



Amendment No. 3  
to  
Contract No. NA120000072  
for  
Painting Services  
between  
GG's Construction, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective February 9, 2017 through February 8, 2018. No options remain.
- 2.0 The total contract amount is increased by \$1,741,824.00 for the extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/09/2012 – 02/08/2015	\$2,548,000.00	\$2,548,000.00
Amendment No. 1: Option 1 02/09/2015 – 02/08/2016	\$1,209,600.00	\$3,757,600.00
Amendment No. 2: Option 2 02/09/2016 – 02/08/2017	\$1,451,520.00	\$5,209,120.00
Amendment No. 3: Option 3 02/09/2017 – 02/08/2018	\$1,741,824.00	\$6,950,944.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: 1/05/17 R. Osorio  
Printed Name: Rolando J. Osorio  
Authorized Representative

Sign/Date: Danielle Lord 2/1/17  
Danielle Lord  
Contract Compliance Manager

GG's Construction, LLC  
13608 Bullick Hollow Road  
Austin, Texas 78726  
(512) 257-8075  
[rolandoo@mxconstruction.net](mailto:rolandoo@mxconstruction.net)

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



Amendment No. 2  
to  
Contract No. NA120000072  
for  
Painting Services  
between  
GG's Construction, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective February 9, 2016 through February 8, 2017. One option remains.
- 2.0 The total contract amount is increased by \$1,451,520.00 for the extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/09/2012 – 02/08/2015	\$2,548,000.00	\$2,548,000.00
Amendment No. 1: Option 1 02/09/2015 – 02/08/2016	\$1,209,600.00	\$3,757,600.00
Amendment No. 2: Option 2 02/09/2016 – 02/08/2017	\$1,451,520.00	\$5,209,120.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-

Sign/Date:

Nov. 17/15

Printed

Name:

Authorized Representative

*R. Osorio*

GG's Construction, LLC  
13608 Bullick Hollow Road  
Austin, Texas 78726

(512) 257-8075

[rolandoor@mxconstruction.net](mailto:rolandoor@mxconstruction.net)

Sign/Date:

*Linell Goodin-Brown*  
4/2/16

Linell Goodin-Brown

Contract Compliance Supervisor

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



**Amendment No. 1 to  
Contract No. NA120000072  
for Painting Services  
between  
GG's Construction, LLC  
and the  
City of Austin**

1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective February 9, 2015 through February 8, 2016. Two options remain.

2.0 The total contract amount is increased by \$1,209,600.00 for the extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/09/2012 – 02/08/2015	\$2,548,000.00	\$2,548,000.00
Amendment No. 1: Option 1 02/09/2015 – 02/08/2016	\$1,209,600.00	\$3,757,600.00

3.0 MBEIWBE goals do not apply to this contract.

4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Printed Name: Rolando Osorio

Authorized Representative

GG's Construction, LLC124  
13608 Bullick Hollow Road Austin, Texas 78701  
Austin, Texas 78726  
1512) 257-8075 [rolandoo@mxconstruction.net](mailto:rolandoo@mxconstruction.net)

Michael Benson  
Chief Administrative Officer

City of Austin  
Purchasing Office  
W. 8th Street, Ste. 310



**Financial and Administrative Service Department**  
**Purchasing Office**  
PO Box 1088, Austin, Texas, 78767

February 4, 2012

GG'S Construction, LLC.  
Rolando Osorio  
13608 Bullick Hollow Rd.  
Austin, TX 78726

Dear Mr.Osorio:

The City of Austin has approved the award and execution of a contract with your company for Painting Services in accordance with solicitation IFB PAX0025.

Responsible Department:	Building Services Division
Department Contact Person:	Mark Northcutt
Department Contact Email:	<a href="mailto:mark.northcutt@austintexas.gov">mark.northcutt@austintexas.gov</a>
Department Contact Telephone:	(512) 974-3972
Project Name:	Painting Services
Contractor Name:	GG's Construction
Contract Number:	NA120000072
Contract Period:	02/09/12 – 02/08/15
Contract Period Amount	\$2,548,000
Extension Options:	3
Requisition Number:	7400 11042900318
Solicitation Number:	IFB PAX0025
Agenda Item Number:	10
Council Approval Date:	02/02/12

A copy of the contract is attached.

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person above.

Sincerely,

Sai Xoomsai,  
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")**  
**AND**  
**GG's Construction, LLC. ("Contractor")**  
**for**  
**Painting Services**  
**NA120000072**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between GG's Construction, LLC. having offices at Austin, TX 78726 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number PAX0025.

**1.1 This Contract is composed of the following documents:**

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Invitation for Bid (IFB), PAX0025 including all documents incorporated by reference
- 1.1.3 GG's Construction, LLC.'s Offer, dated 10/27/2011, including subsequent clarifications

**1.2 Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications

**1.3 Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

**1.4 Term of Contract.** The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

**1.5 Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$2,548,000, with three 12-month extension options in estimated amounts not to exceed \$1,209,600 for the first extension option, \$1,451,520 for the second extension option, and \$1,741,824 for the third extension option, for a total estimated contract amount not to exceed \$6,950,944. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and

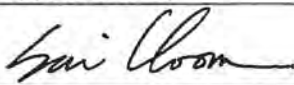


understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**CITY OF AUSTIN**

Printed Name of  
Authorized Person: Sai Xoomsai

Signature: 

Title: Buyer I

Date 02/09/12

Printed Name of  
Authorized Person: Yolanda Miller

Signature: 

Title: Deputy Purchasing Officer

Date



**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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**IFB PAX0025      Addendum No: 4      Date of Addendum:      November 10, 2011**

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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

- 1.0 Section 0600 (Bid Sheet) line item 3; unit column is hereby changed from FL to LF.
- 2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

Sai Xoomsai, Buyer I  
Purchasing Office

11/10/11  
Date

ACKNOWLEDGED BY:

Vendor Name

Authorized Signature

Nov. 10/11  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.  
Failure to do so may constitute grounds for rejection of your offer.**



**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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IFB PAX0025	Addendum No: 3	Date of Addendum:	November 8, 2011
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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

- 1.0 Coversheet (Offer Sheet) Bid Due Prior to date changed to Tuesday November 15, 2011 at 2:00 pm.
- 2.0 Coversheet (Offer Sheet) Proposal Opening date changed to Tuesday November 15, 2011 at 2:15 pm.
- 3.0 (Q) What is the height per section of scaffold?  
(A) 6ft.
- 4.0 (Q) What is the height of the lift?  
(A) We will only need a two-man lift, size is usually 2ft. x 4ft
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:	 Sai Xoomsai, Buyer I Purchasing Office	<u>11/02/11</u> Date
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ACKNOWLEDGED BY:	 Authorized Signature	<u>Nov. 8/2011</u> Date
<u>EG's Construction</u> Vendor Name		

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.  
Failure to do so may constitute grounds for rejection of your offer.**





**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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**IFB PAX0025      Addendum No: 2      Date of Addendum:      November 2, 2011**

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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

1.0      Replaced solicitation number listed on Addendum No: 1 from PAX0211 to PAX0025.

2.0      ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

A handwritten signature in cursive script, appearing to read "Sai Xoomsai".

Sai Xoomsai, Buyer I  
Purchasing Office

11/02/11  
Date

ACKNOWLEDGED BY:

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.**

**Failure to do so may constitute grounds for rejection of your offer.**

Addendum # 2 is hereby acknowledged by GG's Construction  
November 3, 2011

A handwritten signature in cursive script, appearing to read "R Osorio".

Rolando J Osorio  
Vice President  
GG's Construction



**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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**IFB PAX0211      Addendum No: 1      Date of Addendum:      November 2, 2011**

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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

- 1.0 An updated bid sheet (Section 0600(R)) has been added to the solicitation.
- 2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

A handwritten signature in cursive script, appearing to read "Sai Xoomsai".

Sai Xoomsai, Buyer I  
Purchasing Office

11/02/11  
Date

ACKNOWLEDGED BY:

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.**

**Failure to do so may constitute grounds for rejection of your offer.**

Addendum # 1 is hereby acknowledged by GG's Construction  
November 3, 2011

A handwritten signature in cursive script, appearing to read "Rolando J Osorio".

Rolando J Osorio  
Vice President  
GG's Construction

# CITY OF AUSTIN, TEXAS

## Purchasing Office INVITATION FOR BID (IFB) Offer Sheet

ORIGINAL

SOLICITATION NO: IFB PAX0025

COMMODITY/SERVICE DESCRIPTION: Painting Services

DATE ISSUED: 10/17/2011

REQUISITION NO.: 7400 11042900318

PRE-BID CONFERENCE TIME AND DATE: : 10/27/2011, 8:00 A.M

COMMODITY CODE: 91054

LOCATION: Municipal Building, 124 W 8th Street, RM 310

FOR CONTRACTUAL AND TECHNICAL  
ISSUES CONTACT:

BID DUE PRIOR TO: 11/09/2011, 02:00 P.M.

Sai Xoomsai

Buyer I

Phone: (512) 972-4016

BID OPENING TIME AND DATE: 11/09/2011, 02:15 P.M.

LOCATION: MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 310, AUSTIN, TEXAS 78701

LIVE BID OPENING LINK:

<http://www.ci.austin.tx.us/purchase/bidopenings.htm>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

### SUBMIT 1 ORIGINAL AND 2 SIGNED COPIES OF OFFER

OFFER SUBMITTED BY

B. Osorio

Signature of Person Authorized to Sign Offer

Rolando Osorio/Vice President

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. [REDACTED]

Date: Oct-27/2011

Company Name: GG's Construction, LLC

Address: 13608 Bullick Hollow Rd.

City, State, Zip Code Austin, TX. 78726

Phone No. (512) 257-8075

Fax No. (512) 219-5209

Email Address: rolando@mxconstruction.net

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE 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 or Supplemental Terms and Conditions, 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 purchase release 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 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.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **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.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. 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 that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **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 and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **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 in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

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.

**10. 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. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has 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.

- 11. 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.

**12. INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and 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 and transportation charges, if any, shall be listed separately. 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.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also 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 at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract 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.



**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 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 Section 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 ten (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, are filed or 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 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, Section 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. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- 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 non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **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 City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE TERMS AND CONDITIONS**

<http://www.gsa.gov/portal/category/21287>

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.

**15. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an 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:
  - 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.

**16. 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.

**17. RIGHT TO AUDIT:**

- 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 under this Contract. The Contractor shall retain all such records for a period of three (3) 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. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization 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 Utilization 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

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Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth 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 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 indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 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 ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. 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.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** 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.

21. **WARRANTY – 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

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regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
- B. 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.
- C. 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 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 thirty (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.
- D. 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.
- E. 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 assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided 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, 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 the Acceptance Date. 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 above 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 thirty (30) calendar days of discovery of the breach 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.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** 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. If any such acceptance occurs prior

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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. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **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. In the event that 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.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **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 under Paragraph 24, (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.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City 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 Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (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.
29. **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.
30. **DELAYS:**
- A. 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



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adjustment within thirty (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 process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (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.

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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 Contractor must 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 licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 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 0400, Supplemental Purchase Provisions, 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 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. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

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or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **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 (3) 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. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. 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 Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. 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.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: 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. 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. 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.
37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

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- 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 deliverables containing copyrightable 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 38 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 works 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) 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-made-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 obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. 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 of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **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.
42. **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

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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.

43. **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.
44. **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.
45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure 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.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can 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.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **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.
49. **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 fourteen (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 (1) 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 thirty (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.



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- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (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 give consideration to 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 thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (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.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., 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.
51. **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.
52. **HOLIDAYS:** The following holidays are observed by the City:
- | <u>Holiday</u>                     | <u>Date Observed</u>        |
|------------------------------------|-----------------------------|
| New Year's Day                     | January 1                   |
| Martin Luther King, Jr.'s Birthday | Third Monday in January     |
| President's Day                    | Third Monday in February    |
| Memorial Day                       | Last Monday in May          |
| Independence Day                   | July 4                      |
| Labor Day                          | First Monday in September   |
| Veteran's Day                      | November 11                 |
| Thanksgiving Day                   | Fourth Thursday in November |
| Friday after Thanksgiving          | Friday after Thanksgiving   |
| Christmas Eve                      | December 24                 |
| Christmas Day                      | December 25                 |
- 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.
53. **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.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**55. EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror'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.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
  - iii. "Domestic end product" means-
    - (1) An unmanufactured end product mined or produced in the United States; or
    - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
  - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

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- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by Wednesday, May 25, 2011 at 2:00pm. Please send questions in writing to Sai Xoomsai by email [sai.xoomsai@ci.austin.tx.us](mailto:sai.xoomsai@ci.austin.tx.us) or fax to: (512) 972-4015.

2. **INSURANCE.** Insurance is required for this solicitation.

A. **General Requirements.** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address 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
- ii. 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.
- iii. 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 holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

**City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767**

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry 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. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- 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 WC 420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

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- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).
  - (1) The policy shall contain the following provisions:
    - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - (b) Independent Contractor's Coverage.
    - (c) Products/Completed Operations Liability for the duration of the warranty period.
    - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
  - (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) Thirty (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. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
  - (1) The policy shall include these endorsements in favor of the City of Austin:
    - (a) **Waiver of Subrogation**, Endorsement TE 2046A, or equivalent coverage
    - (b) **Thirty (30) days Notice of Cancellation**, Endorsement TE 0202A, or equivalent coverage
    - (c) **The City of Austin listed as an additional insured**, Endorsement TE 9901B, or equivalent coverage.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that 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.
- D. Certificate: The following statement must be shown on the Certificate of Insurance.

**The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability, and workers compensation policies.**

**3. TERM OF CONTRACT**

- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to one (1) additional 36-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably



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necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

THIS IS A 36-MONTH CONTRACT.

FIRM PRICES ARE TO BE SUBMITTED FOR THE FIRST TWELVE (12) MONTH PERIOD

**4. QUANTITIES**

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

**5. INVOICES and PAYMENT** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

Department	FASD - Building Services Division
Attn:	David C. Lothery
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767
Department	AE – Austin Energy
Attn:	Payment Sections
Address	P.O. Box 3546
City, State, Zip Code	Austin, TX 78764
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 S. Lamar Blvd.
City, State Zip Code	Austin, Texas 78701

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- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) 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.

**6. HAZARDOUS MATERIALS**

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (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.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "a " must be included with each shipment under the contract.

**7. RECYCLED PRODUCTS**

- A. 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.
- B. 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/> .
- C. 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.

**8. LIVING WAGES AND BENEFITS (applicable to procurements involving the use of labor)**

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, 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. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

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- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees 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.
- D. 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 (FLSA). Basic employment records shall at a minimum include:
- i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
  - ii. time and date of week when employee's workweek begins;
  - iii. hours worked each day and total hours worked each workweek;
  - iv. basis on which employee's wages are paid;
  - v. regular hourly pay rate;
  - vi. total daily or weekly straight-time earnings;
  - vii. total overtime earnings for the workweek;
  - viii. all additions to or deductions from the employee's wages;
  - ix. total wages paid each pay period; and
  - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
- i. the employee's name and job title;
  - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
  - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

Employee Certifications shall be signed by each employee directly assigned to the contract.

- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's 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 identified in paragraph D above to verify compliance with this provision.

**9. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING**

- A. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services exceeding \$5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.

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- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. The City requires Offerors submitting Offers on this Solicitation to provide a signed affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance (**see the Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit included in the Solicitation**).

**10. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)**

- A. Access to any of the City building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City.
- B. Contractor personnel will be required to check in at the security desk when entering or leaving the Department building 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.
- C. 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.

**11. ECONOMIC PRICE ADJUSTMENT**

- A. Prices shown in this contract shall remain firm for the first 12-month period 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 subject to the following considerations:
- B. Price Increases
  - i. Requests for price increases must be made in writing and submitted to the appropriate Buyer in the City's Purchasing Office. The letter must be signed by a person with the authority to bind the Contractor contractually, shall reference the contract number, and include the following documentation:
    - (1) an itemized, revised price list with the effective date of the proposed increase;
    - (2) copies of the documentation provided by the manufacturer regarding the proposed price increase if the contractor is not the manufacturer of the products. If the Contractor is the manufacturer of the products, a letter so stating must be provided;
    - (3) Contractor shall submit, as a part of the request for increase, the version of the U.S. Department of Labor Employment Cost Index for Wages and Salaries for all Urban Wage Earners and Clerical Workers code, CUUR0000SA0 current as of the date of the Contractor's Offer; and a copy of the index for the most current period.
    - (4) Proposed price increases must be solely for the purpose of accommodating increases in the Contractor's costs for the products or services provided. Prices

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for products or services unaffected by verifiable cost trends shall not be subject to change.

- ii. Requests for price increases must be made in writing and submitted to the appropriate Contract Manager prior to each yearly anniversary date of contract. Prices will only be considered for an increase at that time. Once received, the City will have 30-calendar days to review and approve/disapprove the requested increase. Should the City not agree with the requested increase, Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the contract.
- iii. The proposed percentage change between the current contract price and the requested price shall not exceed the percentage change between the Index in effect at the beginning of the current review period and the one in effect at the time the price increase is requested. Except in the case of emergency situations, the requested index related or non-index related price increase shall not exceed twenty-five percent (25%) for any single line item, and in no event shall the total amount of the contract be automatically increased as a result of the increase in any one or more line items made pursuant to this provision.
- iv. Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully-documented increase requests which, in the Contractor's opinion, justify price increases for one or more line items in the contract. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

**C. Price Decreases**

- i. Proposed price decreases may be offered to the City at any time, and become effective upon acceptance by the City unless a different effective date is specified by the Contractor. Price decrease offers may also be subject to negotiation.
- ii. Price decreases based on relevant factors may be requested by the City at any time. Such requests shall be accompanied by a complete statement of the City's justification for the request. The Contractor shall have 30-calendar days to respond to the City's request. Following receipt of the Contractor's agreement with the requested decrease, the City may implement the decrease at any time. Should the Contractor not agree with the requested decrease, the City may either maintain the prices currently in effect, negotiate with the contractor, or terminate the contract.

**12. CONTRACT MANAGER**

The following persons are designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Mark Northcutt  
Project Manager  
Building Services Division (BSD)  
(512) 974-3972  
[Mark.Northcutt@ci.austin.tx.us](mailto:Mark.Northcutt@ci.austin.tx.us)

Vince McGlone  
AE Facility Manager  
(512) 322-6420  
[Vincent.Mcglone@austinenergy.com](mailto:Vincent.Mcglone@austinenergy.com)

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Albert Homann  
Maintenance Manager  
PARD Facility Services  
512-974-9524  
[Albert.Homann@ci.austin.tx.us](mailto:Albert.Homann@ci.austin.tx.us)

\*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**CITY OF AUSTIN, TEXAS  
PURCHASE SPECIFICATION  
FOR  
PAINTING SERVICES**

**1.0 PURPOSE**

This Invitation for Bid (IFB) is to establish a Contract with an established single vendor who can provide painting services with associated materials for City of Austin ("City"). A Contract will be awarded to provide painting services on an as needed basis as stipulated in this Statement of Work.

The Contract will be utilized by the Building Services Division of the Finance and Administrative Services Department, Austin Parks and Recreation Department, and Austin Energy. The City may elect to allow multiple City departments to utilize the contract. All services shall be rendered at the location specified at the time of order.

**2.0 VENDOR REQUIREMENT**

Contractor shall have a minimum of 5 years experience in commercial painting services. Lead Painter shall have a minimum of 3 years experience in the proper application of paint/primer, tape/float materials, and textures in commercial facilities.

**3.0 SUPERVISION, EQUIPMENT AND MATERIALS**

Contractor agrees to furnish all labor, supervision, equipment, scaffolding, materials, tools, supplies, and transportation necessary for the proper execution and completion of interior and exterior painting services as specified. Painting services shall vary depending on the type and materials of existing areas and surfaces to be painted or finished. Materials and services provided by the Contractor shall comply with all current Federal, State, local and municipal laws, ordinances and rules and regulations. All painting services shall meet these specifications.

Paints/Primers to be used shall be Benjamin Moore brand paint and will be provided by the City for each job assignment. All other material such as joint tape, joint compound, caulk, metal corner bead, texture material, etc. are to be provided by the Contractor.

**4.0 WARRANTY**

The Contractor shall provide a one (1) year warranty from date of completion on any work performed. Warranty shall be stated on Contractor's invoice.

**5.0 PROTECTION**

- a. All surfaces, floors, and City property not to be textured or painted shall be completely protected at all times. Furniture, floors, surfaces, and other City property must be protected by covering with drop cloths or by other type of covering, moving, masking, or by employing detailed application methods. Any dropped paint shall be removed.
- b. The Contractor shall be responsible for and use the utmost care in the protection of the occupants' property, including all screens, windows, walkways, shrubbery, parked vehicles, and any other property in the area, from paint and/or other damage.
- c. Extreme care shall be taken to safeguard all existing facilities, site amenities, building structures, windows, and vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of the Contractor and shall be repaired and/or replaced at no additional cost to the City.



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- d. Contractor shall be held responsible for any damages caused by Contractor's employees and Sub-Contractors to City property or any adjacent property, buildings, etc.
- e. Any damage, including damage to finished surfaces, shall be repaired to the City's satisfaction at the Contractor's expense.
- f. It shall be the responsibility of the Contractor to report to the Contract Manager or his designee any damage found prior to any work at job sites.
- g. The Contractor shall be entirely responsible for any loss or damage to its own materials, supplies and equipment, and to the personal property of its employees while they are maintained on the work sites.
- h. The work site may be occupied during the times work is performed. Contractor and Contractor's personnel shall exercise a particularly high level of discipline, safety and cooperation at all times while on the job site. The Contractor shall be responsible for controlling employee conduct, for assuring that its employees are not boisterous or rude and assuring that they are not engaging in any destruction or criminal activity. The Contractor is also responsible for ensuring that its employees do not disturb papers, desks and cabinets, or use City phones, equipment, or facilities except as authorized.

**6.0     SAFETY**

- a. All Federal, State, and local codes, rules and regulations concerning safety will be adhered to by the painting Contractor.
- b. Contractor shall be responsible for assuring the safety of his employees, City employees and the general public during performance of all services under this contract.
- c. Contractor shall assure that all crews are fully and properly equipped to perform services promptly and safely without delay.
- d. Good housekeeping shall be maintained on a daily basis. Contractor shall pay for and furnish all means of removing all soiled, used rags, waste, and trash from City facilities generated by any painting service work. The City will not provide for portable restrooms when the need arises.
- e. Possession and consumption of drugs or alcoholic beverages is strictly prohibited at all times at the job sites and on or around the City's property.
- f. Contract Manager or his designee may issue a stop work due to severe weather, lack of material, safety violations, or other unforeseen circumstances. If the work stoppage is longer than 48 hours, the Contract Manager or designee will issue a written Stop Work Notice.

**7.0     SITE INSPECTION**

It shall be the responsibility of the Contractor to visit and inspect the locations prior to the submittal of a proposal. No variation in price or conditions shall be permitted based on claims of not being knowledgeable, aware, or informed of all requirements and specifications for a job assignment. Submittal of the proposal is evidence the Contractor has familiarized himself with the nature and extent of the work and any local conditions that may, in any manner, affect the scope of the work to be done and the equipment, materials and labor required.

**CITY OF AUSTIN, TEXAS  
PURCHASE SPECIFICATION  
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PAINTING SERVICES**

Inspection must be scheduled by contacting the Contract Manager.

**8.0 JOB CONDITIONS**

- a. Comply with manufacturer's recommendations as to environmental conditions under which coatings can be applied.
- b. Do not apply paint during bad weather such as, snow, rain, fog, mist, or when relative humidity exceeds paint manufacturer's recommended limits.
- c. Do not apply paint while painting surface is exposed to hot sun.
- d. Do not apply coatings in areas where dust is being generated.
- e. Provide "Wet Paint" signs to protect newly painted surfaces.
- f. Contractor will be required to submit MSDS sheets upon request.
- g. Contractor shall provide water and electricity if not available on site.

**9.0 SURFACE PREPARATION**

- a. Contractor shall be responsible for the proper preparation of surfaces prior to painting which may include the removal of staples, tape or other adhesive materials as well as cleaning areas (i.e. jambs and door facings) where accumulations of dirt, grease, or grime may prevent proper paint adhesion.
- b. Cracks and defects in walls, including nail holes, shall be patched before painting. All loose or scaly paint shall be scraped before painting.
- c. Newly constructed wall surfaces shall have all drywall nails and screws filled. Seams shall be properly taped, scratched, and sanded prior to the application of texture and paint.
- d. Outside corners shall have metal corner bead installed prior to taping and floating unless otherwise instructed by the Contract Manager or designee.
- e. Existing textured walls are to have all voids, cracks, holes, etc. filled with a compatible material and is clean, dry, and free of dirt/dust prior to the application of primer, texture, and paint. If texture on any wall(s) contains **ASBESTOS**, then wall(s) must only be wet wiped as a method of smoothing out material to be used as filler. **At no time will there be any sanding, scraping, drilling, or abrading on these walls.**
- f. Plaster wall surfaces are to be clean, dry, and free of dirt and dust, and all voids filled with a compatible material prior to the application of paint. These surfaces will not receive texture.
- g. All exterior surfaces except windows are to be pressure cleaned, as necessary, to remove dirt, stains, and mildew prior to painting.
- h. Doors, frames, and trim are to be properly sanded and prepped prior to the application of any enamel paint.

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**10.0 FURNITURE MOVING SERVICES**

- a. For the purpose of painting applicable surfaces behind furniture, the Contractor shall be responsible for moving and relocating all furniture such as desks, cabinets, stand-alone bookshelves, chairs, plant stands, etc.. In addition, items hung on the walls shall be removed and replaced by the Contractor.
- b. The Contractor shall avoid disconnecting electronic equipment such as computers, fax machines, telecommunication equipment, and appliances such as refrigerators. The Contract Manager or designee shall be responsible for disconnections and coordinating disconnections as necessary.

**11.0 PAINT APPLICATION**

- a. Contractor shall store, handle, and apply all materials according to manufacturer's specifications, and in compliance with all applicable government regulations.
- b. Install all paints/coatings in accordance with manufacturer's instructions. Install all required material (paint, primer, putty, etc.) in proper relation to adjacent construction and with uniform appearance. Clean and prime area as recommended by manufacturer.
- c. All coating applications or mixing/thinning of material shall be performed in accordance with the manufacturer's specifications.
- d. All paints shall be thoroughly stirred before removal from the containers and shall be kept stirred while used.
- e. All paint in any one-paint coat shall be hard and dry through the entire paint film before the next coat is applied. In no case shall the elapsed time between the applications of the successive coats of paint to any surface be less than that recommended by the paint manufacturer.
- f. The rate of coverage per gallon for the paint to be applied shall not exceed the maximum rate recommended by its manufacturer.
- g. All coated surfaces shall be free of dust, dirt, and contamination before succeeding coats are applied, as per manufacturer's specifications.
- h. Painters used on the work shall ensure that finished surfaces shall not show brush marks or other irregularities.
- i. All coats shall have uniform thickness and be free of runs, drips, sags, bubbles, pinholes, ridges, laps, and variations in color or texture. Separate coats shall conform to the dry film thickness specified and shall have a distinguishable color difference from the preceding or subsequent coats.
- j. All paint may be rolled or brushed on all textured or plaster surfaces. Any other method of application must have prior approval of Contract Manager.
- k. Top, side, and bottom edges on all doors shall be painted.

**CITY OF AUSTIN, TEXAS  
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PAINTING SERVICES**

**12.0 EXTERIOR PAINTING**

- a. Any rough or peeling surfaces anywhere on the exterior shall be thoroughly scraped with either scrapers or wire brushes and shall be feather edged with sandpaper before being primed with the appropriate primer for either wood or metal prior to the application of two coats of finish as specified.
- b. All pitch (roof tar) shall be removed from gutters, flashing, and fascia boards prior to the application of primer coat. All pitch shall be removed from all copper and aluminum gutters, gutter flashings, and fascia. Copper and aluminum gutters, gutter flashings, and fascia are not to be painted.
- c. All window frames and doorframes shall be caulked prior to application of paint. All necessary glazing and caulking shall be done prior to the application of the primer coat around window glass. Caulking shall include between windows and brickwork, between coping and brickwork, and between coats where two coats are specified.
- d. Two coats of oil base finish paint is to be applied to all exterior surfaces with forty-eight (48) hours to be allowed between coats where two coats are specified.
- e. All doors shall be painted on all surfaces and all edges to maintain a uniform appearance. All doors (metal and wood), doorframes, and window frames except those having an aluminized unpainted finish shall be painted.
- f. All operable windows shall open freely upon completion of work.
- g. All roof fans and ventilators (except those of aluminum) are to be painted with two coats of oil base enamel paint to match existing roof.

**13.0 CLEAN-UP AND PRECAUTIONS**

- a. All rubbish~~ed~~ accumulated from a job shall be removed from the City's premises by the Contractor at his expense. No trash, paint buckets, or other debris is to be placed in City dumpsters or other trash containers belonging to City.
- b. The set up area is to be protected from damage to surface of grounds. Extra precaution should be taken so as not to damage surrounding building walls, landscaping, parking lots, and sidewalks.
- c. At completion of each assigned job, the Contractor shall remove any drippage of paint or finishes from all walls, windows, floors, and finished surfaces that were not present before work commenced. Failure to do so when asked by the Contract Manager or designee will result in the work being done by City personnel and charged back to the Contractor.
- d. In the event of accidental paint spilled, Contractor shall immediately remove all spilled materials and clean to the original condition prior to the spillage.
- e. All clean-up requirements shall be completed prior to payment being made for a job.

**CITY OF AUSTIN, TEXAS  
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FOR  
PAINTING SERVICES**

**14.0 CONTRACTUAL RESPONSE AND WORKING HOURS**

- a. The City's Contract Manager is responsible for notifying City personnel 24 hours before any work proceeds in City facilities. The Contractor shall post proper warning signs and/or barriers where necessary.
- b. Contractor shall be expected to respond to a job assignment or meet with the Contract Manager at the job site within 72 hours of notification of proposed project to discuss the project. For each job, a written estimate of the total cost of work including the target date for starting and estimated time of completion for such project will be submitted to the Contract Manager not more than an additional 24 hours later, and at no cost to the City.
- c. The Contractor shall have an English/Spanish speaking lead painter on all projects. The Contractor shall complete such project within the time period proposed unless a time extension has been approved by the Contract Manager.
- d. Service shall be provided Monday through Friday from 8:00 a.m. to 5:00 p.m. unless requested by the City. If requested by City, services provided at nights, weekends, or holidays shall be subject to the labor rate as specified on the bid sheet. If Contractor performs any work after hours in order to complete a job assignment, no additional charge will be made to the Contractor unless such work performed after hours was requested by the City.
- e. If work is to be conducted on weekends without request of City, a written notice must be given to the Contract Manager at least 48 hours before scheduled work.
- f. If it becomes necessary for the Contractor to perform work at night, weekends, or holidays, a list of the Contractor's employees who are scheduled to work must be given to the Contract Manager. The Contractor's employees must have proper identification in their possession. The above procedure will insure proper ingress and egress at any facility in which the Contractor is required to work. Contractor's vehicles will be required to be clearly identifiable with company name and contact numbers.
- g. For some City facilities, security clearance will be required. Please see the Supplemental Purchase Provisions, Section 0400.
- h. Upon completion of a project, work performed by the Contractor is subject to the inspection and approval by the Contract Manager. Payment will not be made for any service until all requirements and acceptance of service as to contract compliance has been approved by Contract Manager.
- i. Successful Contractor will be required to provide proof of all labor and material charges during the term of the contract. Satisfactory proof of labor charges shall include copies of employee timesheets and company payroll records, as supported by bank statements, which shall be submitted for inspection, upon request, by the City. Satisfactory proof of material charges shall include copy of suppliers' invoices, properly dated, and itemized by line item used in each painting job performed for the City.

**15.0 SUBMITTAL OF INVOICES AND DOCUMENTATION**

Invoices shall include the following as a minimum.

- a. Exact address of work performed

**CITY OF AUSTIN, TEXAS  
PURCHASE SPECIFICATION  
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- b. City of Austin work authorization number
- c. City of Austin contract number, Contractor invoice number and date
- d. Beginning and ending dates of services rendered
- e. Total number of square feet provided each service
- f. Service type, unit cost, number of units provided and extended total charges

**16.0 MODIFICATIONS OR ADDITIONS**

Any suggestions by the Contractor for improved quality and/or durability of the completed work through additional preparation, repair, or other process are desirable to the City.

Such additions or modifications to the scope of the work shall be detailed in each job proposal and their additional benefits explained in detail.

These proposed changes must be submitted as an ADDITION to the originally stated project specifications.

**BID SHEET  
CITY OF AUSTIN  
PAINTING SERVICES  
IFB #PAX0025**

Copies of Bid: Vendor must submit three copies of its signed bid - one original and two copies.

**Special Instructions:** Be advised that exceptions taken to any portion of the solicitation may jeopardize acceptance of the Bid

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Tape and Float (Walls)	100,000	SF	\$0.20	\$20,000.00
2	Tape and Float (Ceilings)	150,000	SF	\$0.20	\$30,000.00
3	Install Metal Corners	1,500	FL	\$0.10	\$150.00
4	Texture (Splatter)	100,000	SF	\$0.12	\$12,000.00
5	Texture (Sand)	100,000	SF	\$0.16	\$16,000.00
6	Texture (Rolled)	100,000	SF	\$0.12	\$12,000.00
7	Prime Walls and Ceilings	300,000	SF	\$0.13	\$39,000.00
8	Paint Walls and Ceilings	400,000	SF	\$0.14	\$56,000.00
9	Prime and Paint Trim -- Wood 6" Wide-Max	3,000	LF	\$0.18	\$540.00
10	Prime and Paint Trim -- Wood > 6" Wide	3,000	LF	\$0.20	\$600.00
11	Prime and Paint Trim -- Metal 6" Wide-Max	3,000	LF	\$0.18	\$540.00
12	Prime and Paint Trim -- Metal > 6" Wide	3,000	LF	\$0.20	\$600.00
13	Prime and Paint Doors Frames Wood < 3' Wide	200	EA	\$15.00	\$3,000.00
14	Prime and Paint Doors Wood < 3' Wide	200	EA	\$15.00	\$3,000.00
15	Prime and Paint Doors Frames Wood > 3' Wide (Double Doors)	100	EA	\$18.00	\$1,800.00
16	Prime and Paint Doors Frames Metal < 3' Wide	200	EA	\$15.00	\$3,000.00
17	Prime and Paint Doors Metal < 3' Wide	200	EA	\$15.00	\$3,000.00
18	Paint Doors Frames Metal > 3' Wide (Double Doors)	100	EA	\$18.00	\$1,800.00
19	Moving Services	50	HR	\$12.00	\$600.00
20	Exterior Paint	3,000	HR	\$16.00	\$48,000.00
21	Hourly labor rate for additional services to include, but not limited to power wash, painting of exterior walls, soffits, trim and gutters	1,000	HR	\$18.00	\$18,000.00
22	Rental of Scaffolding	30	DAY	\$5.00	\$150.00
23	Lift Rental	30	DAY	\$33.33	\$1,000.00
<b>TOTAL</b>					<b>\$270,780.00</b>

FOR INFORMATIONAL PURPOSES ONLY:

MATERIALS	% MARK-UP
Mark-up to vendor cost for all materials the City may wish to purchase from Vendor in the future.	10%

FOR INFORMATIONAL PURPOSES ONLY: THE CITY MAY WISH TO PURCHASE ADDITIONAL ITEMS OR SERVICES FROM THE SUCCESSFUL BIDDER IN THE FUTURE. PLEASE INDICATE THE PRICING STRUCTURE YOU WILL OFFER THE CITY FOR ANY NON-SPECIFIED ITEM OR SERVICE DURING THE COURSE OF THE RESULTING CONTRACT

COMPANY NAME: GG's Construction, LLC

DATE: November 2, 2011

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

PRINTED NAME: Rolando J Osorio

EMAIL ADDRESS: rolandoo@mxconstruction.net

ADDRESS: 13608 Bullick Hollow Road CITY/STATE: Austin ZIP CODE: 78720



**CITY OF AUSTIN  
PURCHASING OFFICE  
REFERENCE SHEET**

**Please Complete and Return This Form with the Offer**

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least  recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button. =====>

Company's Name	<input type="text" value="JQJ MANAGEMENT CO"/>		
Name of Contact	<input type="text" value="BILLY BARRIENTOS"/>	Contact Title	<input type="text" value="OFFICE MANAGER"/>
Present Address	<input type="text" value="306 W RUNDBERG LANE"/>		
City	<input type="text" value="AUSTIN"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78726"/>
Telephone Number	<input type="text" value="(512) 695-2104"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="BILLY.BARRIENTOS2@GMAIL.COM"/>		

Company's Name	<input type="text" value="EANES ISD"/>		
Name of Contact	<input type="text" value="JOHN TRIGGS"/>	Contact Title	<input type="text" value="TRADES SUPERVISOR"/>
Present Address	<input type="text" value="601 Camp Craft Road"/>		
City	<input type="text" value="AUSTIN"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78746"/>
Telephone Number	<input type="text" value="(512) 785-5635"/>	FAX Number	<input type="text" value="(512) 732-9053"/>
Email Address	<input type="text" value="jtrigg@eanesisd.net"/>		

Company's Name	<input type="text" value="TEXAS FACILITIES COMMISSION"/>		
Name of Contact	<input type="text" value="ANTHONY ONTIVEROS"/>	Contact Title	<input type="text" value="MINOR CONSTRUCTION SUPERVISOR"/>
Present Address	<input type="text" value="1711 San Jacinto"/>		
City	<input type="text" value="AUSTIN"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78702"/>
Telephone Number	<input type="text" value="(512) 563-9344"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="anthony.ontiveros@tfc.state.tx.us"/>		

Company's Name	Texas Preservation Board		
Name of Contact	Roger Calkins	Contact Title	Lead Painter/Supervisor
Present Address	1100 Congress Ave		
City	AUSTIN	State	Texas Zip Code 78701
Telephone Number	(512) 923-6472	FAX Number	
Email Address	ROGER.CALKINS@TSPB.STATE.TX.US		

Company's Name	I&R REMODELING		
Name of Contact	RUDY IRIAS	Contact Title	MANAGER
Present Address	9711 MEADOWN HEATH		
City	AUSTIN	State	Texas Zip Code 78729
Telephone Number	(512) 801-2451	FAX Number	
Email Address	TOCOFIR@MSN.COM		

**City of Austin, Texas  
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE  
NON-DISCRIMINATION CERTIFICATION**

**SOLICITATION NO** **PAX0025**

**City of Austin, Texas  
Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin  
Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

*Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.*

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.**

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 27 day of October, 2011.

CONTRACTOR

GG'S CONSTRUCTION

Authorized Signature

R. Osorio

Title


Vice President

**City of Austin, Texas**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

SOLICITATION NO. PAX0025

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	<div style="border: 1px solid black; padding: 2px;">GG'S CONSTRUCTION</div>		
Signature of Officer or Authorized Representative:		Date:	<div style="border: 1px solid black; padding: 2px;">Oct 27, 2011</div>
Printed Name:	<div style="border: 1px solid black; padding: 2px;">ROLANDO J OSORIO</div>		
Title:	<div style="border: 1px solid black; padding: 2px;">VICE PRESIDENT</div>		

CITY OF AUSTIN  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT  
SOLICITATION NO. PAX0025  
FOR

Painting Services

**State of Texas**


**County of Travis**

**The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:**

The term "Offeror", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
  - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
  - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** . The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
  - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;



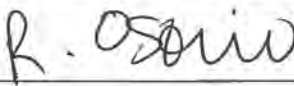
Contractor's Name:	GG'S CONSTRUCTION		
Signature of Officer or Authorized Representative:		Date:	Oct 27, 2011
Printed Name:	ROLANDO OSORIO		
Title:	VICE PRESIDENT		

**City of Austin, Texas**  
**NONRESIDENT BIDDER PROVISIONS**  
**SOLICITATION NO. PAX0025**

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

- ☒ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- ☐ Non-resident Bidder

Bidder's Name:	GG'S CONSTRUCTION		
Signature of Officer or Authorized Representative:		Date:	Oct 27, 2011
Printed Name:	ROLANDO OSORIO		
Title:	VICE PRESIDENT		



**CITY OF AUSTIN  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.ci.austin.tx.us/cityclerk/coi.htm>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Offeror's  
Explanation:

N/A

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a member of the City Council, a member of a City Board, or any other official, employee or agent of the City, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

Contractor's Name:	GG'S CONSTRUCTION
Printed Name:	ROLANDO J OSORIO
Title:	VICE PRESIDENT

R. Osorio  
Signature of Officer or Authorized Representative:

Subscribed and sworn to before me this 27<sup>th</sup> day of October, 2011.

K. Cubas  
Notary Public

My Commission Expires



**CITY OF AUSTIN, TEXAS**  
**LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION**  
*(Please duplicate as needed)*

**SOLICITATION NO.** PAX0025

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add	PEDRO VALDEZ	JOURNEYMAN PAINTER
Delete		
Add	ANGEL PULIDO	JOURNEYMAN PAINTER
Delete		
Add	MARCOS RODRIGUEZ	JOURNEYMAN PAINTER
Delete		
Add	ISRAEL RODRIGUE	JOURNEYMAN PAINTER
Delete		
Add	JORGE IRIAS	SUPERVISOR
Delete		
Add	JOSE GUADALUPE RODRIGUEZ	JOURNEYMAN PAINTER
Delete		

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	Painting Services
Contractor Name:	GG'S CONSTRUCTION

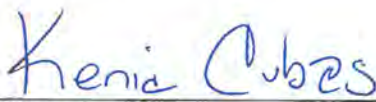
Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Journeyman Painter		
Signature of Employee:	Pedro A. Valdez	Date:	01/11/2011
Employee's Printed Name:	Pedro A. Valdez		

  
(Witness Signature)

  
(Printed Name)

**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	Painting Services
Contractor Name:	GG'S CONSTRUCTION


Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Journeyman Painter		
Signature of Employee:	Marcos Rodriguez	Date:	11/21/11
Employee's Printed Name:	Marcos Rodriguez		

  
(Witness Signature)

  
(Printed Name)



**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**


Contract Number:	
Description of Services:	Painting Services
Contractor Name:	GG'S CONSTRUCTION


Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Journeyman Painter		
Signature of Employee:	Angel Pulido	Date:	11-01-2011
Employee's Printed Name:	Angel Pulido		

  
(Witness Signature)

  
(Printed Name)

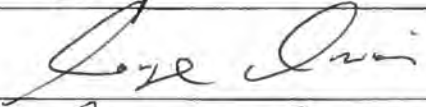
**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**


Contract Number:	
Description of Services:	Painting Services
Contractor Name:	GG'S CONSTRUCTION


Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Supervisor		
Signature of Employee:		Date:	11/01/2011
Employee's Printed Name:	Jorge Larios		

  
(Witness Signature)

  
(Printed Name)

**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

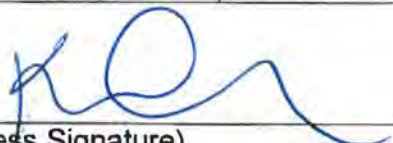
Contract Number:	
Description of Services:	Painting Services
Contractor Name:	GG'S CONSTRUCTION


Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Journeyman Painter		
Signature of Employee:	Jose Guadalupe Rodriguez	Date:	6/11/1/2011
Employee's Printed Name:	Jose Guadalupe Rodriguez.		

  
(Witness Signature)

  
(Printed Name)



**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	
Description of Services:	Painting Services
Contractor Name:	GG'S CONSTRUCTION


Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	Journeyman Painter		
Signature of Employee:	Israel Rodriguez	Date:	11/01/2011
Employee's Printed Name:	Israel Rodriguez		

  
(Witness Signature)

  
(Printed Name)



**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS FORM**

SOLICITATION NUMBER: PAX0025

PROJECT NAME: Painting Services

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974 -7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

**Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?**

No ☐ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes ☒ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

GG's Construction  
Company Name  
Rolando J. Osorio | Vice President  
Name and Title of Authorized Representative (Print or Type)

R. Osorio  
Signature

Oct 27/2011  
Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS UTILIZATION PLAN**

*(Please duplicate as needed)*

SOLICITATION NUMBER: PAX0025

PROJECT NAME: Painting Services

**PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION**

Name of Contractor/Consultant	GG'S Construction		
Address	13608 Bullock Hollow Rd.		
City, State Zip	Austin, TX. 78726		
Phone	512-251-8075	Fax Number	512-219-5209
Name of Contact Person			
Is company City certified?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/>	MBE/WBE Joint Venture <input type="checkbox"/>

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Rolando J. Osorio / Vice President  
Name and Title of Authorized Representative (Print or Type)

R. Osorio  
Signature

Oct. 27/2011  
Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant	Sherwin Williams		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input checked="" type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Philip.	Phone Number:	512-331-7793
Amount of Subcontract	\$		
List commodity codes & description of services	Painting Supplies		

Sub-Contractor/Consultant	Home Depot		
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input checked="" type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person			
Amount of Subcontract	\$		
List commodity codes & description of services	Painting Supplies		

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

I having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor \_\_\_\_\_ Date \_\_\_\_\_ Director/Deputy Director \_\_\_\_\_ Date \_\_\_\_\_

**CITY OF AUSTIN  
PURCHASING OFFICE  
REFERENCE SHEET**

**Please Complete and Return This Form with the Offer**

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least  recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

Company's Name	<input type="text" value="JQJ MANAGEMENT CO"/>		
Name of Contact	<input type="text" value="BILLY BARRIENTOS"/>	Contact Title	<input type="text" value="OFFICE MANAGER"/>
Present Address	<input type="text" value="306 W RUNDBERG LANE"/>		
City	<input type="text" value="AUSTIN"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78726"/>
Telephone Number	<input type="text" value="(512) 695-2104"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="BILLY.BARRIENTOS2@GMAIL.COM"/>		

Company's Name	<input type="text" value="EANES ISD"/>		
Name of Contact	<input type="text" value="JOHN TRIGGS"/>	Contact Title	<input type="text" value="TRADES SUPERVISOR"/>
Present Address	<input type="text" value="601 Camp Craft Road"/>		
City	<input type="text" value="AUSTIN"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78746"/>
Telephone Number	<input type="text" value="(512) 785-5635"/>	FAX Number	<input type="text" value="(512) 732-9053"/>
Email Address	<input type="text" value="jtrigg@eanesisd.net"/>		

Company's Name	<input type="text" value="TEXAS FACILITIES COMMISSION"/>		
Name of Contact	<input type="text" value="ANTHONY ONTIVEROS"/>	Contact Title	<input type="text" value="MINOR CONSTRUCTION SUPERVISOR"/>
Present Address	<input type="text" value="1711 San Jacinto"/>		
City	<input type="text" value="AUSTIN"/>	State	<input type="text" value="Texas"/> Zip Code <input type="text" value="78702"/>
Telephone Number	<input type="text" value="(512) 563-9344"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="anthony.ontiveros@tfc.state.tx.us"/>		

Company's Name	Texas Preservation Board		
Name of Contact	Roger Calkins	Contact Title	Lead Painter/Supervisor
Present Address	1100 Congress Ave		
City	AUSTIN	State	Texas Zip Code 78701
Telephone Number	(512) 923-6472	FAX Number	
Email Address	ROGER.CALKINS@TSPB.STATE.TX.US		

Company's Name	I&R REMODELING		
Name of Contact	RUDY IRIAS	Contact Title	MANAGER
Present Address	9711 MEADOWN HEATH		
City	AUSTIN	State	Texas Zip Code 78729
Telephone Number	(512) 801-2451	FAX Number	
Email Address	TOCOFIR@MSN.COM		



TO: Veronica Lara, Director  
Department of Small and Minority Business Resources

FROM: Sai Xoomsai, Buyer I  
Purchasing Office

DATE: October 7, 2011

SUBJECT: Approval to use Zero Goals for Solicitation No. IFB PAX0025

Project Name: Painting  
Commodity Code(s): 91054  
Estimated Value: \$600,000 Annually

The Purchasing Office has determined that the following Goals are appropriate for this Commodity solicitation:

X No Goals (Goal of 0%)

This determination is based on the following reason:

This solicitation will be bid by and awarded to a prime contractor. No subcontracting opportunities have been identified.

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 972-4016.

☒ Approval is hereby granted to use the above Goals.

☐ Approval is hereby denied. Recommend the use of the following goals based on the below reasons:

a. Goals: \_\_\_\_\_% MBE \_\_\_\_\_% WBE

b. Subgoals: \_\_\_\_\_% African American \_\_\_\_\_% Hispanic

\_\_\_\_\_% Native/Asian American \_\_\_\_\_% WBE

This determination is based on the following reasons:

Single scope of work. No subcontracting opportunities

*Amelia D.*  
Veronica Lara, Director *on behalf*

Date: 12/20/2011

*The only dispute/issue was awarding to 2 vendors instead of one. Did not receive follow up on this issue from Dept.*



**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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<b>IFB PAX0025</b>	<b>Addendum No: 1</b>	<b>Date of Addendum:</b>	November 2, 2011
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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

1.0 An updated bid sheet (Section 0600(R)) has been added to the solicitation.

2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

A handwritten signature in black ink, appearing to read "Sai Xoomsai".

Sai Xoomsai, Buyer I  
Purchasing Office

11/02/11  
Date

ACKNOWLEDGED BY:

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.  
Failure to do so may constitute grounds for rejection of your offer.**



**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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<b>IFB PAX0025</b>	<b>Addendum No: 2</b>	<b>Date of Addendum:</b>	November 2, 2011
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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

1.0 Replaced solicitation number listed on Addendum No: 1 from PAX0211 to PAX0025.

2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

  
Sai Xoomsai, Buyer I  
Purchasing Office

11/02/11  
Date

ACKNOWLEDGED BY:

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.  
Failure to do so may constitute grounds for rejection of your offer.**



**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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<b>IFB PAX0025</b>	<b>Addendum No: 3</b>	<b>Date of Addendum:</b>	November 8, 2011
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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

- 1.0 Coversheet (Offer Sheet) Bid Due Prior to date changed to **Tuesday November 15, 2011 at 2:00 pm.**
- 2.0 Coversheet (Offer Sheet) Proposal Opening date changed to **Tuesday November 15, 2011 at 2:15 pm.**
- 3.0 (Q) What is the height per section of scaffold?  
(A) 6ft.
- 4.0 (Q) What is the height of the lift?  
(A) We will only need a two-man lift, size is usually 2ft. x 4ft
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:	 Sai Xoomsai, Buyer I Purchasing Office	<u>11/02/11</u> Date
--------------	--	-------------------------

ACKNOWLEDGED BY:

Vendor Name	Authorized Signature	Date
-------------	----------------------	------

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.  
Failure to do so may constitute grounds for rejection of your offer.**





**ADDENDUM  
INVITATION FOR BID (IFB)  
PAINTING SERVICES  
CITY OF AUSTIN, TEXAS**

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<b>IFB PAX0025</b>	<b>Addendum No: 4</b>	<b>Date of Addendum:</b>	November 10, 2011
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This addendum is to incorporate the following change into the above-referenced Invitation for Bid.

- 1.0 Section 0600 (Bid Sheet) line item 3; unit column is hereby changed from FL to LF.
- 2.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURES affixed below, this Addendum is hereby incorporated into and made a part of the above-referenced Invitation for Bid.

APPROVED BY:

A handwritten signature in cursive script, appearing to read "Sai Xoomsai".

Sai Xoomsai, Buyer I  
Purchasing Office

11/10/11  
Date

ACKNOWLEDGED BY:

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**RETURN A COPY OF THIS ADDENDUM to the City of Austin Purchasing Office with your bid.**  
**Failure to do so may constitute grounds for rejection of your offer.**

**BID SHEET  
CITY OF AUSTIN  
PAINTING SERVICES  
IFB #PAX0025**

**Copies of Bid:** Vendor must submit three copies of its signed bid - one original and two copies.

**Special Instructions:** Be advised that exceptions taken to any portion of the solicitation may jeopardize acceptance of the Bid.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Tape and Float (Walls)	100,000	SF	\$	\$
2	Tape and Float (Ceilings)	150,000	SF	\$	\$
3	Install Metal Corners	1,500	FL	\$	\$
4	Texture (Splatter)	100,000	SF	\$	\$
5	Texture (Sand)	100,000	SF	\$	\$
6	Texture (Rolled)	100,000	SF	\$	\$
7	Prime Walls and Ceilings	300,000	SF	\$	\$
8	Paint Walls and Ceilings	400,000	SF	\$	\$
9	Prime and Paint Trim -- Wood 6' Wide-Max	3,000	LF	\$	\$
10	Prime and Paint Trim -- Wood > 6' Wide	3,000	LF	\$	\$
11	Prime and Paint Trim -- Metal 6' Wide-Max	3,000	LF	\$	\$
12	Prime and Paint Trim -- Metal > 6' Wide	3,000	LF	\$	\$
13	Prime and Paint Doors Frames Wood < 3' Wide	200	EA	\$	\$
14	Prime and Paint Doors Wood < 3' Wide	200	EA	\$	\$
15	Prime and Paint Doors Frames Wood > 3' Wide (Double Doors)	100	EA	\$	\$
16	Prime and Paint Doors Frames Metal < 3' Wide	200	EA	\$	\$
17	Prime and Paint Doors Metal < 3' Wide	200	EA	\$	\$
18	Paint Doors Frames Metal > 3' Wide (Double Doors)	100	EA	\$	\$
19	Moving Services	50	HR	\$	\$
20	Exterior Paint	3,000	HR	\$	\$
21	Hourly labor rate for additional services to include, but not limited to power wash, painting of exterior walls, soffits, trim and gutters	1,000	HR	\$	\$
22	Rental of Scaffolding	30	DAY	\$	\$
23	Lift Rental	30	DAY	\$	\$
<b>TOTAL</b>					

**FOR INFORMATIONAL PURPOSES ONLY:**

<b>MATERIALS</b>	<b>% MARK-UP</b>
Mark-up to vendor cost for all materials the City may wish to purchase from Vendor in the future.	% _____

FOR INFORMATIONAL PURPOSES ONLY: THE CITY MAY WISH TO PURCHASE ADDITIONAL ITEMS OR SERVICES FROM THE SUCCESSFUL BIDDER IN THE FUTURE. PLEASE INDICATE THE PRICING STRUCTURE YOU WILL OFFER THE CITY FOR ANY NON-SPECIFIED ITEM OR SERVICE DURING THE COURSE OF THE RESULTING CONTRACT.

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COMPANY NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY/STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

# CITY OF AUSTIN, TEXAS

## Purchasing Office INVITATION FOR BID (IFB) Offer Sheet

SOLICITATION NO: IFB PAX0025

COMMODITY/SERVICE DESCRIPTION: Painting Services

DATE ISSUED: 10/17/2011

REQUISITION NO.: 7400 11042900318

PRE-BID CONFERENCE TIME AND DATE: : 10/27/2011, 8:00 A.M

COMMODITY CODE: 91054

LOCATION: Municipal Building, 124 W 8th Street, RM 310

FOR CONTRACTUAL AND TECHNICAL  
ISSUES CONTACT:

BID DUE PRIOR TO: 11/09/2011, 02:00 P.M.

Sai Xoomsai

Buyer I

Phone: (512) 972-4016

BID OPENING TIME AND DATE: 11/09/2011, 02:15 P.M.

LOCATION: MUNICIPAL BUILDING, 124 W 8<sup>th</sup> STREET  
RM 310, AUSTIN, TEXAS 78701

LIVE BID OPENING LINK:

<http://www.ci.austin.tx.us/purchase/bidopenings.htm>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 <sup>th</sup> Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

### SUBMIT 1 ORIGINAL AND 2 SIGNED COPIES OF OFFER

OFFER SUBMITTED BY

Signature of Person Authorized to Sign Offer

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Phone No. (     )

Fax No. (     )

Email Address: \_\_\_\_\_

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All other Sections may be viewed at: <https://www.cityofaustin.org/purchase> by clicking the link to "Vendor Self Service (VSS)", sign in if registered, register, or use public access to follow the links to "Business Opportunities" and "Search for Solicitation."

### RETURN THE FOLLOWING DOCUMENTS WITH YOUR OFFER\*\*

- Cover Page                      Offer Sheet
- Section 0600                    Bid Sheet(s)
- Section 0700                    Reference Sheet (if required)
- Sections 0800 - 0835        Certifications and Affidavits (return all applicable Sections)
- Section 0900                    MBE/WBE Procurement Program Package or No Goals Utilization Plan

**\*\* See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

The Vendor agrees, if this Offer is accepted within 90 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

**\* INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm>.

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the address or phone number indicated on page 1 of this Offer Sheet. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

***It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this Solicitation are contained in Section 0900.***

***All Contractors and Subcontractors should be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture should be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto <https://www.cityofaustin.org/purchase> and follow the directions.***

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By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE 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 or Supplemental Terms and Conditions, 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 purchase release 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 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.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **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.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. 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 that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **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 and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **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 in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which

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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.

**10. 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. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
  - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has 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.

- 11. 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.

**12. INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and 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 and transportation charges, if any, shall be listed separately. 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.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also 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 at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract 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.

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13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 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 Section 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 ten (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, are filed or 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 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, Section 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. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- 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 non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **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 City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:



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<http://www.gsa.gov/portal/category/21287>

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.

**15. FINAL PAYMENT AND CLOSE-OUT:**

- A. If an 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:
  - 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.

**16. 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.

**17. RIGHT TO AUDIT:**

- 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 under this Contract. The Contractor shall retain all such records for a period of three (3) 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. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

**18. SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization 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 Utilization 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

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Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth 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 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 indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 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 ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. 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.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** 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.

21. **WARRANTY – 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

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regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
- B. 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.
- C. 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 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 thirty (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.
- D. 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.
- E. 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 assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided 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, 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 the Acceptance Date. 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 above 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 thirty (30) calendar days of discovery of the breach 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.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** 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. If any such acceptance occurs prior

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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. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **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. In the event that 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.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **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 under Paragraph 24, (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.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City 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 Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (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.
29. **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.
30. **DELAYS:**
- A. 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

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adjustment within thirty (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 process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**31. INDEMNITY:**

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
  - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (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.

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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 Contractor must 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 licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 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 0400, Supplemental Purchase Provisions, 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 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. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions**

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

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or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **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 (3) 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. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. 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 Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. 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.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: 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. 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. 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.
37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

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- 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 deliverables containing copyrightable 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 38 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 works 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) 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-made-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 obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. 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 of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **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.
42. **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



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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.

43. **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.
44. **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.
45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure 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.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can 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.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **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.
49. **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 fourteen (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 (1) 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 thirty (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.

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- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (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 give consideration to 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 thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (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.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., 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.
51. **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.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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.

53. **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.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**55. EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror'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.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
  - ii. "Cost of components" means -
    - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
    - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
  - iii. "Domestic end product" means-
    - (1) An unmanufactured end product mined or produced in the United States; or
    - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
  - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

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- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by Wednesday, May 25, 2011 at 2:00pm. Please send questions in writing to Sai Xoomsai by email [sai.xoomsai@ci.austin.tx.us](mailto:sai.xoomsai@ci.austin.tx.us) or fax to: (512) 972-4015.

2. **INSURANCE.** Insurance is required for this solicitation.

A. **General Requirements.** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address 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
- ii. 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.
- iii. 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 holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

**City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767**

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry 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. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- 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 WC 420304, or equivalent coverage
    - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage
- ii. **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).

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- (1) The policy shall contain the following provisions:
  - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
  - (b) Independent Contractor's Coverage.
  - (c) Products/Completed Operations Liability for the duration of the warranty period.
  - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
- (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) Thirty (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. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

- (1) The policy shall include these endorsements in favor of the City of Austin:
  - (a) **Waiver of Subrogation**, Endorsement TE 2046A, or equivalent coverage
  - (b) **Thirty (30) days Notice of Cancellation**, Endorsement TE 0202A, or equivalent coverage
  - (c) **The City of Austin listed as an additional insured**, Endorsement TE 9901B, or equivalent coverage.

C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that 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.

D. Certificate: The following statement must be shown on the Certificate of Insurance.

**The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability, and workers compensation policies.**

### **3. TERM OF CONTRACT**

- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to one (1) additional 36-month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

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- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

THIS IS A 36-MONTH CONTRACT.

FIRM PRICES ARE TO BE SUBMITTED FOR THE FIRST TWELVE (12) MONTH PERIOD

**4. QUANTITIES**

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

**5. INVOICES and PAYMENT** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

Department	FASD - Building Services Division
Attn:	David C. Lothery
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767
Department	AE – Austin Energy
Attn:	Payment Sections
Address	P.O. Box 3546
City, State, Zip Code	Austin, TX 78764
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 S. Lamar Blvd.
City, State Zip Code	Austin, Texas 78701

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) 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.



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**6. HAZARDOUS MATERIALS**

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (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.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "a " must be included with each shipment under the contract.

**7. RECYCLED PRODUCTS**

- A. 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.
- B. 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/> .
- C. 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.

**8. LIVING WAGES AND BENEFITS (applicable to procurements involving the use of labor)**

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, 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. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title.

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The list shall be updated and provided to the City as necessary throughout the term of the Contract.

- D. 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 (FLSA). Basic employment records shall at a minimum include:
- i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
  - ii. time and date of week when employee's workweek begins;
  - iii. hours worked each day and total hours worked each workweek;
  - iv. basis on which employee's wages are paid;
  - v. regular hourly pay rate;
  - vi. total daily or weekly straight-time earnings;
  - vii. total overtime earnings for the workweek;
  - viii. all additions to or deductions from the employee's wages;
  - ix. total wages paid each pay period; and
  - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
- i. the employee's name and job title;
  - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
  - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.
- Employee Certifications shall be signed by each employee directly assigned to the contract.
- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's 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 identified in paragraph D above to verify compliance with this provision.

**9. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING**

- A. The Austin City Council adopted Ordinance No. 20071206-045 on December 6, 2007, adding a new Article 6 to Chapter 2-7 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services exceeding \$5,000. During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the person designated in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. The City requires Offerors submitting Offers on this Solicitation to provide a signed affidavit certifying that the Offeror has not in any way directly or indirectly made representations to

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anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance (**see the Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit included in the Solicitation**).

**10. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)**

- A. Access to any of the City building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City.
- B. Contractor personnel will be required to check in at the security desk when entering or leaving the Department building 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.
- C. 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.

**11. ECONOMIC PRICE ADJUSTMENT**

- A. Prices shown in this contract shall remain firm for the first 12-month period 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 subject to the following considerations:
- B. Price Increases
  - i. Requests for price increases must be made in writing and submitted to the appropriate Buyer in the City's Purchasing Office. The letter must be signed by a person with the authority to bind the Contractor contractually, shall reference the contract number, and include the following documentation:
    - (1) an itemized, revised price list with the effective date of the proposed increase;
    - (2) copies of the documentation provided by the manufacturer regarding the proposed price increase if the contractor is not the manufacturer of the products. If the Contractor is the manufacturer of the products, a letter so stating must be provided;
    - (3) Contractor shall submit, as a part of the request for increase, the version of the U.S. Department of Labor Employment Cost Index for Wages and Salaries for all Urban Wage Earners and Clerical Workers code, CUUR0000SA0 current as of the date of the Contractor's Offer; and a copy of the index for the most current period.
    - (4) Proposed price increases must be solely for the purpose of accommodating increases in the Contractor's costs for the products or services provided. Prices for products or services unaffected by verifiable cost trends shall not be subject to change.
  - ii. Requests for price increases must be made in writing and submitted to the appropriate Contract Manager prior to each yearly anniversary date of contract. Prices will only be considered for an increase at that time. Once received, the City will have 30-calendar days to review and approve/disapprove the requested increase. Should the City not

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agree with the requested increase, Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the contract.

- iii. The proposed percentage change between the current contract price and the requested price shall not exceed the percentage change between the Index in effect at the beginning of the current review period and the one in effect at the time the price increase is requested. Except in the case of emergency situations, the requested index related or non-index related price increase shall not exceed twenty-five percent (25%) for any single line item, and in no event shall the total amount of the contract be automatically increased as a result of the increase in any one or more line items made pursuant to this provision.
- iv. Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully-documented increase requests which, in the Contractor's opinion, justify price increases for one or more line items in the contract. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

**C. Price Decreases**

- i. Proposed price decreases may be offered to the City at any time, and become effective upon acceptance by the City unless a different effective date is specified by the Contractor. Price decrease offers may also be subject to negotiation.
- ii. Price decreases based on relevant factors may be requested by the City at any time. Such requests shall be accompanied by a complete statement of the City's justification for the request. The Contractor shall have 30-calendar days to respond to the City's request. Following receipt of the Contractor's agreement with the requested decrease, the City may implement the decrease at any time. Should the Contractor not agree with the requested decrease, the City may either maintain the prices currently in effect, negotiate with the contractor, or terminate the contract.

**12. CONTRACT MANAGER**

The following persons are designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Mark Northcutt  
Project Manager  
Building Services Division (BSD)  
(512) 974-3972  
[Mark.Northcutt@ci.austin.tx.us](mailto:Mark.Northcutt@ci.austin.tx.us)

Vince McGlone  
AE Facility Manager  
(512) 322-6420  
[Vincent.Mcglone@austinenergy.com](mailto:Vincent.Mcglone@austinenergy.com)

Albert Homann  
Maintenance Manager  
PARC Facility Services  
512-974-9524  
[Albert.Homann@ci.austin.tx.us](mailto:Albert.Homann@ci.austin.tx.us)

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\*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.



**CITY OF AUSTIN, TEXAS  
PURCHASE SPECIFICATION  
FOR  
PAINTING SERVICES**

**1.0 PURPOSE**

This Invitation for Bid (IFB) is to establish a Contract with an established single vendor who can provide painting services with associated materials for City of Austin ("City"). A Contract will be awarded to provide painting services on an as needed basis as stipulated in this Statement of Work.

The Contract will be utilized by the Building Services Division of the Finance and Administrative Services Department, Austin Parks and Recreation Department, and Austin Energy. The City may elect to allow multiple City departments to utilize the contract. All services shall be rendered at the location specified at the time of order.

**2.0 VENDOR REQUIREMENT**

Contractor shall have a minimum of 5 years experience in commercial painting services. Lead Painter shall have a minimum of 3 years experience in the proper application of paint/primer, tape/float materials, and textures in commercial facilities.

**3.0 SUPERVISION, EQUIPMENT AND MATERIALS**

Contractor agrees to furnish all labor, supervision, equipment, scaffolding, materials, tools, supplies, and transportation necessary for the proper execution and completion of interior and exterior painting services as specified. Painting services shall vary depending on the type and materials of existing areas and surfaces to be painted or finished. Materials and services provided by the Contractor shall comply with all current Federal, State, local and municipal laws, ordinances and rules and regulations. All painting services shall meet these specifications.

Paints/Primers to be used shall be Benjamin Moore brand paint and will be provided by the City for each job assignment. All other material such as joint tape, joint compound, caulk, metal corner bead, texture material, etc. are to be provided by the Contractor.

**4.0 WARRANTY**

The Contractor shall provide a one (1) year warranty from date of completion on any work performed. Warranty shall be stated on Contractor's invoice.

**5.0 PROTECTION**

- a. All surfaces, floors, and City property not to be textured or painted shall be completely protected at all times. Furniture, floors, surfaces, and other City property must be protected by covering with drop cloths or by other type of covering, moving, masking, or by employing detailed application methods. Any dropped paint shall be removed.
- b. The Contractor shall be responsible for and use the utmost care in the protection of the occupants' property, including all screens, windows, walkways, shrubbery, parked vehicles, and any other property in the area, from paint and/or other damage.
- c. Extreme care shall be taken to safeguard all existing facilities, site amenities, building structures, windows, and vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of the Contractor and shall be repaired and/or replaced at no additional cost to the City.

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- d. Contractor shall be held responsible for any damages caused by Contractor's employees and Sub-Contractors to City property or any adjacent property, buildings, etc.
- e. Any damage, including damage to finished surfaces, shall be repaired to the City's satisfaction at the Contractor's expense.
- f. It shall be the responsibility of the Contractor to report to the Contract Manager or his designee any damage found prior to any work at job sites.
- g. The Contractor shall be entirely responsible for any loss or damage to its own materials, supplies and equipment, and to the personal property of its employees while they are maintained on the work sites.
- h. The work site may be occupied during the times work is performed. Contractor and Contractor's personnel shall exercise a particularly high level of discipline, safety and cooperation at all times while on the job site. The Contractor shall be responsible for controlling employee conduct, for assuring that its employees are not boisterous or rude and assuring that they are not engaging in any destruction or criminal activity. The Contractor is also responsible for ensuring that its employees do not disturb papers, desks and cabinets, or use City phones, equipment, or facilities except as authorized.

**6.0     SAFETY**

- a. All Federal, State, and local codes, rules and regulations concerning safety will be adhered to by the painting Contractor.
- b. Contractor shall be responsible for assuring the safety of his employees, City employees and the general public during performance of all services under this contract.
- c. Contractor shall assure that all crews are fully and properly equipped to perform services promptly and safely without delay.
- d. Good housekeeping shall be maintained on a daily basis. Contractor shall pay for and furnish all means of removing all soiled, used rags, waste, and trash from City facilities generated by any painting service work. The City will not provide for portable restrooms when the need arises.
- e. Possession and consumption of drugs or alcoholic beverages is strictly prohibited at all times at the job sites and on or around the City's property.
- f. Contract Manager or his designee may issue a stop work due to severe weather, lack of material, safety violations, or other unforeseen circumstances. If the work stoppage is longer than 48 hours, the Contract Manager or designee will issue a written Stop Work Notice.

**7.0     SITE INSPECTION**

It shall be the responsibility of the Contractor to visit and inspect the locations prior to the submittal of a proposal. No variation in price or conditions shall be permitted based on claims of not being knowledgeable, aware, or informed of all requirements and specifications for a job assignment. Submittal of the proposal is evidence the Contractor has familiarized himself with the nature and extent of the work and any local conditions that may, in any manner, affect the scope of the work to be done and the equipment, materials and labor required.



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Inspection must be scheduled by contacting the Contract Manager.

**8.0 JOB CONDITIONS**

- a. Comply with manufacturer's recommendations as to environmental conditions under which coatings can be applied.
- b. Do not apply paint during bad weather such as, snow, rain, fog, mist, or when relative humidity exceeds paint manufacturer's recommended limits.
- c. Do not apply paint while painting surface is exposed to hot sun.
- d. Do not apply coatings in areas where dust is being generated.
- e. Provide "Wet Paint" signs to protect newly painted surfaces.
- f. Contractor will be required to submit MSDS sheets upon request.
- g. Contractor shall provide water and electricity if not available on site.

**9.0 SURFACE PREPARATION**

- a. Contractor shall be responsible for the proper preparation of surfaces prior to painting which may include the removal of staples, tape or other adhesive materials as well as cleaning areas (i.e. jambs and door facings) where accumulations of dirt, grease, or grime may prevent proper paint adhesion.
- b. Cracks and defects in walls, including nail holes, shall be patched before painting. All loose or scaly paint shall be scraped before painting.
- c. Newly constructed wall surfaces shall have all drywall nails and screws filled. Seams shall be properly taped, scratched, and sanded prior to the application of texture and paint.
- d. Outside corners shall have metal corner bead installed prior to taping and floating unless otherwise instructed by the Contract Manager or designee.
- e. Existing textured walls are to have all voids, cracks, holes, etc. filled with a compatible material and is clean, dry, and free of dirt/dust prior to the application of primer, texture, and paint. If texture on any wall(s) contains **ASBESTOS**, then wall(s) must only be wet wiped as a method of smoothing out material to be used as filler. **At no time will there be any sanding, scraping, drilling, or abrading on these walls.**
- f. Plaster wall surfaces are to be clean, dry, and free of dirt and dust, and all voids filled with a compatible material prior to the application of paint. These surfaces will not receive texture.
- g. All exterior surfaces except windows are to be pressure cleaned, as necessary, to remove dirt, stains, and mildew prior to painting.
- h. Doors, frames, and trim are to be properly sanded and prepped prior to the application of any enamel paint.

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FOR  
PAINTING SERVICES**

**10.0 FURNITURE MOVING SERVICES**

- a. For the purpose of painting applicable surfaces behind furniture, the Contractor shall be responsible for moving and relocating all furniture such as desks, cabinets, stand-alone bookshelves, chairs, plant stands, etc.. In addition, items hung on the walls shall be removed and replaced by the Contractor.
- b. The Contractor shall avoid disconnecting electronic equipment such as computers, fax machines, telecommunication equipment, and appliances such as refrigerators. The Contract Manager or designee shall be responsible for disconnections and coordinating disconnections as necessary.

**11.0 PAINT APPLICATION**

- a. Contractor shall store, handle, and apply all materials according to manufacturer's specifications, and in compliance with all applicable government regulations.
- b. Install all paints/coatings in accordance with manufacturer's instructions. Install all required material (paint, primer, putty, etc.) in proper relation to adjacent construction and with uniform appearance. Clean and prime area as recommended by manufacturer.
- c. All coating applications or mixing/thinning of material shall be performed in accordance with the manufacturer's specifications.
- d. All paints shall be thoroughly stirred before removal from the containers and shall be kept stirred while used.
- e. All paint in any one-paint coat shall be hard and dry through the entire paint film before the next coat is applied. In no case shall the elapsed time between the applications of the successive coats of paint to any surface be less than that recommended by the paint manufacturer.
- f. The rate of coverage per gallon for the paint to be applied shall not exceed the maximum rate recommended by its manufacturer.
- g. All coated surfaces shall be free of dust, dirt, and contamination before succeeding coats are applied, as per manufacturer's specifications.
- h. Painters used on the work shall ensure that finished surfaces shall not show brush marks or other irregularities.
- i. All coats shall have uniform thickness and be free of runs, drips, sags, bubbles, pinholes, ridges, laps, and variations in color or texture. Separate coats shall conform to the dry film thickness specified and shall have a distinguishable color difference from the preceding or subsequent coats.
- j. All paint may be rolled or brushed on all textured or plaster surfaces. Any other method of application must have prior approval of Contract Manager.
- k. Top, side, and bottom edges on all doors shall be painted.

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**12.0 EXTERIOR PAINTING**

- a. Any rough or peeling surfaces anywhere on the exterior shall be thoroughly scraped with either scrapers or wire brushes and shall be feather edged with sandpaper before being primed with the appropriate primer for either wood or metal prior to the application of two coats of finish as specified.
- b. All pitch (roof tar) shall be removed from gutters, flashing, and fascia boards prior to the application of primer coat. All pitch shall be removed from all copper and aluminum gutters, gutter flashings, and fascia. Copper and aluminum gutters, gutter flashings, and fascia are not to be painted.
- c. All window frames and doorframes shall be caulked prior to application of paint. All necessary glazing and caulking shall be done prior to the application of the primer coat around window glass. Caulking shall include between windows and brickwork, between coping and brickwork, and between coats where two coats are specified.
- d. Two coats of oil base finish paint is to be applied to all exterior surfaces with forty-eight (48) hours to be allowed between coats where two coats are specified.
- e. All doors shall be painted on all surfaces and all edges to maintain a uniform appearance. All doors (metal and wood), doorframes, and window frames except those having an aluminized unpainted finish shall be painted.
- f. All operable windows shall open freely upon completion of work.
- g. All roof fans and ventilators (except those of aluminum) are to be painted with two coats of oil base enamel paint to match existing roof.

**13.0 CLEAN-UP AND PRECAUTIONS**

- a. All rubbish accumulated from a job shall be removed from the City's premises by the Contractor at his expense. No trash, paint buckets, or other debris is to be placed in City dumpsters or other trash containers belonging to City.
- b. The set up area is to be protected from damage to surface of grounds. Extra precaution should be taken so as not to damage surrounding building walls, landscaping, parking lots, and sidewalks.
- c. At completion of each assigned job, the Contractor shall remove any drippage of paint or finishes from all walls, windows, floors, and finished surfaces that were not present before work commenced. Failure to do so when asked by the Contract Manager or designee will result in the work being done by City personnel and charged back to the Contractor.
- d. In the event of accidental paint spilled, Contractor shall immediately remove all spilled materials and clean to the original condition prior to the spillage.
- e. All clean-up requirements shall be completed prior to payment being made for a job.

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**14.0 CONTRACTUAL RESPONSE AND WORKING HOURS**

- a. The City's Contract Manager is responsible for notifying City personnel 24 hours before any work proceeds in City facilities. The Contractor shall post proper warning signs and/or barriers where necessary.
- b. Contractor shall be expected to respond to a job assignment or meet with the Contract Manager at the job site within 72 hours of notification of proposed project to discuss the project. For each job, a written estimate of the total cost of work including the target date for starting and estimated time of completion for such project will be submitted to the Contract Manager not more than an additional 24 hours later, and at no cost to the City.
- c. The Contractor shall have an English/Spanish speaking lead painter on all projects. The Contractor shall complete such project within the time period proposed unless a time extension has been approved by the Contract Manager.
- d. Service shall be provided Monday through Friday from 8:00 a.m. to 5:00 p.m. unless requested by the City. If requested by City, services provided at nights, weekends, or holidays shall be subject to the labor rate as specified on the bid sheet. If Contractor performs any work after hours in order to complete a job assignment, no additional charge will be made to the Contractor unless such work performed after hours was requested by the City.
- e. If work is to be conducted on weekends without request of City, a written notice must be given to the Contract Manager at least 48 hours before scheduled work.
- f. If it becomes necessary for the Contractor to perform work at night, weekends, or holidays, a list of the Contractor's employees who are scheduled to work must be given to the Contract Manager. The Contractor's employees must have proper identification in their possession. The above procedure will insure proper ingress and egress at any facility in which the Contractor is required to work. Contractor's vehicles will be required to be clearly identifiable with company name and contact numbers.
- g. For some City facilities, security clearance will be required. Please see the Supplemental Purchase Provisions, Section 0400.
- h. Upon completion of a project, work performed by the Contractor is subject to the inspection and approval by the Contract Manager. Payment will not be made for any service until all requirements and acceptance of service as to contract compliance has been approved by Contract Manager.
- i. Successful Contractor will be required to provide proof of all labor and material charges during the term of the contract. Satisfactory proof of labor charges shall include copies of employee timesheets and company payroll records, as supported by bank statements, which shall be submitted for inspection, upon request, by the City. Satisfactory proof of material charges shall include copy of suppliers' invoices, properly dated, and itemized by line item used in each painting job performed for the City.

**15.0 SUBMITTAL OF INVOICES AND DOCUMENTATION**

Invoices shall include the following as a minimum.

- a. Exact address of work performed

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- b. City of Austin work authorization number
- c. City of Austin contract number, Contractor invoice number and date
- d. Beginning and ending dates of services rendered
- e. Total number of square feet provided each service
- f. Service type, unit cost, number of units provided and extended total charges

**16.0 MODIFICATIONS OR ADDITIONS**

Any suggestions by the Contractor for improved quality and/or durability of the completed work through additional preparation, repair, or other process are desirable to the City.

Such additions or modifications to the scope of the work shall be detailed in each job proposal and their additional benefits explained in detail.

These proposed changes must be submitted as an ADDITION to the originally stated project specifications.



**BID SHEET  
CITY OF AUSTIN  
PAINTING SERVICES  
IFB #PAX0025**

**Copies of Bid:** Vendor must submit three copies of its signed bid - one original and two copies.

**Special Instructions:** Be advised that exceptions taken to any portion of the solicitation may jeopardize acceptance of the Bid.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Tape and Float (Walls)	100,000	SF	\$	\$
2	Tape and Float (Ceilings)	150,000	SF	\$	\$
3	Install Metal Corners	1,500	FL	\$	\$
4	Texture (Splatter)	100,000	SF	\$	\$
5	Texture (Sand)	100,000	SF	\$	\$
6	Texture (Rolled)	100,000	SF	\$	\$
7	Prime Walls and Ceilings	300,000	SF	\$	\$
8	Paint Walls and Ceilings	400,000	SF	\$	\$
9	Prime and Paint Trim -- Wood 6' Wide-Max	3,000	LF	\$	\$
10	Prime and Paint Trim -- Wood > 6' Wide	3,000	LF	\$	\$
11	Prime and Paint Trim -- Metal 6' Wide-Max	3,000	LF	\$	\$
12	Prime and Paint Trim -- Metal > 6' Wide	3,000	LF	\$	\$
13	Prime and Paint Doors Frames Wood < 3' Wide	200	EA	\$	\$
14	Prime and Paint Doors Wood < 3' Wide	200	EA	\$	\$
15	Prime and Paint Doors Frames Wood > 3' Wide (Double Doors)	100	EA	\$	\$
16	Prime and Paint Doors Frames Metal < 3' Wide	200	EA	\$	\$
17	Prime and Paint Doors Metal < 3' Wide	200	EA	\$	\$
18	Paint Doors Frames Metal > 3' Wide (Double Doors)	100	EA	\$	\$
19	Moving Services	50	HR	\$	\$
20	Exterior Paint	3,000	HR	\$	\$
21	Hourly labor rate for additional services to include, but not limited to power wash, painting of exterior walls, soffits, trim and gutters	1,000	HR	\$	\$
<b>TOTAL</b>					

**FOR INFORMATIONAL PURPOSES ONLY:**

MATERIALS	% MARK-UP
Mark-up to vendor cost for all materials the City may wish to purchase from Vendor in the future.	% _____

FOR INFORMATIONAL PURPOSES ONLY: THE CITY MAY WISH TO PURCHASE ADDITIONAL ITEMS OR SERVICES FROM THE SUCCESSFUL BIDDER IN THE FUTURE. PLEASE INDICATE THE PRICING STRUCTURE YOU WILL OFFER THE CITY FOR ANY NON-SPECIFIED ITEM OR SERVICE DURING THE COURSE OF THE RESULTING CONTRACT.

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**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS FORM**

SOLICITATION NUMBER: PAX0025

PROJECT NAME: Painting Services

**The City of Austin has determined that no goals are appropriate for this project.** Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974 -7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

**Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?**

No \_\_\_\_\_ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes \_\_\_\_\_ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name and Title of Authorized Representative (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)  
PROCUREMENT PROGRAM  
NO GOALS UTILIZATION PLAN**  
(Please duplicate as needed)

SOLICITATION NUMBER: PAX0025

PROJECT NAME: Painting Services

**PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION**

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone		Fax Number	
Name of Contact Person			
Is company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

\_\_\_\_\_  
Name and Title of Authorized Representative (Print or Type)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

<b>Sub-Contractor/Consultant</b>	
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Amount of Subcontract	\$
List commodity codes & description of services	

<b>Sub-Contractor/Consultant</b>	
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Amount of Subcontract	\$
List commodity codes & description of services	

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

I having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor \_\_\_\_\_ Date \_\_\_\_\_ Director/Deputy Director \_\_\_\_\_ Date \_\_\_\_\_



**CITY OF AUSTIN  
PURCHASING OFFICE  
REFERENCE SHEET**

**Please Complete and Return This Form with the Offer**

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least  recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

**Add Reference**

Company's Name	<input style="width: 95%;" type="text"/>		
Name of Contact	<input style="width: 40%;" type="text"/>	Contact Title	<input style="width: 55%;" type="text"/>
Present Address	<input style="width: 95%;" type="text"/>		
City	<input style="width: 30%;" type="text"/>	State	<input style="width: 20%;" type="text"/> Zip Code <input style="width: 20%;" type="text"/>
Telephone Number	<input style="width: 30%;" type="text"/>	FAX Number	<input style="width: 40%;" type="text"/>
Email Address	<input style="width: 95%;" type="text"/>		

Company's Name	<input style="width: 95%;" type="text"/>		
Name of Contact	<input style="width: 40%;" type="text"/>	Contact Title	<input style="width: 55%;" type="text"/>
Present Address	<input style="width: 95%;" type="text"/>		
City	<input style="width: 30%;" type="text"/>	State	<input style="width: 20%;" type="text"/> Zip Code <input style="width: 20%;" type="text"/>
Telephone Number	<input style="width: 30%;" type="text"/>	FAX Number	<input style="width: 40%;" type="text"/>
Email Address	<input style="width: 95%;" type="text"/>		

Company's Name	<input style="width: 95%;" type="text"/>		
Name of Contact	<input style="width: 40%;" type="text"/>	Contact Title	<input style="width: 55%;" type="text"/>
Present Address	<input style="width: 95%;" type="text"/>		
City	<input style="width: 30%;" type="text"/>	State	<input style="width: 20%;" type="text"/> Zip Code <input style="width: 20%;" type="text"/>
Telephone Number	<input style="width: 30%;" type="text"/>	FAX Number	<input style="width: 40%;" type="text"/>
Email Address	<input style="width: 95%;" type="text"/>		

Company's Name	<input type="text"/>		
Name of Contact	<input type="text"/>	Contact Title	<input type="text"/>
Present Address	<input type="text"/>		
City	<input type="text"/>	State	<input type="text"/> Zip Code <input type="text"/>
Telephone Number	<input type="text"/>	FAX Number	<input type="text"/>
Email Address	<input type="text"/>		

Company's Name	<input type="text"/>		
Name of Contact	<input type="text"/>	Contact Title	<input type="text"/>
Present Address	<input type="text"/>		
City	<input type="text"/>	State	<input type="text"/> Zip Code <input type="text"/>
Telephone Number	<input type="text"/>	FAX Number	<input type="text"/>
Email Address	<input type="text"/>		

City of Austin, Texas  
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE  
NON-DISCRIMINATION CERTIFICATION

SOLICITATION NO PAX0025

City of Austin, Texas  
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin  
Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

*Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.*

*Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.*

**UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.**

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CONTRACTOR \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_

**City of Austin, Texas**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

SOLICITATION NO. PAX0025

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:			
Signature of Officer or Authorized Representative:		Date:	
Printed Name:			
Title:			

CITY OF AUSTIN  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT  
SOLICITATION NO. PAX0025  
FOR

Painting Services

State of Texas

County of Travis

**The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:**

The term "**Offeror**", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
  - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
  - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** . The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
  - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;



**CITY OF AUSTIN  
NON-COLLUSION,  
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.ci.austin.tx.us/cityclerk/coi.htm>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Offeror's  
Explanation:

--

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a member of the City Council, a member of a City Board, or any other official, employee or agent of the City, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

Contractor's Name:	<input type="text"/>
Printed Name:	<input type="text"/>
Title:	<input type="text"/>

\_\_\_\_\_  
Signature of Officer or Authorized Representative:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**CITY OF AUSTIN, TEXAS**  
**LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION**  
*(Please duplicate as needed)*

**SOLICITATION NO.**

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add		
Delete		

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name:	<input type="text"/>		
Signature of Officer or Authorized Representative:	<input type="text"/>	Date:	<input type="text"/>
Printed Name:	<input type="text"/>		
Title:	<input type="text"/>		



**CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	<input type="text"/>
Description of Services:	<input type="text" value="Painting Services"/>
Contractor Name:	<input type="text"/>

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	<input type="text"/>		
Signature of Employee:	<input type="text"/>	Date:	<input type="text"/>
Employee's Printed Name:	<input type="text"/>		

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Printed Name)

**City of Austin, Texas**  
**NONRESIDENT BIDDER PROVISIONS**  
**SOLICITATION NO. PAX0025**

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

- ☐ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- ☐ Non-resident Bidder

Bidder's Name:			
Signature of Officer or Authorized Representative:		Date:	
Printed Name:			
Title:			

**CITY OF AUSTIN  
PURCHASING OFFICE  
"NO OFFER" REPLY FORM**

**SOLICITATION NUMBER:** PAX0025

**Please Complete and Return This Form to the following address to Indicate a "No Offer" Reply**

City of Austin  
Purchasing Office  
P.O. Box 1088  
Austin, Texas 78767-8845

**(DO NOT RETURN ALONG WITH OFFER)**

Please check the appropriate box to indicate why your firm is submitting a "no offer" response. Failure to respond to three (3) consecutive solicitations may result in your company being removed from the source list for this commodity or service. Completion of this form will assist us in maintaining an accurate, up-to-date source list.

**COMMODITY CODE:** 91054

**DESCRIPTION:** Painting Services

- ☐ Unable to supply item(s) specified. Remove my company from the source list for the Commodity / Service Group
- ☐ Unable to supply item(s) specified. Retain my company on the vendor list for this commodity / service.
- ☐ Cannot meet the Scope of Work / Specifications.
- ☐ Cannot provide required Insurance.
- ☐ Cannot provide required Bonding.
- ☐ Job too small.
- ☐ Job too large.
- ☐ Do not wish to do business with the City. Remove my company from the City's Vendor list.
- ☐ Other reason (please state why you will not submit a bid):

\_\_\_\_\_  
\_\_\_\_\_

Contractor's Name:

Street Address

City, State, Zip Code

Signature of Officer or  
Authorized

Representative:

Date:

Printed Name:

Title