CFR 1910, Occupational Safety and Health Standards (General Industry Standards, [https://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=S\\_TANDARDS&p\\_toc\\_level=1&p\\_keyvalue=1910](https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=S_TANDARDS&p_toc_level=1&p_keyvalue=1910)) as revised or amended from time to time. Compliance with OSHA and other applicable laws and regulations for the protection of employees is exclusively the obligation of Contractor, and the City assumes no liability or responsibility for Contractor's compliance or noncompliance with such responsibilities. CONTRACTOR SHALL INDEMNIFY THE CITY FOR ANY CLAIMS, FINES, OR DEMANDS RESULTING FROM CONTRACTOR'S FAILURE TO COMPLY WITH OSHA REQUIREMENTS.
- 17.4 Accident Reports: Contractor shall comply with all OSHA reporting requirements for record keeping and reporting of all accidents resulting in death, injury, occupational disease, or adverse environmental impact. The Contractor shall provide a verbal report to the City within one normal working day of occurrence. Contractor shall cooperate with the City,

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providing written documentation and any information required for their records.

- 17.5 Environmental Requirements: Contractor shall comply with all applicable federal, state, and local environmental protection laws, regulations, and standards. Contractor shall comply with any other statutory requirements for clean air, clean water, toxic substances control, pollution control, resource conservation and recovery. All environmental protection matters or questions shall be coordinated with the City.
- 17.6 Stop-Work: Contractor shall be responsible for the enforcement of all safety requirements for any work performed under the Agreement. If Contractor fails or refuses to promptly comply with safety requirements, the Contract Administrator may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such order shall be made the subject of a claim for extension of time or for excess costs or damages to Contractor.

**Delivery Locations:**

<b>City of Austin</b>	<b>Address</b>
<b>Austin Convention Center</b>	500 East Cesar Chavez Street, Austin, Tx 78701-4121

<b>City of Austin Police Department</b>	<b>Address</b>
Austin Police Department – <b>Main Headquarters</b>	718 East 8 <sup>th</sup> Street Austin, TX 78701
Austin Police Department – <b>North Substation</b>	12425 Lamplight Village Ave Austin, TX 78758
Austin Police Dept. – <b>South Substation</b>	404 Ralph Ablandado Dr. Austin, TX 78748
Austin Police Dept. – <b>East Command</b>	812 Springdale Road Austin, TX 78702
Austin Police Dept. – <b>Office of Community Liaison</b>	41401 S. Industrial Blvd. Austin, TX 78744
Austin Police Dept. – <b>Evidence Warehouse</b>	4708 East Martin Luther King, Jr. Blvd Austin, TX 78721

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<b>Austin Police Dept. – Mounted Patrol</b>	1495 S. State HWY 21 Cedar Creek, TX 78612
<b>Austin Police Dept.</b>	400 Deep Eddy Austin, TX 78703

<b>Department</b>	<b>Address</b>
<b>City of Austin Aviation</b>	10100 Golf Course Rd Bldg. 3 Austin, TX 78730

<b>Department – Building Services</b>	<b>Address</b>
<b>BSD and SWAT campus</b>	411 Chicon, Austin, TX 78702
<b>City Hall</b>	301 W 2nd St, Austin, TX 78701
<b>RLC Campus</b>	1520 Rutherford Ln, Austin, TX 78754
<b>Public Safety Training Campus</b>	4200 Shaw Ln, Austin, TX 78744
<b>Public Health and Animal Shelter Campus</b>	7201 Levander Loop, Austin, TX 78702
<b>Town Lake Center</b>	721 Barton Springs Rd, Austin, TX 78704
<b>Various APD, Fire, and EMS stations as needed</b>	

<b>Department</b>	<b>Address</b>
<b>Fleet Services</b>	<b>Exhibit A hereto attached</b>

<b>Department</b>	<b>Address</b>
<b>Public Library</b>	<b>Exhibit A hereto attached</b>

<b>Department</b>	<b>Address</b>
<b>Parks and Recreation</b>	2525 South Lakeshore Blvd. Austin, TX 78741

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Department	Address
Austin Water	To Be Determined at Contract Execution

**Specific Requirements for Austin Convention Center Department**

**ACCD Contractor or Subcontractor Access Requirements**

Authorized ID and access to those acting as a Contractor or Contractor's Subcontractor who are providing services at Austin Convention Center Department (ACCD) must adhere to the security requirements defined below. Violation of the applicable requirements below may result in the Contractor or its Subcontractor to be removed from ACCD facility or property.

1. Other than ACCD and in-house contractor employees, and unless other arrangements are made with the Contract Manager, persons conducting business with Austin Convention Center (ACC) are required to enter through the service entrance at the pedestrian gate on Red River St. and check-in at the Security Check-In inside the service yard or with the Security Operations Center. Persons arriving at ACC may also enter through the Administrative Offices entrance on Cesar Chavez Street. Persons conducting business with Palmer Events Center (PEC) are required to enter through the garage service entrance and check-in with the PEC Security Operations Center or PEC Administrative Offices. Any other means of access entry into the facilities are unauthorized.

2. Contractors, Contractor's Subcontractors or others who are providing services at ACCD shall be issued Temporary Badge/Access, which may be an ACCD Photo or Non-Photo ID Badge.

3. All persons not directly escorted by an ACCD employee must clearly display an access/ID device while on ACCD facility premises.

4. Use of ACCD access/ID devices to access any part of ACCD facilities for non-business purposes (events, shows, etc.) is prohibited.

5. Any ACCD employee may check an individual's status or contact Security Operations Center whenever observing person(s) in non-public areas of ACCD facilities who are not being directly escorted by an ACCD employee or who are not displaying any required access/ID devices.

6. Restricted areas of the facility with signs stating, "Authorized Personnel Only", "Restricted Access", "Client Access Only" or "No Access" are off limits to all persons except those authorized.

7. Unless authorized by ACCD Management, exterior access into ACCD facilities using keys is prohibited.

8. Under no circumstances shall any person issued an access/ID device, allow another person entry into any ACCD facility using their access/ID device. This includes "piggy-backing" through access doors or gates. Any person with an ACCD ID badge or access device who allows another person to enter using their access privileges should bring the person directly to the Security Operations Center to be checked in.

9. Due to security and safety concerns, Contractors and Contractor's Subcontractors conducting business at ACCD, are not allowed to walk through the open service yard vehicle gates to enter or exit the service yards. Entry and exit should be by way of the designated pedestrian gates and walkway using appropriate access/ID devices and check-in procedures.

10. Pedestrian traffic through ACCD's service yards and exhibit halls is restricted to authorized persons during event/show move-in and move-outs. Children under seventeen (17) are prohibited from ACCD service yards and exhibit halls during move-in and move-outs.

11. During periods where there is no move-in or move-out traffic in the service yards, only persons with legitimate business needs are allowed into the service yards.

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12. Temporary badge/access devices issued to contractors, subcontractors or temporary workers must be returned to the Security Operations Center at the completion of the ACCD work assignment. Non-photo temporary badges must be returned at the end of the completion of work assignments may lead to future ACCD facility access restrictions. employee's work shift/assignment. Failure to return temporary badges/access devices at the completion of work assignments may lead to future ACCD facility access restrictions.

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**Exhibit A**

**Service Center #5**

**Jim Forman, Manager**  
**Robert Opheim, Supervisor – 1<sup>st</sup> shift**  
**Jesus Ruiz, Supervisor – 2<sup>nd</sup> shift**  
**Tony Mercado, Supervisor – 3<sup>rd</sup> shift**  
**Rafferty Brewer-Vogt, Service Consultant – 1<sup>st</sup> shift**  
**Chris Crossland, Service Consultant – 2<sup>nd</sup> shift**  
**714 East 8<sup>th</sup> Street**  
**Austin, TX 78701**  
**[servicecenter5DL@austintexas.gov](mailto:servicecenter5DL@austintexas.gov)**  
**Main Tel. No.: (512) 974-1804 / Fax No.: (512) 322-9909**

**Parts Room - Service Center #5**  
**Edward Kinch, Stores Coordinator**  
(512) 974-1889  
Gilbert Rodriguez  
(512) 974-1841  
Rey Degollado  
(512) 974-1813

Email: [FleetPartsPA5DL@austintexas.gov](mailto:FleetPartsPA5DL@austintexas.gov)

**Service Center #6**

**Merritt Jason Pratt, Manager**  
**Paul Conde, Supervisor – 1<sup>st</sup> shift**  
**Ernest Lopez, Supervisor – 2<sup>nd</sup> shift**  
**Larry Knight, Service Consultant – 1<sup>st</sup> shift**  
**Vacant, Service Consultant – 2<sup>nd</sup> shift**  
**1182 Hargrave St.**  
**Austin, TX 78702**  
**[servicecenter6DL@austintexas.gov](mailto:servicecenter6DL@austintexas.gov)**  
**Main Tel. No.: (512) 974-1742 / Fax No.: (512) 974-9156**

**Parts Room - Service Center #6**  
**Gordon McClendon, Stores Coordinator**  
(512) 974-9162  
Daniel Ramirez  
(512) 974-1743

Email: [FleetPartsPA6DL@austintexas.gov](mailto:FleetPartsPA6DL@austintexas.gov)

**Service Center #8**

**Joseph Jenkins, Manager**  
**Craig Subbert, Supervisor – 1<sup>st</sup> shift**  
**Michael Calnan, Supervisor – 2<sup>nd</sup> shift**  
**Richard Fitch, Service Consultant**  
**Richard Zapata, Service Consultant**  
**4411-D Meinardus Rd.**  
**Austin, TX 78745**  
**[servicecenter8DL@austintexas.gov](mailto:servicecenter8DL@austintexas.gov)**  
**Main Tel. No.: (512) 974-3075 / Fax No.: (512) 416-1635**

**Parts Room - Service Center #8**  
**Luis Velez, Stores Coordinator**  
(512) 974-3029  
Raymond Solis  
(512) 974-2687  
Christopher Alvarez  
(512) 974-4319

Email: [FleetPartsPA8DL@austintexas.gov](mailto:FleetPartsPA8DL@austintexas.gov)

**Service Center #11**

**Adrian Alejo, Manager**  
**Vacant, Supervisor – 1<sup>st</sup> shift**  
**David Jones, Supervisor – 2<sup>nd</sup> shift**  
**George Toposna, Service Consultant**  
**6301-J Harold Court**  
**Austin, TX 78721**  
**[servicecenter11DL@austintexas.gov](mailto:servicecenter11DL@austintexas.gov)**  
**Main Tel. No.: (512) 974-2389 / Fax No.: (512) 974-9055**

**Parts Room - Service Center #11**  
**Mike Maharidge, Stores Coordinator**  
(512) 974-9022

Email: [FleetPartsPA11DL@austintexas.gov](mailto:FleetPartsPA11DL@austintexas.gov)

**Service Center #12**

**Adrian Alejo, Manager**  
**Kevin McFarlin – Supervisor, 2<sup>nd</sup> shift**

**Parts Room - Service Center #12**  
**Juan Sanchez, Stores Coordinator**  
(512) 974-1763

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Eddie Raymond, Service Consultant  
4108 Todd Lane  
Austin, TX 78744

Email: [FleetPartsPA11DL@austintexas.gov](mailto:FleetPartsPA11DL@austintexas.gov)

[servicecenter11DL@austintexas.gov](mailto:servicecenter11DL@austintexas.gov)

Main Tel. No.: (512) 974-4368 / Fax No.: 512) 974-4328

**Austin Public Library Locations:**

Austin History Center - 810 Guadalupe St. Austin, Tx 78701  
John Henry Faulk - 800 Guadalupe St. Austin, Tx 78701  
Carver Branch - 1161 Angelina St. Austin, Tx 78702  
Cepeda Branch - 651 N. Pleasant Valley Rd. Austin, Tx 78702  
Zaragoza warehouse - 651 N. Pleasant Valley Rd. - Austin, Tx 78702  
Manchaca Road Branch - 5500 Manchaca Rd. Austin, Tx 78745  
Pleasant Hill Branch • 211E. William Cannon Or. Austin, Tx 78745  
Ruiz Branch - 1600 Grove Blvd. Austin, Tx 78741  
Southeast Branch - 5803 Nuckols Crossing Rd. Austin, Tx 78744  
Terrazas Branch - 1105 E. Cesar Chavez St. Austin, Tx 78702  
Twin Oaks Branch - 1800 S. Fifth St. Austin, Tx 78702  
University Hills Branch • 4721 Loyola Ln. Austin, Tx 78723  
Willie Mae Kirk Branch - 3101 Oak Springs Or. Austin, Tx 78702  
Windsor Park Branch - **5833** Westminster Dr. Austin, Tx 78723  
Central Library 710 W. Cesar Chavez St. Austin, Tx 78701  
Hampton Branch at Oak Hill - 5125 Convict HUI Rd. Austin, Tx 78749  
Howson Branch 2500 Exposition Blvd. Austin, Tx 78703  
Little Walnut Creek Branch - 835 W. Rundberg Ln. Austin, Tx 78758  
Milwood Branch - 12500 Amherst Dr. Austin, Tx 78727  
North Village Branch - 2505 Steck Ave. Austin, Tx 78757  
Old Quarry Branch - 7051 Village Center Dr. Austin, Tx 78731  
Spicewood Springs Branch - 8637 Spicewood Springs Rd. Austin, Tx 78759  
Yarborough Branch - 2200 Hancock Dr. Austin, Tx 78756

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# Solicitation INSTRUCTIONS

Solicitation No.  
IFB WJT1017

## 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.

## 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.
- 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 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.)
- 3.5 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 one hundred and twenty (120) 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 Materials Specifications/Descriptive Literature.**
- 4.6.1** If a Solicitation refers to a Qualified Products List (QPL), Standard Products List (SPL) or a manufacturer's name and product, any Offeror offering products not referenced in the solicitation must submit as part of their Offer materials specifications/descriptive literature for the non-referenced product. Materials specifications/descriptive literature must be identified to show the item(s) in the Offer to which it applies.
- 4.6.2** Material specifications/descriptive literature are defined as product manufacturer's catalog pages, "cut sheets" applicable tests results, or related detailed documents that specify material construction,

performance parameters, and any industrial standards that are applicable such as ANSI, ASTM, ASME, SAE, NFPA, NBS, EIA, ESL, and NSA. The submitted materials specifications/descriptive literature must include the manufacturer's name and product number of the product being offered.

**4.6.3** The failure of the materials specifications/descriptive literature to show that the product offered conforms to the requirements of the Solicitation shall result in rejection of the Offer.

**4.6.4** Failure to submit the materials specifications/descriptive literature as part of the Offer may subject the Offer to disqualification from consideration for award.

**4.7 Qualified products List: (AE Only)**

**4.7.1** If a solicitation refers to a Qualified Products List (QPL) or a manufacturer's name and/or product number, only offers for those pre-qualified items and/or manufacturers will be considered for award.

**4.8 Pricing Requirements – Non-Specified Items.**

**4.8.1** The City may purchase additional related items that are available from the Contractor in various quantities. Pricing for these non-specified items will be calculated based on a percentage markup over Contractors cost as identified in the Price Sheet under the Non-Specified Parts Section.

**4.8.2** Offeror shall bid a percentage markup to their cost.

**4.8.2.1** The percentage markup shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent renewal periods if the City and the Contractor choose to renew the Contract.

**4.8.2.2** The Offeror may offer a different percentage discount or markup amount per manufacturer for any Non-Specified Part; however, parts within each manufacturer's product line shall be priced by taking the stated list price and applying that percentage discount or markup.

**4.9 Hazardous Materials.**

**4.9.1** If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Safety Data Sheets (SDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

**4.9.2** Failure to submit the SDS as part of the Offer may subject the Offer to disqualification from consideration for award.

**4.9.3** The SDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

**4.10 Recycled Products.**

**4.10.1** The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.

**4.10.2** The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/>.

**4.10.3** Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

**4.11 Published Price Lists.**

**4.11.1** Offerors may quote using published price lists in the following ways:

**4.11.1.1** Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.

**4.11.1.2** Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.

- 4.11.2** Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.
- 4.11.3** The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision.
- 4.11.4** The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- 4.11.5** Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.
- 4.12 Buy America Act – Supplies.**
- 4.12.1** In accordance with applicable Federal Regulations, the City is restricted from purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate. (See Section 0300, paragraph 55 for additional guidelines).
- 4.12.2** Offerors shall sign and return with their Offer, the Buy American Act Certificate included in the Solicitation.

## 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: [Insert Solicitation Number] P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: [Insert Solicitation Number] 124 W 8 <sup>th</sup> 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](mailto: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](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 Presences 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 reserves the right to: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation due 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 any or all Offers; (ix) procure any goods or services included in this Solicitation by other means; (x) consider

and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xi) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.

**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.

## 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.