

**City Council Questions and Answers for
Thursday, June 27, 2013**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, June 27, 2013 at Austin City Hall
301 W. Second Street, Austin, TX



**Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5**

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions of departments via the City Manager's Agenda Office. This process continues until the final report is distributed at noon to City Council the Wednesday before the council meeting.

QUESTIONS FROM COUNCIL - None at this time.

1. Agenda Item # 27
 - a. QUESTION: Since agenda items from staff typically include a staff recommendation - What is the City Manager's recommendation on this agenda item? COUNCIL MEMBER SPELMAN
 - b. ANSWER: Staff has been given previous direction from Council via Ordinance regarding Prevailing Wage and we are currently enforcing your direction. As you know, White Lodging recently requested that an item be added to your agenda to clarify this issue. Staff provided for your June 27th meeting a number of alternatives, but will continue to enforce the current ordinance unless different direction is provided.
 - c. QUESTION: How much has COA paid toward the wastewater line for Marriott? From what department's budget did that funding originate? COUNCIL MEMBER TOVO
 - d. ANSWER: The wastewater relocation project related to the Marriott development is CIP# 3353.098 (Block 18 Alley WW Relocation) and FDU 4570-2307-3014 (SER Reimbursements). The wastewater relocation project has not been completed. No request for reimbursement has been made by White Lodging, nor has a request for additional funding been submitted. Per the Cost Reimbursement Agreement, reimbursement would not be issued until final acceptance is issued for the wastewater line. There is additional work at the 2nd Street tie-in that still needs to be completed, as well as plugging the existing line on the north side of 3rd St. The total amount eligible for reimbursement would be \$403,659.75.
 - e. QUESTION: (1) What timeframe does the contract with J.W. Marriott specify for repayment of waived fees in the event of a contract breach? (2) Please indicate other examples within the last several years in which the City Manager has brought forward an item that reconsiders a Council policy action at the request of a developer. COUNCIL MEMBER TOVO
 - f. ANSWER: (1) The ordinance waiving the development fees does not specify a timeframe for repayment of any waived fees if White Lodging does not comply. A contract was executed to address the wastewater relocation and costs. The draft ordinance does not address the repayment of the waived fees or a timeframe for repayment. (2) This is the first time that a developer has requested clarification on a Council decision regarding City funding (fee

waivers, 380 agreements, etc).

2. Agenda Item # 28

a. QUESTION: In processes such as this one – the recommendation of a design team – why doesn't public feedback factor into the staff recommendation? What action would be necessary to ensure that going forward, staff recommendations would be based at least in part on feedback obtained through community meetings and public comment cards? COUNCIL MEMBER TOVO

b. ANSWER: See attachment.

3. Agenda Item # 40

a. QUESTION: What kind of concession is the APF contemplating for Wooldridge Square Park? In what period did the agreement at the Old Bakery generate \$18,000? What provisions of the policy regarding parkland concessions are being waived? COUNCIL MEMBER TOVO

b. ANSWER: See attachment.

4. Agenda Item # 42

a. QUESTION: How did NHCD plan to spend the money from the Sustainability Fund? What will be the impact of transferring it for use for congregate meals? What other options did staff explore? COUNCIL MEMBER TOVO

b. ANSWER: There will not be an impact to NHCD since the reduction in the transfer from Sustainability Fund to the Neighborhood Housing Fund is possible due to savings realized from vacancies and the need for contractual costs, such as legal and appraisal services, being less than budget. Neighborhood Housing, Health and Human Services and the Parks and Recreation Department met to evaluate the current expenditure of grant funding within Neighborhood Housing and Health and Human Services. The analysis hoped to find grant funding from either block grants, "specialty" grants, federal or state resource allocations. It was the team's hope that funding could be reallocated for the purpose of funding congregate meals and/or identify shared funding opportunities between the three departments to assist with funding congregate meals. Unfortunately, the avenues identified were found to be inconsistent with grant deliverables, inconsistent with grant terms or the transfer of the funding would be considered supplantation and not permissible without jeopardizing the current or future grant funding.

5. Agenda Item # 48

a. QUESTION: Will a copy of the contract be uploaded to the back-up? If not,

please provide. COUNCIL MEMBER TOVO

- b. ANSWER: We do not have approval yet to negotiate a contract. Attached for your review are the Terms & Conditions, Supplemental Purchase Provision, and the Scope of Work used in the solicitation: Section 0300, City of Austin Standard Terms and Conditions; Section 0400, City of Austin Supplemental Purchase Provisions; and Section 0500, Scope of Work. Please note – not all Operational Areas of the Scope of Work are being recommended for award. Internment Services, Inc. proposed (and is being recommended for award) for the Operation Area of Internment and Burial Services.
- c. QUESTION: (1) Can you let us know what the range of options might be regarding the interment services contract before us tomorrow? (2) Are we allowed under the posting language to modify the terms (duration, etc...) of the contract or is it a simple vote between approval and re-soliciting which would take another 6 months? MAYOR PRO TEM COLE
- d. ANSWER: (1) Options are • Award contract as recommended by staff for initial term of 60 months with two 60 month options, • Award contract for initial term and direct that any options come back to Council for approval, or • Reject all bids and re-advertise. (2) Please note that both PARD and FSD Purchasing worked to source competition on this solicitation and the City of Austin could not find anyone else interested in this work. This award is only for the services noted in RCA. The rest of the services required will be performed by COA staff or other contracts as other services are being rebid. Currently this supplier is providing services under a short term contract and PARD is performing the other services that are not under a separate contract.

6. Agenda Item # 57

- a. QUESTION: The item references that it will “implement a combined crime records data set that is used to more quickly identify criminals.” Are these incident reports, crime records, arrest records, or something else? How will this be used to ID criminals? COUNCIL MEMBER SPELMAN
- b. ANSWER: The Sypherlink software converts disparate, proprietary crime records of various Central Texas law enforcement agencies into one standardized format. This does include incident reports and arrest records. By combining the many Record Management Systems (RMS) into one database, it allows the departments to more effectively identify potential suspects of crime. It is well documented that criminals cross jurisdictional boundaries to commit their crimes, and the ability to search different agencies’ databases assists officers and analysts with identifying patterns and trends of crime on a regional basis.

7. Agenda Item # 59

- a. QUESTION: The backup for the airport rewards program mentions that this

program is established in 160+ airports throughout the U.S. Has there been any analysis done on this type of program to demonstrate that the cost to the airport of \$60,000/year leads to a return on investment that justifies that cost? Also, the description mentions that the program will also extend throughout Austin to include local merchants and tourist attractions. How will this program interact with the other reward card programs already in place with local businesses? COUNCIL MEMBER RILEY

- b. ANSWER: Yes. Participating airports have identified key metrics to measure the return on investment of the loyalty program. Incremental spending has been identified in the form of new parking revenue and increased concession revenue. Airport partners have also identified indirect value with positive customer feedback. The Thanks Again program is intended to supplement existing reward programs. The program is airport centered and provides unique access to numerous reward currencies.
- c. QUESTION: The RCA states that the Aviation Department has an interest in fostering patronage of the Airport's parking operation and that the Thanks Again rewards program will encourage patronage of the Airport's parking facilities. What is the current utilization of the airport's parking facilities? MAYOR PRO TEM COLE
- d. ANSWER: The current utilization of available public parking spaces ranges from 70% to 85%.

8. Agenda Item # 61

- a. QUESTION: Will the interlocal agreement address the design and placement of the wayfinding signs to ensure that the pedestrian clear zone is protected? COUNCIL MEMBER RILEY
- b. ANSWER: The Interlocal Agreement will address the location of the wayfinding signs within the City's right-of-way, they will be placed so they can be seen by drivers and pedestrians, while ensuring that they do not create an obstruction in the pedestrian clear zone, or conflict with existing traffic signs. The Transportation Department will review and approve the locations proposed by UT. The design of the UT wayfinding signs has been already established, and will correspond with the wayfinding signs currently in place on the UT campus to provide continuity.

9. Agenda Item # 75

- a. QUESTION: Please outline the environmental protections and standards established under LA zoning per Council Work Session discussion. COUNCIL MEMBER MORRISON
- b. ANSWER: See attachment.

c. QUESTION: Please list any re-zonings of properties within 1,000 of the Lake Austin shoreline that have been filed or are in progress. Please list variance requests that have been filed or are in progress for properties within 500 feet of the shoreline of Lake Austin. COUNCIL MEMBER TOVO

d. ANSWER: See attachment.

10. Agenda Item # 83

a. QUESTION: (1) Please provide a fiscal note for this item, with projections to include the coming years as the valet fees transition to levels that meet cost of service. (2) Are the license agreement fees and the valet fees paid into the same fund? Which fund(s)? (3) Please provide a list of license agreements that would be affected by this ordinance change, along with the annual fee for the agreement. COUNCIL MEMBER MORRISON

b. REVISED ANSWER: (1) Enclosed is the fiscal impact including the fiscal year outlook with the projected increases for valet fees in order to meet the cost of service demands. Please see attached Fiscal Note (2) The license agreement fees and the valet fees are not paid into the same fund. The license agreement fees are paid into the Transportation Fund and the valet fees are paid into the Parking Management Fund. (3) After reviewing a list of licensed agreements that would be affected by this ordinance change, the only property that is associated with valet and a licensed drop-off area would be the "W". The current annual fee is \$65,455 which includes the drop-off fee of \$40,035.


11. Agenda Item # 93


a. QUESTION: Was the tenant relocation plan included as part of the Grayco PUD rezoning? Please explain why staff do not want to include language about the tenant relocation plan in the public restrictive covenant for the Oak Creek Village proposed rezoning. COUNCIL MEMBER TOVO

b. ANSWER: As part of the density bonus granted to the owner, the South Shore (Grayco) PUD ordinance required that the owner provide NHCD with an agreement between the owner and an acceptable entity that provided at least \$90,000 in displacement and relocation assistance within 1 year of the ordinance adoption, prior to filing a development application, or the first notice to tenants of termination of leases. Further, the ordinance required that the owner file a restrictive covenant within 45 days to commit to the terms of the density bonus provisions. Other provisions related to the provision of onsite affordable housing and other related fees. A Declaration of Covenants, Conditions, and Restrictions was subsequently filed by the owner; it does not appear that a public restrictive covenant was filed. That document mirrors the language of the ordinance regarding providing NHCD with a fee, and other items. Neither the PUD ordinance or the Declaration mention a relocation plan. Unlike the South Shore District PUD, the Oak Creek Village rezoning case is not a PUD, but rather a request for rezoning from one base zoning

district to another. There is no provision in our Code for staff to require an owner seeking a rezoning to file a relocation plan. Moreover, PDR staff is not aware of any mechanism to review and approve such a plan, or the criteria for evaluation of such. Staff is aware that there are Federal requirements or guidelines that may be involved in tenant relocation related to federally-funded programs, but is not aware of adopted guidelines at the municipal level.

END OF REPORT - ATTACHMENTS TO FOLLOW

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance please call 974-2210 OR 974-2445 TDD.*



Council Question and Answer

Related To	Agenda Item # 28	Meeting Date	June 27, 2013
------------	------------------	--------------	---------------

Additional Answer Information

The current Qualifications Based Selection (QBS) process, established for the selection of a consultant firm to perform professional services, is structured to adhere to the strict requirements of Government Code Chapter 2254. Chapter 2254 requires that a professional service firm be selected by a municipality on the basis of demonstrated competence and qualifications to perform the services. We interpret that statement to mean that a municipality must use City staff with subject matter expertise to make the recommended selection.

Given the basic structure of our QBS process, CMD worked closely with the Neighborhood Housing and Community Development (NHCD) and the Colony Park Neighborhood Association (CPNA) to develop ways in which the CPNA and the impacted community could weigh in on the selection process. NHCD staff met with CPNA numerous times to develop the Project scope of services which was then provided to CMD for review. CMD prepared the draft RFQ scope with the information provided by NHCD and CPNA. A meeting between CMD, NHCD and CPNA was held to ensure that the key themes of importance to CPNA were included in the RFQ scope of services, prior to issuing the RFQ on 2/22/13. During the evaluation period, CMD met with NHCD and CPNA to solicit input for the consultant interview phase.

The following input was received and implemented for use during the RFQ development and evaluation process to determine the staff recommendation:

- CPNA emphasized important key phrases and themes which were incorporated into the scope of services and further emphasized to the staff evaluation panel, such as: attributes similar to the Mueller redevelopment; job skills center; a healthy, safe and walkable community.
- CPNA provided input on presentation content for each firm's use during Phase II of the evaluation process, specifically, to include emphasis on the, "Team's plan to obtain participation from a diversity of stakeholders."
- CPNA provided questions which were used during Phase II - Consultant interviews of the evaluation process:
 1. Given the inaccessibility of the north side of the project site by road, what are some of the major obstacles and challenges to attracting a grocery store and major employers providing opportunities comparable to the Robert Mueller redevelopment project?
 2. What role will the economic analysis consultant have in performing the Market Study? If none, how will the team achieve economic development success comparable to the Robert Mueller, Seaholm Power Plant redevelopment, or other comparable projects?
 3. What direct experience does your team have in low-income, distressed minority communities and how does this relate to the Colony Park Challenge Grant community?
 4. What background and experience does your team have in Master Planning minority, low-income communities focused on sustainable and livable mixed-use, mixed-income development?

All of these measures were implemented to allow the maximum amount of public participation while still maintaining the integrity of the City's QBS procurement process –specifically allowing for an evaluation panel with subject matter expertise to make the recommended selection.

We feel that the aforementioned steps taken with the CPNA were beneficial in terms of allowing for CPNA to provide evaluation content that was important to them within the evaluation process. As such, we plan to continue

taking these actions for major planning initiatives.

In addition, we have begun a conversation on lessons learned and believe some enhancements can be made to our process. One proposed enhancement is to:

- Allow community input to factor into the final recommended firm that Council would consider for award. Rather than the staff recommendation being decided prior to the firms presenting to Council, stakeholders groups, and the community, the evaluation panel would be able to consider in their evaluation the firms' presentations to these groups. In addition, the evaluation panel would take into consideration public feedback captured through public comment cards. The Evaluation Panel's recommendation to Council would be based on the review and evaluation of a firm's statement of qualification, presentation and interviews, and consideration of public feedback.

As we finalize process enhancements, we will provide a memo to Council describing changes to the evaluation process for these types of major planning initiatives.



Council Question and Answer

Related To	Agenda Item #40	Meeting Date	June 27, 2013
------------	-----------------	--------------	---------------

Additional Answer Information

QUESTION:

What kind of concession is the APF contemplating for Wooldridge Square Park? COUNCIL MEMBER TOVO

ANSWER:

The entire DRAFT Agreement is attached (this document is still in the development and legal review portion of the process). **The Basics of the agreement are as follows:**

The term of this agreement shall be for a period of two (2) years from the Effective Date, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Each party acknowledges that a concession agreement for the Site for any period beyond the two-year term shall be subject to the competitive solicitation process or negotiation and execution of a new agreement possibly revising terms as determined by the City.

1. Prepare and offer for sale cooked and pre-packaged food items such as but not limited to baked goods, pastries, sandwiches, coffee, and non-alcoholic beverages.
2. Utilize revenue generated from concession sales to maintain the Site and to assist in funding future site improvements to the Site during the term of this Agreement.
3. Operate and manage an on-site food and beverage concession serving breakfast and lunch items to the general public.
 - a. Hours of operation shall be Monday through Friday between 7:00 a.m. and 3:00 p.m. Alternate days and hours of operation are subject to the prior approval and discretion of the PARD Director.
 - b. Additional days and hours of operation may be added based on vendor need and for special events at Wooldridge Square Park. Vendor(s) shall remit, to APF, a minimum of ten percent (10%) of gross monthly revenue (less sales tax) from all concession sales generated
 - c. Collect and maintain records of the amount collected from vendor(s) for future site improvements. APF shall retain at least ten percent (10%) of the gross revenue generated from concession sales to provide substantial park improvements to the Site.
 - d. No portion of the funds collected under this Agreement shall be used for APF administration costs but solely for improvements to the Site.

QUESTION:

In what period did the agreement at the Old Bakery generate \$18,000? COUNCIL MEMBER TOVO

ANSWER:

October 11, 2011 through to approximately mid November, 2012.

QUESTION:

What provisions of the policy regarding parkland concessions are being waived? COUNCIL MEMBER TOVO

ANSWER:

Resolution 980312-25 refers to Attachment A for establishing concessions on parkland. Attachment A is attached.

In summary, Council is being asked to waive the following provisions:

Waive the competitive process (the Department is instead entering into an agreement with a non-for-profit entity which is permissible provided without a competitive bid provided there is substantial public benefit. In this case, being able to utilize the revenue generated from the contract will provide programming and site improvements to benefit the public)

Waive provisions for temporary or seasonal contract fees as established by Council and instead approve a “minimum of ten percent (10%) of gross revenue.

See supporting documentation below.

Wooldridge Square Park Concession Agreement

This Park Concession Agreement (Agreement) is entered into by the City of Austin, a home rule municipality, through its Parks and Recreation Department (City), and the Austin Parks Foundation (APF), a Texas non-profit Corporation. City owns Wooldridge Square Park located at 900 Guadalupe (Site), and wishes to permit the APF to manage and operate a concession at the Site. Effective Date shall be the date this Agreement is signed by the last of the two parties.

1. PURPOSE

APF and the City through its Parks and Recreation Department (PARD) conducted a one- (1) year pilot concession program at the Old Bakery and Emporium, under which APF operated and managed a food and beverage concession, in exchange for revenue, which will be used ~~as~~to provide substantial park improvements to the Old Bakery and Emporium site.

APF requests to enter into a new agreement with the City to duplicate this model at Wooldridge Square Park.

2. Term of Agreement

The term of this agreement shall be for a period of two (2) years from the Effective Date, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Each party acknowledges that a concession agreement for the Site for any period beyond the two-year term shall be subject to the competitive solicitation process or negotiation and execution of a new agreement possibly revising terms as determined by the City.

3. GOALS and OBJECTIVES

1. Prepare and offer for sale cooked and pre-packaged food items such as but not limited to baked goods, pastries, sandwiches, coffee, and non-alcoholic beverages.
2. Utilize revenue generated from concession sales to maintain the Site and to assist in funding future site improvements to the Site during the term of this Agreement.

4. APF OBLIGATIONS

1. Solicit and contract with a vendor(s) acceptable to the City and approved by the PARD Director prior to entering or conducting operations on the Site. APF shall provide the City with the business name and contact information for all approved vendors.
- ~~2. Provide an accounting of all funds designated for improvements to the Site from the Temporary Park Concession Agreement between APF and the City executed on September 22, 2011 (Temporary Agreement), within thirty days of the Effective Date of this Agreement. All funds from the Temporary Agreement shall be used for improvements to the Site during the term of this Agreement unless otherwise agreed to by the parties.~~
- ~~3.2.~~ Provide City with an Emergency Management and Operations plan to be reviewed and approved by the City.
- ~~4.3.~~ Operate and manage an on-site food and beverage concession serving breakfast and lunch items to the general public.
 - a. Hours of operation shall be Monday through Friday between 7:00 a.m. and 3:00 p.m. Alternate days and hours of operation are subject to the prior approval and discretion of the PARD Director.
 - ~~b.~~ Additional days and hours of operation may be added based on vendor need and for special events at Wooldridge Square Park, including but not be limited to the Old Bakery Artist Reception, Chuy's Parade, ROT Rally, Capital Tree Lighting and Downtown Stroll.
 - ~~c.b.~~ Vendor(s) shall remit, to APF, a minimum of ten percent (10%) of gross monthly revenue (less sales tax) from all concession sales generated at the Site at the beginning of each month for the previous month's sale.
- ~~5.4.~~ Obtain written consent, through the PARD Director or designee, for any alterations, improvements, or additions, in, on, or about the exterior of the Site.
- ~~6.5.~~ Prior to conducting concession operations at the Site, APF shall obtain written consent, through the PARD Director or designee, for the concession equipment and vehicle-food trailer specifications included in **Attachment B** attached hereto and incorporated herein. **Attachment B** shall include proposed concession equipment and vehicle-trailer specifications, including but not limited to color, materials, dimensions, weight and utilities, as well as designate which improvements are permanent or temporary specific to the vendor.
- ~~7.6.~~ Provide the City with a concession schedule, menu and price listing, and documentation of APF and vendor required insurance coverage listing the City as an additional insured. APF and its vendors shall maintain insurance in the amounts shown in **Attachment C**.

- ~~8-7.~~ Ensure prices of all items offered for sale are properly displayed. The manner and location of posting will be subject to approval by the PARD Director or designee.
- ~~9-8.~~ Vendor(s) shall develop and maintain written procedures for receiving, investigating and responding to questions, concerns and inquiries from the City and general public, and provide a copy to the City.
- ~~10-9.~~ APF shall ensure vendor(s) obtains and arranges for all utilities including electricity, water or other utilities needed for operations. APF shall be solely responsible for the payment of utility charges for the duration of the agreement. Utilities shall have separate metering and billing capabilities ~~from the Old Bakery and Emporium facility.~~
- ~~11-10.~~ Ensure vendor(s) provide assistance, upon request, to individuals with disabilities.
- ~~12-11.~~ Ensure all concession equipment and utilities are shut off prior to completion of daily operations.
- ~~13-12.~~ Maintain Site in a clean and sanitary condition and require vendor(s) to comply with all applicable federal, state, and local health, safety, and environmental laws, ordinances, and other governmental provisions prevailing in performing under this Agreement.
- ~~14-13.~~ Ensure the vendor(s) obtains and maintains licenses, permits, registrations, and certificates required by law to perform under this Agreement.
- ~~15-14.~~ Equipment, supplies, and materials necessary to perform under this Agreement shall be stored ~~within the an area designated and approved by the City. Storage facilities shall be maintained to ensure aesthetic and structural integrity~~ self-contained trailer.
- ~~16-15.~~ All disposable products such as cups, napkins, cutlery, and plates shall be of recycled or biodegradable content.
- ~~17-16.~~ Furnish trash and recycling receptacles for the daily disposal of waste and recyclable products generated from concession services
- ~~18-17.~~ Monitor litter and ensure all trash, from within the service area, is contained in trash receptacles daily.
- ~~19-18.~~ Litter and trash shall be disposed of daily ~~off premises in an area to be designated by the City.~~
- ~~20-19.~~ No Styrofoam or glass containers of any kind shall be used in the dispensing of food and/or beverages.
- ~~21-20.~~ In the event the agreement between APF and its vendor(s) is terminated or expires, APF shall notify the City's Contract Manager in writing within five (5) business days of the last day of operations by such vendor. APF shall conduct a walkthrough with the City and vendor

prior to and after the vendor leaves to ensure all concession equipment and property is removed from the premises within thirty (30) days of vendor's written notice.

~~22-21.~~ Indemnify and hold harmless the City from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs arising from or related to any violation on the part of APF or its employees, agents, vendors or subcontractors of any such laws, rules, regulations, ordinances, or directives. APF shall require this provision in each of its agreements with vendors it contracts with.

~~23.~~ Collect and maintain records of the amount collected from vendor(s) for future Site-site improvements. APF shall retain at least ten percent (10%) of the gross revenue generated from concession sales ~~to be used as matching funds for a grant application that will~~ provide substantial park improvements to the Site or site specific programming. ~~APF will submit a proposal for grant funds to ___ grantor/agency for ___ type of grant/grant name during the term of this Agreement. The grant application must name the City as a co-recipient and must be approved by the PARD Director. APF must submit a site improvement plan that utilizes all revenue received from its vendors. This plan must include a description of proposed improvements and an implementation schedule to be approved by the PARD Director.~~ The terms and conditions for the site improvements will be identified under a Parkland Improvement Agreement to be executed between the parties within 120 days of the approval of the site improvement plan, within 120 days of award of grant funding. ~~If APF is unsuccessful in obtaining grant funds for whatever reason, APF must submit a site improvement plan that utilizes all revenue received from its vendors. This plan must include a description of proposed improvements and an implementation schedule to be approved by the PARD Director. If APF fails to obtain grant funds or submit a site improvement plan, then APF shall remit an accounting and all funds accumulated during the term of this Agreement and the Temporary Concession Agreement to the City.~~

~~24-22.~~ No portion of the funds collected under this Agreement shall be used for APF administration costs but solely for improvements to the Site.

5. CITY OBLIGATIONS

- A. Allow APF to operate and manage a food and beverage concession at the Site.
- B. Oversee and monitor APF's performance under this Agreement through periodic site visits and reporting requirements.
- C. Review all reports received under Section Seven (7) of this Agreement.
- D. Provide APF with a calendar of events, including official City holidays, observed by ~~the Old Bakery and Emporium~~ Wooldridge Square Park.

- E. ~~Grant approved vendor(s) the right to store certain equipment, supplies and materials in a designated area approved by the City. Storage space located inside the Old Bakery and Emporium is not available for use.~~
- F. ~~Provide and/or coordinate daily trash collection services at the site.~~

6. CONSIDERATION

APF shall require its vendor(s) to maintain records and remit to APF a minimum of ten percent (10%) of gross monthly revenue from all concession sales generated on site on a monthly basis within two (2) weeks of preceding report month.

7. REPORTS

- (1) APF shall prepare and submit a report in the form prescribed in **Attachment D** attached hereto and incorporated herein to the Contract Manager within fifteen (15) business days of each month during operation. APF shall provide the City with the following information:

i. Total gross revenue for all items sold by vendor(s) at the site.

ii. Total revenue paid to APF by the vendor.

iii. Total of balance of account established to be used ~~for grant applications and for future site improvements to the Old Bakery and Emporium outdoor space at~~ Wooldridge Square Park.

- (2) ~~Updates and proposed plans regarding the Downtown Austin Plan, related to the Old Bakery and Emporium, these updates include, but are not limited to public engagement efforts, concept and design development, implementation time line and construction document preparation. The reports will be provided on a quarterly schedule, with the first report due August 15, 2013. All subsequent quarterly reports will be due the 15th of the month.~~ APF shall submit to the Contract Manager, on a monthly basis, or as reported by the vendor, a copy of the vendor's sales tax report required by the Texas Comptroller of Public Accounts.

- (3) The City may conduct an audit of APF's records and its vendor(s) as necessary to ensure compliance with this Agreement. APF agrees to allow the City or other authorized representatives of the City access to its records as they relate to the performance of this Agreement and will require such right to audit in all of its contracts with its vendors. APF shall retain all such records for a period of three (3) years after the expiration or termination of this Agreement or until all audit or litigation matters that the City has brought to the attention of APF are resolved, whichever is longer.

8. CONTACT PERSON(S)

The City will appoint a Contract Manager to be the primary contact for APF. APF shall provide the City with a least one contact person who can be reached during the days and times necessary to carry out services under the agreement. The Contract Manager may use monthly meetings between the PARD Director and APF as an opportunity to discuss concession management and operations.

9. TERMINATION

Termination for Public Safety. The City shall have the right to terminate this Agreement without prior notice due to APF's or its vendors' action or inaction that results in an immediate threat to public health, safety and welfare and for which there is no cure.

Mutual Termination. Either party may terminate this Agreement for convenience and without cause or further liability by providing written notice at least 45 days prior to the termination date designated in such notice to the other party.

Upon termination of this Agreement any remaining funds paid by or due from vendor(s) to APF shall be accounted for and remitted to the City, or the parties may enter into such agreement as necessary. The City shall not be liable or responsible for any damages or costs incurred by APF or its vendors due to termination or expiration of this Agreement.

10. Miscellaneous

(1) Dispute Resolution.

- i. If a dispute arises out of or relates to the Agreement, 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.
- ii. 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 APF 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 Agreement 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, and APF agrees it will compel participation of its vendors in mediation if applicable to the dispute. The City and APF 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.

- (2) No Third Party Rights. The provisions and conditions of this Agreement are solely for the benefit of the City and APF, and are not intended to create any rights, contractual or otherwise, to any other person or entity.
- (3) No Partnership or Joint Venture. APF shall operate as an independent contractor and not as an officer, agent, servant, or employee of the City.
- (4) Non-Discrimination Ordinances. APF and its vendors shall comply with all provisions of AUSTIN, TEX., CODE Title 5. (Civil Rights), as amended, recodified or reenacted from time to time, relating to equal opportunity in employment and business practices. Such provisions are incorporated in this Agreement and by reference made a part of this Agreement as though fully set forth in this Agreement.
- (5) No Hazardous Materials. APF covenants and agrees that neither APF nor any of its agents or vendors shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Site, or transported to or from the Site.
- (6) Condition of Premises. APF accepts the Site in its present condition, "as-is", finds it suitable for the purposes intended, and further acknowledges that it is thoroughly familiar with such condition by reason of a personal inspection and does not rely on any representations by City as to the condition of the Site, or its suitability for the purposes intended.
- (7) Assignment. APF will not assign any of its rights or obligations under this Agreement without the prior written approval of the PARD Director.
- (8) Claims. In the event that any claim, demand, suit or other action (Claim) is made or brought by any person, firm, corporation or other entity against APF or its vendors related to the Site or to products sold at the Site, APF shall provide written notice of

such Claim to the City's Contract Manager within two calendar days of the date APF or any of its employees or representatives first learned of the Claim. Notification from APF shall include, the names and addresses of the person, firm, corporation or other entity making the Claim, and if known, the basis of such claim.

- (9) Compliance with Health, Safety, and Environmental Regulations. APF, its vendors, and their respective employees and subcontractors, 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. APF 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 APF's obligations under this paragraph.
- (10) Survivability of Obligations. All provisions of the Agreement 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 this Agreement.

EXECUTED by the authorized representatives of the Parties on the dates indicated below.

AUSTIN PARKS FOUNDATION
a Texas non-profit organization

CITY OF AUSTIN,
a home-rule municipal corporation

By: _____

By: _____

Title: [Executive Director](#)

_____ Title: [Director](#)

Date: _____, 2013

Date: _____, 2013

Attachments:

Attachment A: Site Map

Attachment B: Vendor Proposal

Attachment C: Insurance Requirements

Attachment D: Monthly Concessionaire Report

DRAFT

"ATTACHMENT A"

PARKS AND RECREATION DEPARTMENT POLICY/PROCEDURE

Title: Policy for Concessions on City Parkland

Effective Date: 3/18/93

Council Approval: March 18, 1993

Revised Date: October 21, 1997

Purpose: To establish a policy for concessions on all City parkland.

Reference:

Policy: The Parks and Recreation Department (PARD) has developed this policy regarding the limited private commercial use within the City's park system in the form of concessions, including permanent and temporary concessions. These policies are intended to maintain the aesthetic and environmental quality of the City's park system and to ensure a financial return to the City of Austin from such uses or to provide a public good to the citizens of Austin.

All proposals for concessions on Town Lake will be reviewed in compliance with Chapter 11-3 of the City code. The definition of a concession is as follows: Any privately operated business on parkland serving park users, authorized by the City in accordance with applicable ordinance requirements. Types of businesses operated as concessions may include without limitation, food and beverage stands, boat rentals, excursion boats, boating lessons, bicycle rentals, and pushcarts." Concessions also include businesses which provide souvenirs and other goods and services to park users and which generally pay a portion of their revenue to the City or provide a public good to the citizens of Austin.

There are three categories of concessions: 1) new permanent concessions, 2) existing permanent concessions, whose contracts have expired, and 3) unsolicited temporary concessions. The following policies will address the development of permanent concessions on parkland and establish guidelines for temporary concessions

New Permanent Concession Development¹

In order to comply in a timely manner with the Town Lake Ordinance the following time line will be followed annually:

April 1 - June 30	Staff will accept input for new concession ideas through various methods e.g., surveys of boards, commissions, advisory groups and park users; public notice; and requests for written suggestions from the general public.
By July 31	Staff will submit a report to the Parks and Recreation Board and the Environmental Boards, describing all proposals received for new concessions ideas.
By August 31	A subcommittee made up of City staff, representatives of the Parks and Recreation Board and the Environmental Board will review concepts and make recommendations to each Board.
By September 30	The Environmental Board and the Parks and Recreation Board will recommend which of the concession concepts (if any) should go forward to a public hearing. Potential locations of all the concessions must be determined prior to the setting of the public hearing. No less than 21 days prior to the public hearing, signs will be posted at the prospective locations of the concession(s). Notices will be sent to all interested parties including the media.
By October 31	Staff will present the annual concession report ² . This report will provide a synopsis of this process and will include the Environmental Board, Parks and Recreation Board and staff recommendations.
By November 30	The Parks and Recreation Board and the Environmental Board will forward to the City Council their response to the annual report.
By January 31	Staff will issue RFPs for new concessions approved by Council.

RFPs for new permanent concessions will require payments based on a flat fee schedule or on a percentage basis of gross sales less sales tax. The method of payment for each concession will be determined on a case by case basis by the Parks and Recreation Director. The flat fee or percentage of sales methods will be determined based on an analysis of the location and type of concession and will be calculated by City staff. The contracts will require an annual review of the concession to determine incremental increases to the fees after the second year of the contract. Additionally, for the flat fee, concessionaires will be required to pay a percentage of their gross sales, once sales exceed the targeted annual gross sales on which the flat fee is based.

¹ A permanent concession is defined as a concession, which has or is eligible for a contract of a year or more and generally has a permanent structure.

² As required by Town Lake Ordinance No. 890126.

An evaluation team will review RFP responses and make recommendations to Council. (As allowed by chapter 11-3 of the City code, the evaluation team will include staff and may include one representative from each of the following organizations: Parks and Recreation Board, Environmental Board, and Design Commission.) Recommendations for award of contracts as a result of this process will be forwarded to the Parks and Recreation Board for review and recommendation prior to the City Council action. Following Council approval, a contract will be negotiated and executed.

Permanent Concession Policy for Existing Contracts About to Expire.

Staff will gather public input concerning items that should be addressed in a new contract, for an existing concessions 90 days prior to contract's expiring.

RFPs will be issued for new contract periods for existing concessions. An evaluation team will review the proposals and make recommendations to the Parks and Recreation Board. The evaluation team will include staff and may include one representative from the Parks and Recreation Board, Environmental Board, and Design Commission. Requests for Council Action (RCAs) will be submitted to Council for contract award.

RFPs for existing concessions will require payments based on a flat fee schedule or on a percentage basis (as they stand now) for the term of the contract. The method of payment for concessions will be determined on a case by case basis, by the Parks and Recreation Director. The flat fee or percentage of sales payment will be based on an analysis of the location and type of concession and on a five-year history of that particular concession. City staff will calculate this fee. For the flat fee method, the contracts will require an annual review of the concession to determine incremental increases to the flat fee after the first year of the contract. Additionally, concessionaires will be required to pay a percentage of their gross sales, once sales exceed the targeted annual gross sales on which the flat fee is based.

Temporary - Seasonal Concession Policy

A temporary or seasonal concession is defined as a concession which does not require a building or other type of permanent structure from which to operate and has a contract term limited to one year or less. Fees for temporary or seasonal contracts will be established by the City Council in the annual budget. Any temporary concession granted a temporary/seasonal permit two times within a 12 month period will be considered in the annual process for new permanent concessions. The Director of Parks and Recreation is authorized to negotiate and enter into temporary or seasonal concession contracts based on predetermined criteria to include impact, location, service level, revenues to the City, and any other criteria which may be in the best interest of the City and the use of its parkland.

Single Day - Temporary Permits

A single day temporary permit is defined as a concession set up outside of a special event taking place in a City Park. This concessionaire would have the opportunity to purchase a one-day permit for \$50.00 at the site of the event or cease and remove the operation of the concession from the area immediately.

Performing Artists in the Parks

Performing artists are allowed to entertain in the parks provided they register with and are approved by the Director of the City of Austin Parks and Recreation Department. Performing artists are categorized under the single day - temporary permit fee structure. The fee for performing artists will be \$10.00 a day and may be purchased in 2-week increments. When applying, the performing artist must provide specific days of operation, so this can be reflected on the permit.

Individuals may perform as artists or entertainers in any City park as long as they meet the following conditions. They:

- A. May not block sidewalks or in any way impede pedestrian or vehicular traffic circulation.
- B. May not be within 100 feet of an existing concession's main operating location.
- C. May set up at special events only with written permission of event organizer.
- D. May not use Amplified sound.
- E. Juggling of potentially hazardous materials or items such as knives or fire is prohibited.
- F. Any money exchanged must be on a "tips" or donation basis only, with the amount to be determined by the donor.
- G. Entertainers must carry the permit issued by the Parks and Recreation Department allowing them to perform in the park. This permit is to be available on request by any park employee charged with patrolling or supervising park use or by any citizen.
- H. May not impede or interfere with the use of park facilities or scheduled activities.

Failure to produce the permit issued from the Parks and Recreation Department can result in immediate expulsion from the park.

Report(s) Required:. This policy is to be reviewed by the Parks Board every three years from the date of original approval with changes to be approved by Council. The Director of Parks and Recreation is authorized to develop guidelines and make changes thereto for the implementation of this policy.

**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 could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby

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

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 by check 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:

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

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

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 Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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

- 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 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.

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

- 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 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

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

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 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

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

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.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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

- 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.
- 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. 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, 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 2nd Street, 4th 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 OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

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.
- 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

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

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 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.

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

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.
 - 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

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

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:**

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

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

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.

- 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".

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

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 2:00 PM Central Savings Time, on Tuesday, February 5, 2013. Please send to Sharon Patterson by email Sharon.Patterson@austintexas.gov or fax: (512) 974-2388.

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 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 Injury).

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

- (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (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/or 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.

3. TERM OF CONTRACT

- A. The Contract shall be in effect for an initial term of 60 months (5 years) and may be extended thereafter for up to two additional 60-month periods (5-year 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).
- 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 60-MONTH CONTRACT.

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

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

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:

	City of Austin
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 South Lamar
City, State Zip Code	Austin, Texas 78704

- 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. **MATERIALS SPECIFICATIONS/DESCRIPTIVE LITERATURE**

- A. If a solicitation refers to a Qualified Products List (QPL), Standard Products List (SPL) or a manufacturer's name and product, any Offeror offering products not referenced in the solicitation must submit as part of their Offer materials specifications/descriptive literature for the non-referenced product. Materials specifications/descriptive literature must be identified to show the item(s) in the Offer to which it applies.
- B. Materials specifications/descriptive literature are defined as product manufacturer's catalog pages, "cut sheets" applicable tests results, or related detailed documents that specify material construction, performance parameters, and any industrial standards that are applicable such as ANSI, ASTM, ASME, SAE, NFPA, NBS, EIA, ESL, and NSA. The submitted materials specifications/descriptive literature must include the manufacturer's name and product number of the product being offered.
- C. The failure of the materials specifications/descriptive literature to show that the product offered conforms to the requirements of the Solicitation shall result in rejection of the Offer.
- D. Failure to submit the materials specifications/descriptive literature as part of the Offer may subject the Offer to disqualification from consideration for award.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

7. 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.

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. 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;

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

- 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.
- F. 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. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person 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. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying 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. The text of the City Ordinance is posted on the Internet at:
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

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

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the “report”) for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as “Contractor’s personnel”).
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver’s license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver’s license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor’s personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver’s license or photo ID card.
- D. Contractor shall provide the City Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor’s personnel to determine those appropriate for execution of the work and for presence on the City’s property. A list of all Contractor Personnel requiring access to the City’s site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor’s affidavit described in (D) above and the list of the Contractor’s personnel, the City will provide each of Contractor’s personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor’s personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor’s reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City’s Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor’s personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor’s schedule. Lost ID badges shall be reported to the City’s Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor’s personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

11. **MONTHLY SUBCONTRACT AWARDS AND EXPENDITURES REPORT** (reference paragraph 18 in Section 0300) (applicable to the MBE/WBE Compliance Plan)

- A. The Contractor must submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager specified herein and to the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Mail the Purchasing Office Copy of the report to the following address:

City of Austin
Purchasing Office
Attn: Contract Compliance Manager
P. O. Box 1088
Austin, Texas 78767

12. **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 Consumer Price Index for U.S. City Average (the "Index") current as of the date of the Contractor's Offer; and a copy of the index for the most current period. The specific Index per Operational Area will be identified during contract negotiation and award.
 - (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 thirty (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. 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

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
RFP 8600 SAP0101**

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. Request for price decreases by the City will be based on the same documentation as price increase request. 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 thirty (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.

13. **INTERLOCAL PURCHASING AGREEMENTS** (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

14. **CONTRACT MANAGER**

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

Troy Houtman

919 W. 28 1/2 St.

Austin, Texas 78705

(512) 974-9481

Troy.Houtman@austintexas.gov

*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.



Request for Proposal (RFP)

8600 SAP0101

Scope of Work

Management, Operations, and Maintenance
of Austin Cemeteries



TABLE OF CONTENTS

INTRODUCTION.....	4
OBJECTIVES FOR CEMETERY MANAGEMENT	4
CITY RESPONSIBILITIES.....	5
GENERAL DESCRIPTION OF CEMETERY SERVICES	7
 SCOPE OF WORK	
I. Sales Administration & Management.....	9
A. Administration and Management.....	9
B. Business Operations.....	10
C. Use of Cemetery Facilities.....	12
D. Records Management.....	12
E. Rules and Regulations Monitoring and Enforcement.....	13
F. Sales and Account Management.....	14
G. Customer Service and Complaints Resolution.....	14
H. Marketing Plan & Implementation	14
I. Monument, Marker & Headstone Coordination.....	14
J. Procedures Manual	15
K. Cemetery Master Planning	15
L. Sales Administration and Management Performance Standards	15
 II. Cemetery Operations	 16
A. Administration and Management.....	16
B. Operations Management Plan.....	16
C. Monument, Marker and Headstone.....	16
D. Grounds Maintenance.....	17
E. Utilities	17
F. Levels of Maintenance	17
G. Irrigation	18
H. Irrigation System Maintenance	18
I. Clearing Live Vegetation Near Headstones, Curbs and Fence Lines.....	18
J. Insect Control	18
K. Daily Custodial Services.....	19
L. Building, Fencing & Signage.....	19
M. Hardscape Maintenance – Roads, Sidewalks.....	20
N. Trash and Debris Management	20
O. Floral and Gravesites Tributes Removal	20
P. Turf Care.....	20
Q. Turf Maintenance	20
R. Equipment	21
S. Aerification.....	21
T. Fertilization and Weed Control	22
U. Leveling of Existing Graves	22
V. Comprehensive Tree Survey and Annual Tree Maintenance Work Plan.....	22
W. Tree Maintenance.....	23
X. Ball Moss Removal and Enforcement	25
Y. Brush Removal.....	25
Z. Spoils Management.....	25
AA. City of Austin Responsibilities	25
BB. Cemetery Operations Performance Standards.....	25

III. Interments & Burial Services	27
A. Administration and Management.....	27
B. Space Opening/Closing, Interments and Burial Services	27
C. Plot Ownership Confirmation Prior to Burial	27
D. Grave Preparation/Funeral Set-up.....	27
E. Closing of Gravesites	27
F. Grave Liner Installation	28
G. Re-interments	28
H. Pre- & Post-Graveside Service/Set-up & Clean-up	28
I. Tent Set-up, Removal, and Storage	28
J. Equipment	28
K. Procedures Manual	28
L. The Interment and Burial Services Performance Standards.....	29
GENERAL RESPONSIBILITIES	30
LAWS, STATUTES AND GOVERNMENTAL REQUIREMENTS	30
DEFINITIONS	31
 ATTACHMENTS AND EXHIBITS	
Exhibit A: City of Austin Local Government Records Control Schedule for Cemetery Unit	31
Attachment A: Pricing Proposal Instructions	32

Request for Proposals

Management, Operations and Maintenance of Austin Cemeteries

INTRODUCTION

The purpose of this solicitation is for the City of Austin ("City"), through its Parks and Recreation Department, to identify qualified cemetery management and operations firms to consider contracting with the City to perform one or all aspects of the City of Austin's cemetery services ("Cemeteries"). Interested firms who demonstrate the experience, business resources, and the infrastructure capacity necessary for maintaining all City-owned cemetery properties as valuable public assets will be considered. This is a performance-based contract for which the contractor will be reimbursed for services rendered on behalf of the City. The City is seeking proposals for a contract with an initial term of five (5) years, with two (2) five (5) year options.

The City began operating cemeteries in 1856 upon receiving Oakwood Cemetery from the State of Texas. Although owned by the City, the cemeteries were primarily maintained by individual plot owners and the Austin Cemetery Association with the support of the Public Works Department. After consolidation of the Urban Transportation Department and the Public Works Department in 1987, cemetery oversight was transferred to the Parks and Recreation Department. The Parks and Recreation Department provided cemetery maintenance and operations from 1987 until 1990, when the services were outsourced to a contractor. The current cemetery contract will end in 2013.

The City owns five distinct cemetery properties highlighted below:

Property Name	Location	Date Established	Total Acres	Average Burials Per Year
Oakwood Cemetery*	1601 Navasota Street	1839	40	40
Oakwood Annex Cemetery*	1600 Comal	1914	22	20
Evergreen Cemetery	3304 East 12 th Street	1928	30	100
Austin Memorial Park	2800 Hancock Drive	1927**	96.75***	320
Plummers Cemetery*	1204 Springdale	1957	8	Occasional

* Burial sales are essentially inactive.

** Date established per deed dated August 17, 1927. Vol. 407, Page 16, Records of Travis County

*** 112.75 original acreage. Exact acreage today is to be confirmed.

OBJECTIVES FOR CEMETERY MANAGEMENT

The City of Austin desires proposals and resulting contract that meets or exceeds all the objectives as listed below:

- A. Ensure all five of the City cemeteries are treated with equal care and each is a well-maintained, dedicated burial place. Each cemetery should be a place where the Austin community feels welcome to visit and gather, to respectfully celebrate life, to make connections with family, friends and predecessors, and to celebrate culture and history.

- B. Ensure management regards the City's five cemeteries as important historic sites and cultural landscapes in keeping with national best practices that recognize the value of a city's burying grounds for citizens, scholars, decedents, and tourists who visit Austin.
- C. Ensure accessible and well-maintained cemetery buildings and infrastructure for the visiting public and interment of the deceased in compliance with all applicable statutes, ordinances, rules and regulations.
- D. Ensure cemetery grounds, landscaped areas, and natural elements are well maintained, utilizing applicable industry standards and best practices in landscaping that promotes optimally healthy turf, trees, and plant life, and ensure such activities are conducted in a safe, clean and environmentally friendly manner.
- E. Ensure and coordinate daily operations in an efficient and professional manner that results in quality service delivery, protects public safety, minimizes adverse impact or destruction to public and private property, and minimizes distraction from the cemetery serving as a respectful place of remembrance.
- F. Ensure proper administrative and operational policies and procedures are established to achieve and maintain:
 - professional and operational efficiency;
 - trained and/or certified personnel and active volunteer coordination;
 - high-quality customer service and timely complaints resolution;
 - thorough, accurate and accessible records management and retention, including recordation and maintenance of interment records;
 - effective business and accounts management; and
 - optimum employee and public safety, and adherence to applicable risk management standards.
- G. Ensure best practices in maintaining the public's trust, including a high standard of ethical, equitable and non-discriminatory practices, as well as implementation of management and operational practices that ensure public access to facilities and transparency in public information and business communications. Provide excellent service to customers in a respectful and consistent manner.

CITY RESPONSIBILITIES

The City of Austin Parks and Recreation Department will begin a cemetery master planning process as funding is made available. As a result, Contractor may be asked to accommodate infrastructure and building improvements. Further, existing buildings may be re-purposed to accommodate new uses as identified in the master planning process.

The City will designate a City Cemetery Contract Manager (CCM) to be responsible for exercising oversight and direction of Contractor's efforts as defined in the Scope of Work (SOW). The CCM will represent the interests of the City in resolving any and all issues that may arise incidental to and during the execution of the agreement. Specifically, the CCM shall maintain regular communication with the Contractor through site visits,



conference calls, meetings, and operational reports. The CCM will promptly review any written reports submitted by the Contractor, and is responsible for approval of all invoices for payment. The CCM will give the Contractor regular and timely feedback on the acceptability and progress of work including customer relations, resulting contract deliverables and reports.

To ensure a high level of customer satisfaction, the CCM will identify areas in need of improvement, conduct and publish an annual customer satisfaction survey that will be used to determine quality of service and progress towards improvement, determine management, operations and community priorities, provide information regarding effectiveness of communications with the public and emerging trends. The CCM will produce and publish a City of Austin Cemeteries annual report.

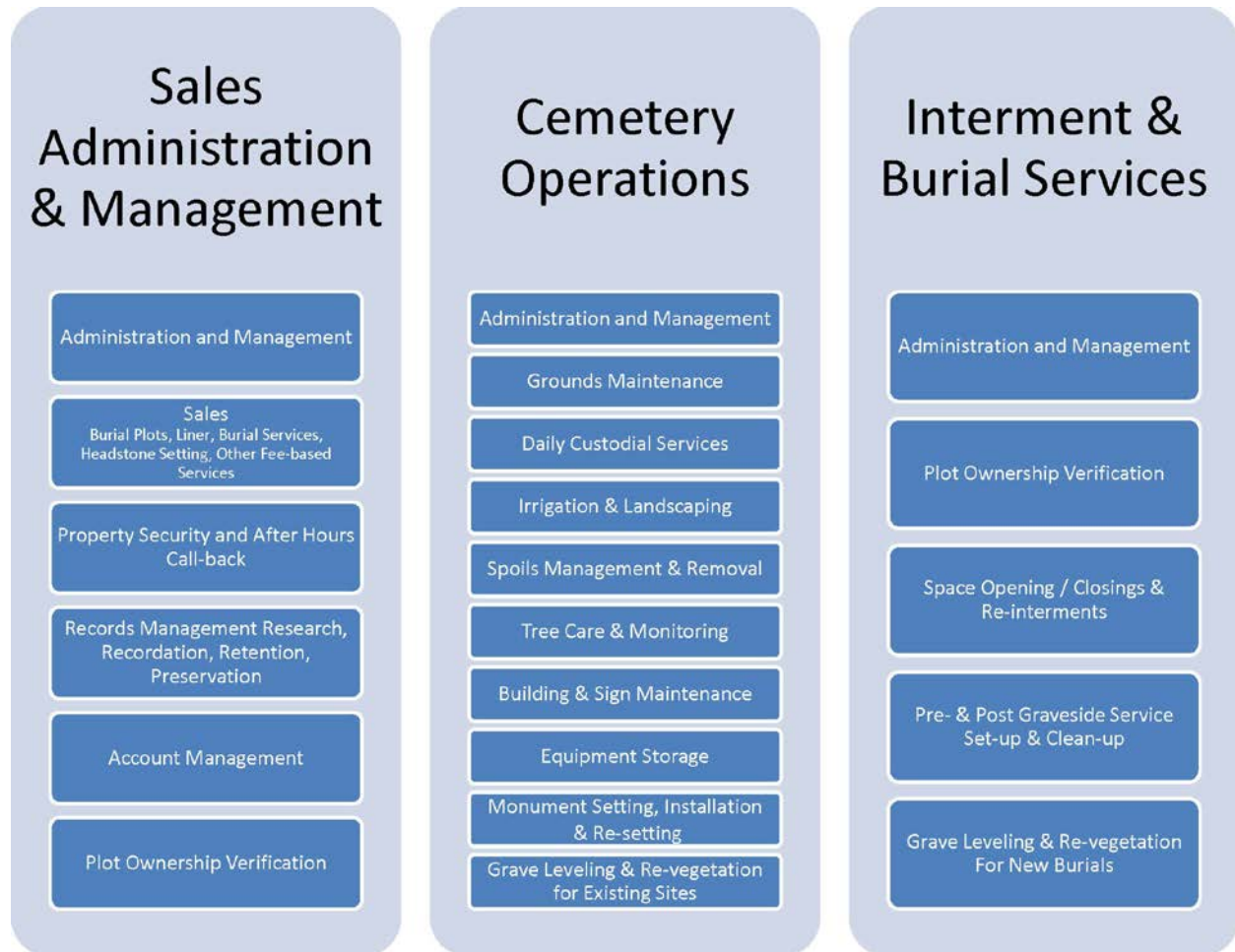
The City's Contract Compliance Unit will ensure the City receives conforming goods and services in accordance with the contract. Compliance staff will monitor all aspects of the contract from funding, term, options, reporting, deliverables, performance, scheduled and unscheduled compliance visits, claims, disputes, amendments, renewals, and closeout activities.

Other City responsibilities include annual facilities and grounds condition assessments, submitting capital planning and improvement funding recommendations, City Code, safety and environmental site review and compliance visits. The City is responsible for major infrastructure development (including roadways).

Remaining page left intentionally blank.

GENERAL DESCRIPTION OF CEMETERY SERVICES

This section includes a general description of each operational area. Austin municipal cemetery operations consist of three major components: Sales, Operations, and Burial Services. While all areas are distinct, they are also interrelated. Each operational area may operate independently. Therefore, the Proposer may choose to submit a response for one or more of the operational areas highlighted below and discussed in further detail in the SOW section of this document. The City reserves the right to award contracts for some, none, or all of the areas of operations.



SALES ADMINISTRATION & MANAGEMENT

The Contractor for this operational area shall be required to provide a variety of sales administration, marketing and related management services.

Administration and Management: Contractor shall perform a variety of general administrative, management and supervisory duties, including operational planning, budgeting, developing and enforcing operational policies and procedures.

Contractor shall provide all personnel, equipment, tools, supplies, supervision and services necessary to ensure sales, administration and management of the cemeteries are provided in a manner that supports and reflects best practices and industry standards.

Sales and Marketing: Contractor shall offer for sale a variety of cemetery services in accordance with annual sales objectives approved by the City. The sales function includes the sale of burial spaces, concrete grave liners, headstone setting and re-setting. Sales are both at the time of need and preneed. Funding mechanisms for prearrangements include cash sales, installment sales, trusts and insurance contracts.

CEMETERY OPERATIONS

A Contractor for this operational area shall provide high-quality maintenance to all five Austin cemetery properties.

Grounds Maintenance activities include complete grounds maintenance, landscaping, tree trimming/planting/removal; mowing and landscaping; pest control; re-vegetation; grave leveling; spoils management; raising, setting and aligning headstones; cleaning headstones; maintenance of hardscapes including pathways, drives, curbs and parking areas; trash removal; maintenance of existing fencing, railing, benches, flag poles, signage, monuments or statues; maintenance of irrigation systems, drainage and special features; property security, access and after hours call-back; monument delivery acceptance, setting, installation, re-setting; and routine reporting in a manner that reflects best practices and industry standards.

Facilities Maintenance activities include the maintenance and repair of all built facilities, including: preventive maintenance activities; pest control services; painting; graffiti removal; building, storage, signage, lighting, plumbing and electrical maintenance and equipment repairs; repair and replacement of deteriorated building systems and components; janitorial and custodial services that include collection and disposal of refuse and recyclable materials.

Other services include: trimming; edging; fertilization and aeration; removal of leaves, debris and trash from turf and grounds; sweeping or blowing clean roads and sidewalks; plant and tree care; snow and ice removal when applicable; grave leveling; and monument setting and leveling.

Contractor shall provide all personnel, equipment, tools, supplies, supervision and services necessary to ensure clean and manicured premises, which are maintained in a manner that uses best practices and innovative approaches to reduce the carbon footprint and any adverse environmental impacts, prevents damage to existing property, and supports healthy grass, trees, shrubs, and plant life. Contractor shall employ practices to reduce impacts on the natural environment through use of alternative energy, low-emissions equipment, bio-degradable chemicals, or items with recycled content. City Council resolutions #20071129-045 and 20070215-023 relate to the adoption of sustainable business practices that reduce chemical and greenhouse gas emissions, comply with LEED standards, and promote the use of recycled materials in goods and services purchased by the City.

INTERMENTS & BURIAL SERVICES

A Contractor for this operational area shall conduct interments and burial services. This consists of space openings and closings, graveside preparation/funeral site set-up and removal, grave-liner installation, spoils removal, and other associated services which include, space ownership and heirship verification, grave leveling and ground vegetation, reporting, documentation of interments, re-interments, and disinterments per regulating requirements.

Contractor shall provide all personnel, equipment, tools, supplies, supervision and services necessary to ensure services are provided in a manner that supports and reflects best practices and industry standards, and are compliant with all applicable statutes, ordinances, rules and regulations.

Scope of Work

I. SALES ADMINISTRATION & MANAGEMENT

A. Administration and Management

Staffing: Contractor shall employ skilled and competent workers in the performance of a resulting contract. Contractor may adjust and/or rotate personnel among locations to accommodate customer service demands. Contractor shall ensure ability to communicate and serve Spanish-speaking customers, and shall provide reasonable accommodations for persons with disabilities.

Personnel Management – Credentialing, Training, Conduct Standards, and Policies & Procedures: Contractor, personnel, and subcontractors shall adhere at a minimum to the following standards of dress and conduct while on duty at any of the City of Austin cemeteries, as follows:

- Personnel attire shall include a visible name tag and a standard uniform that includes official company logo or patch.
- Be fully clothed at all times, to include long slacks or pants and shirt, buttoned up from neck to waist, or company t-shirt. Clothing shall be clean. Any soiled uniforms should be a result of cemetery work performed that day. Tank tops as outer garments are prohibited. Shoes/boots will have no holes or loose soles. Steel-toed shoes will be required in accordance with Occupational Safety and Health Administration (OSHA) requirements. Contractor, its employees and subcontractors shall maintain personal hygiene.
- Shall not engage in loud or boisterous behavior or use profane or abusive language on any cemetery premises. Shall show proper reverence if working during burial services.
- Shall designate eating areas (other than in the business office) for breaks and meals for its employees. Contractor, employees and contractors shall comply with no smoking regulations. All cemetery properties are designated NO SMOKING.
- The possession or consumption of alcohol, tobacco products and/or illicit drugs is strictly prohibited.
- Contractor, employees and/or subcontractors shall not lean, sit or stand on or against headstones or monuments. No tools, equipment or other items shall be placed on headstones or monuments.

Sales Administration & Management

Administration and Management

Sales
Burial Plots, Liner, Burial Services,
Headstone Setting, Other Fee-based
Services

Property Security and After
Hours Call-back

Records Management Research,
Recordation, Retention,
Preservation

Account Management

Plot Ownership Verification

Contractor shall be responsible for maintaining satisfactory standards of personnel conduct and work performance and shall administer disciplinary action up to and including employee termination, as required. Contractor shall also be responsible for training and will adhere to standard safety precautions for its employees and subcontractors performing work under the awarded contract. OSHA standards shall be observed in all work performed. Appropriate safety equipment shall be furnished by the Contractor and equipment used shall follow manufacturer recommendations and OSHA standards, including use of hard hats, safety shoes, safety glasses, and hearing protection devices.

Contractor shall provide on-site employee supervision. The supervisor shall be knowledgeable and able to effectively communicate minimum contract requirements to employees and the public.

Cemetery Security: Contractor is responsible for cemetery security.

Emergency Management Procedures: Contractor is responsible for and shall develop and implement an Emergency Management Plan that, at a minimum, includes:

- Executive Summary: Purpose of plan, authorities and responsibilities of key personnel, types of emergencies that could occur (capabilities and vulnerabilities), managing response operations, schedule and budget.
- Emergency Management Elements: Direction and control, communications, life safety, property protection, community outreach, recovery and restoration, administration and logistics.
- Emergency Response Elements: Procedures for warning employees and customers, communication with personnel and community responders, conducting evacuation and accounting for all persons, managing response activities, utilizing fire extinguishers as appropriate, shutting down operations, protecting vital records, restoring operations, and activating emergency services.
- Support Documents: Emergency call lists, building and site maps, and resource lists.

Routine and Special Reports: Contractor shall prepare and submit to the City periodic progress reports with respect to receipts, disbursements, space sales, space inventory, interments, repairs, improvements, safety and environmental incidents. The reports shall be submitted as frequently and in such detail as required on a monthly, quarterly and annually as stipulated in the resulting contract.

Annual Audit and Reviews: Contractor shall secure and supply the City with a certified independent financial and program/contract audit annually within 120 days from the close of Contractor's annual accounting period. Contractor shall make all records pertaining to the resulting contract available for review or audit.

Financial and Contract Monitoring: During business hours, Contractor shall provide the City access to all records for the purpose of ensuring Contractor's compliance.

B. Business Operations

The Contractor shall maintain standard business hours of operation at Austin Memorial Park and Oakwood. The Austin Memorial Park office is open Monday through Saturday, 8:00 a.m. to 4:30 p.m. The Oakwood office is open Monday through Friday, 8:00 a.m. to 11:00 a.m. and from

1:30 p.m. to 4:30 p.m. The cemetery offices are closed on Thanksgiving, Christmas Day, New Year's Day, and Independence Day (July 4). No funerals are conducted on those days.

Cemetery gates shall be opened at 7 a.m. and locked at 8 p.m. each day during Daylight Savings Time. During Central Standard Time, gates will be opened at 7 a.m. and locked at 6 p.m. The gates are opened year round for visitation. Any changes in standard hours of operation are subject to City approval and advance notice shall be posted to the public.

Contractor shall manage and operate the business office at Austin Memorial Park for the sale of burial spaces, cemetery goods, and services to the general public and funeral homes representing the public. Contractor shall not discriminate in any form or fashion in the sale of burial spaces. Contractor shall be responsible for showing cemetery properties and spaces available for sale to interested parties and complete all administrative tasks and financial transactions associated with space sales and burial services. Contractor shall collect, record, remit and report all sales, receipts, funds, time sales and refunds into account(s) and in reports as prescribed by the City.

Contractor shall maintain at least one full time administrator on-site at Austin Memorial Park and support staff at Oakwood Cemeteries during business days and hours of operation. Hours of operation are subject to review, approval and change by the City. Contractor shall have staff tour the grounds to ensure that all citizens are off the premises before access gates are locked.

The City is committed to a pricing policy that maintains a competitive pricing structure approved by the Austin City Council while providing affordable access to cemetery spaces and services to the public. Approved fees are valid for the period of October 1 through September 30 of the City's fiscal year. All services, sales and other fees associated with municipal cemeteries are set forth in the established City cemetery fee schedule subject to approval by the Austin City Council. Contractor shall not modify, waive, forgive, or defer collection of fees owed to the City.

Customer Sales and Information Packet: Standard customer sales and information packets shall include, at a minimum: a copy of the cemetery map, Cemetery Rules & Regulations signed by the customer, signed purchase documents, Installment Sales Contract (if required), Customer and Family Contact Information Sheet, Customer Request Form, Customer Complaint Form and current Austin City Council approved Cemetery Fee Schedule. The City will provide Contractor with revised rules and regulations from time to time indicating an effective date the amended rules are to be enforced.

Cash Handling: Contractor shall maintain appropriate levels of internal control at all levels of collection and remittance. Contractor shall account for each step of cash handling from the issuance of "banks" to staff, through final accounting reconciliation and deposit, security methods and emergency procedures to protect Contractor's staff and cash, method of determining cash shortages and full City compensation for all shortages. All transport of cash shall be made in locked transport bags or tamper-evident bags. Contractor shall be responsible for the cost of armored transport services. If any funds collected are lost or stolen from the custody and control of Contractor, Contractor shall be responsible for the loss and compensate the full amount of the loss to the City. Any suspected criminal activity, including embezzlement or theft of City funds or property, shall be reported immediately to the CCM and Austin Police Department upon discovery.

Submittal of Revenue to the City: All revenue shall be deposited into the City's account via direct deposit daily. Contractor shall remit copies of daily cash receipts to the CCM weekly by Friday at 2 p.m.

C. Use of Cemetery Facilities

Authorized and Exclusive Use: Use of property and resources shall be dedicated exclusively to municipal cemetery purposes as permitted by the City of Austin. Any unauthorized use is subject to all rights and remedies afforded under contract and law.

Contractor and Contractor's employees shall park privately owned vehicles in designated parking places as determined by the City. The City is not responsible for any damage or loss to Contractor's equipment, tools and supplies stored on City premises. Contractor shall inspect and maintain equipment in safe operating condition. Contractor shall be responsible for delivering and removing all equipment and supplies not approved for on-site storage on a daily basis. Placement and limited storage of proposed equipment, portable storage facilities, supplies and materials necessary for cemetery operations is subject to prior authorization by the CCM, and will only be allowed at Austin Memorial Park in the areas and buildings designated by the CCM. Any supplies or materials stored within the cemetery must be screened from public view.

Contractor shall be responsible for the safe storage and use of all chemicals, pesticides, herbicides, cleaning solutions needed in the performance of the scoped services in accordance with manufacturer recommendations and City standards. Material Safety Data Sheets (MSDS) are required for all chemicals, pesticides, herbicides and cleaning solutions, with copies stored in the maintenance area. Contractor shall comply with all federal, state, city, and county laws and regulations regarding the use of personal protective equipment for personnel and subcontractors. Contractor shall be responsible for maintaining fire extinguishers and safety equipment.

D. Records Management

General Records Requirements: Contractor shall prepare, maintain and preserve, complete and accurate books, records, files, and accounts of each operational area related to the cemetery information under a resulting contract. Contractor shall maintain separate contract records independent of records not related to this contract. Such records shall include business, financial, burial and all related activities and transactions in the performance of the awarded contract. Records shall be accessible to the City upon request. Contractor's records shall be organized and indexed in a manner that supports efficient retrieval. Records no longer needed for daily business use will be boxed and moved to the City's approved records storage facility. Records requiring permanent retention shall be provided to CCM.

Contractor shall enter all cemetery business information into an industry standard electronic database management system. Data entered into this system shall include all cemetery management areas of this SOW. In order to ensure integrity of all data, Contractor shall implement procedures that prevent unauthorized access to, alteration improper deletion or use of data related to City business. Contractor shall back-up data daily. In order to prevent catastrophic data loss, Contractor shall implement a data recovery plan that includes procedures to restore data from back-ups in the event of hardware failure or other emergencies. A copy of the data recovery plan shall be provided to the City and shall be reviewed and periodically tested by the Contractor.

Contingent upon sufficient funding, the Parks and Recreation Department will establish a centralized Data Warehouse for cemetery data to provide security, centralized reporting and the ability to produce a comprehensive Annual Report on cemetery operations. Contractor shall provide to the Cemetery Contract Manager a data file in a format using media per specifications to be provided by the City that will support import of the Contractor's data into this Data Warehouse and other City systems upon request.

Space and Burial Records: The Contractor shall maintain all burial and space ownership records on a daily basis.

Contractor shall maintain current record book(s) and a map(s) of each cemetery. Contractor will maintain all burial and space ownership records that include: records of the purchaser's name, date of birth, address and contact information, and at least two next-of-kin; the date remains are received; the dates the remains are interred; the name and age of the person interred if these facts can be conveniently located; the name of the owner of the cemetery space; name of the portion of land, block numbers, all or part of a lot, or space for a single interment and all other records pertaining to burials as required; and shall comply with all applicable, state laws, City policies and procedure, and any other federal, state or local government regulations including the City of Austin Local Government Records Control Schedule for Cemetery Unit, approved and adopted 5/18/09 by the Texas State Library and Archives Commission.

Contractor shall record a deed of sale for each burial space sold with the Travis County Clerk's Office, and maintain corresponding property ownership contact information. Recording fees shall be included in the purchase price of the burial space.

Contractor shall utilize existing records as needed as a reference to all prior transactions and contractual obligations, while concurrently implementing an automated cemetery records management system for all burial and financial transactions moving forward.

Contractor shall support the City's efforts in the mapping for the cemeteries to be reconstructed from various records, maps and field review. Cemetery sales and interment records will be converted from both paper and electronic formats and moved into a new map-based Cemetery Records Management system. Contractor will implement and follow preservation plans related to historic cemetery records, which include transfer of archival records to the Austin History Center as outlined in the City's records control schedule.

Contractor shall work with the City in the future to develop and implement an integrated computer-based cemetery management information system to automate and make available to the public cemetery space ownership, location of burials, and available space inventory information. Contractor shall make records available to the public as required by law.

Contractor shall support the conversion of all cemetery sales and interment records to a map based cemetery records management system. Once implemented, the City intends on bringing the data to the City website for web-based public access.

E. Rules and Regulations Monitoring and Enforcement

Contractor shall post and distribute copies of the adopted City of Austin Cemetery Rules and Regulations at the designated cemetery business offices for public viewing. Contractor shall enforce cemetery rules and regulations.

F. Sales and Account Management

The sales function includes the sale of spaces, concrete grave liners, headstone setting and re-setting. Sales are both at the time of need and preneed. Funding mechanisms for prearrangements include cash sales, installment sales, trusts and insurance contracts.

A customer (general public or a funeral home) purchasing a burial space may enter into a financing contract with the City whereby the City agrees to sell to the customer and customer agrees to purchase from the City, real property situated in the County of Travis and State of Texas for purposes of interment. The customer shall pay the City the purchase price for the property, payable as agreed upon by both parties until the full amount of the purchase price has been paid for a period no longer than one (1) year. There shall be no penalty for prepayment of the balance.

Contractor shall not execute a deed to the customer until Contractor receives full payment for the cemetery space. No grave can be dug or body buried without a deed of ownership or the approval and consent of the City.

Sales Contract Default: Contractor shall notify the buyer(s) of contract default status due to non-payment, in accordance with the City's installment contract default procedures and City's intent to repossess the plot(s).

G. Customer Service and Complaints Resolution

Contractor shall receive, log, and address all requests from the public. Contractor is responsible for providing the public a process to communicate needs, concerns and complaints. Contractor shall maintain a website with company email address, onsite comment cards, a citizen request box accessible after hours, and business phone number(s) to facilitate customer service and timely communication. Contractor shall post a City-approved public notification sign in a conspicuous place in each business office on how to file a complaint or request assistance.

Contractor shall establish a customer complaint resolutions protocol. Contractor shall respond to non-emergency public complaints within 24- to 48-hours of receipt. Response shall include steps to be taken and timeline for resolution, or an explanation why a resolution cannot be achieved.

Contractor shall manage, monitor and resolve all complaints received from the City's 311 customer service request system, and submit a monthly report on the status and resolution of all 311 requests to the CCM. For complaints received outside the City's 311 line, Contractor shall assign an individual tracking number and include a summary of the status, resolution or disposition of each complaint in the same monthly report identified above. The City reserves the right to amend, replace or substitute the 311 customer service request system.

H. Marketing Plan & Implementation

Contractor shall develop, implement and manage a marketing plan for the sale of cemetery spaces and other related products and services. Contractor's marketing plan shall include at a minimum: 1) market research; 2) positioning statement; 3) offerings to customers; 4) established fee schedule; 5) budget; 6) sales strategy; 7) service strategy; 8) promotions strategy; 9) web-based marketing strategy; and 10) implementation and scheduled analysis.

I. Monument, Marker & Headstone Coordination

Contractor shall accept monuments upon receipt of full payment, and coordination will be made with Operations for the storage and installation of monuments, markers and headstones.

J. Procedures Manual

Contractor shall submit within sixty (60) days of the effective date of the agreement a procedures manual for its cemetery operations and will make it available to the CCM for review prior to adoption. Contractor shall operate, manage and maintain the cemeteries in accordance with the procedures manual.

K. Cemetery Master Planning

Contingent upon sufficient funding, the Parks and Recreation Department will begin a master planning process in 2013. Issues expected to be addressed may include overall conditions assessment of building and cultural landscape features, an analysis of historic design and cultural trends that inspired the landscapes of the City of Austin cemeteries, e.g. the design of Austin Memorial Park as a "memorial park." Further, the master plan will entail an overall conditions assessment of trees and other vegetation; general management guidelines; a scheduled maintenance plan including materials management; and detailed historic treatment and prioritized implementation plans for each cemetery. Further, the master plan may address policy recommendations with respect to regulations, historic designations and heritage tourism, emergency preparedness, recordkeeping, potential partnerships, service expansion and funding options.

Contractor shall work cooperatively with the City in the implementation of its future master planning process.

L. Sales Administration and Management Performance Standards

The following describes the minimum standards for all cemetery properties. Standards are expected to be achieved 100 percent of the time.

- Personnel are trained and skilled in assigned duties.
- Public funds are properly handled, recorded, transported and deposited.
- Cemetery facilities are properly and respectfully used.
- Financial records are properly recorded.
- Cemetery burial records are properly recorded.
- Cemetery Rules and Regulations are enforced.
- Complaints and suggestion are received, reviewed, recorded, responded to and resolved in an expeditious timeframe.
- Cemetery services are actively marketed to the public in accordance with the marketing plan.

Remaining page left intentionally blank.

II. CEMETERY OPERATIONS

A. Administration and Management

A Contractor for this operational area shall adhere to the 1) administration and management, and 2) records management requirements as detailed in sections of the Sales Administration and Management operational areas referenced below:

- Administration and Management
- General Records Requirements

B. Operations Management Plan

Contractor shall submit an Operations Management Plan within sixty (60) days of the effective date of the agreement for cemetery operations and will make it available to the CCM for review prior to finalizing. Contractor shall operate, manage and maintain the cemeteries in accordance with the Operations Management Plan.

C. Monument, Marker and Headstone

Annual Assessment: Contractor shall at a minimum, in January and June of each year, conduct an assessment of monuments to identify those that pose a public safety concern. Following this assessment, the City and Contractor will develop a plan to address any issue identified with the monuments, including responsibility for repairs, funding and schedule. Contractor shall level and straighten markers or memorials that endanger the health, safety, comfort or welfare of the public.

Installations: Monuments, headstones and markers shall be installed within seven (7) days of notification by the sales office staff.

Contractor shall schedule monument deliveries in preparation for installation, ensure site layout and preparation, and install monuments. Headstones shall be handled in a manner that prevents damage.

Contractor shall ensure that upright headstones in active burial sections are horizontally and vertically aligned so that inscriptions are visible and installed to ensure a pleasing top line while compensating for ground contours.

Flat markers that are installed shall be uniform in height (parallel with the ground and no more than 1 inch above grade) and horizontally and vertically aligned.

Maintenance: Contractor shall ensure that headstones and markers are clean, free of debris and objectionable accumulations.



Fee-Based Headstone Resetting: Contractor shall schedule and reset headstones within seven (7) business days of confirmation of payment in full. For headstones that pose an endangerment to the health and safety of the public, Contractor shall mitigate the danger immediately by placing the headstone on the ground. Within ten (10) business days, Contractor shall coordinate with the sales office to contact the plot owner and offer headstone resetting services per established fee schedule. All notifications shall be transmitted in writing.

D. Grounds Maintenance

Contractor shall provide grounds maintenance in a manner that ensures the grounds are aesthetically pleasing and consistent throughout all of the cemeteries. Grounds maintenance includes the actions for the initial establishment of turf on a gravesite and the perpetual maintenance of existing gravesites, common areas, administration buildings, and other areas.

Overall, Contractor shall maintain turf that is healthy, trees and shrubs that are kept clean and safe, and roadways, curbs, and walkways that are edged and have appropriate drainage.

Grounds care requires regular and consistent maintenance procedures. Contractor shall be responsible for grounds maintenance of cemetery properties up to the edge of the street (including the area from the exterior of the fence line to the street curbside). To the extent necessary to protect public health, safety, comfort, and welfare, as well as mitigate loss and liability to the City, the Contractor shall train personnel to respect not only the solemn dignity of the cemetery, but also train all employees concerning the provisions of this agreement and the need to prevent damage to tombs, stones, and monuments.

E. Utilities

Contractor shall pay all utility expenses including internet, phone, water, electrical, gas, sewer, drainage and waste disposal to operate all cemeteries.

F. Levels of Maintenance

To establish maintenance priorities, areas of the cemetery are described in the order of those areas with the greatest visual impact to customers and visitors of the cemeteries. This order of priority is not to be interpreted by the Contractor to mean the medium and low visual impact areas are to be neglected in maintenance. The levels described here are consistent with the National Cemetery Administration Standards.¹

Visually Prominent Areas

- Interment areas
- Public information and administration buildings
- Visitor entrance to the administration building
- Entrance gate
- Restroom facilities
- Areas adjacent to the main entrance road
- Primary roads and routes to the committal service shelters
- Turf, trees and planting areas adjacent to flagpole/assembly area
- Memorial walkways/monuments
- Other buildings in prominent locations

¹ National Cemetery Standards: Operations Standards and Maintenance. National Shrine Committee. Version 3.1, October 2007

Medium Visual Impact Areas

- Non-burial areas adjacent to secondary roads
- Areas adjacent to the maintenance building and yard
- Areas adjoining the memorial path

Low Visual Impact Areas

- Non-use areas
- Areas viewed within 175 feet from primary roads

G. Irrigation

Contractor shall schedule irrigation for cemeteries with irrigation infrastructure weekly and supplement with additional watering to prevent loss of plant material when necessary. Austin Memorial Park, Evergreen, Oakwood and Oakwood Annex cemeteries have either automatic systems or semi-automatic and manual systems. Oakwood Cemetery irrigation system is non-functioning, and Contractor shall implement irrigation per the needs of the vegetation to ensure healthy vegetation and growth.

When necessary and notified by the CCM, Contractor shall provide supplemental tree watering as per the requirements established by the City's Forestry Unit. Contractor shall comply with water conservation requirements as published by the City through the Austin Water Department.

Watering by the Public: Contractor shall allow the public to hand water individual plots during standard cemetery hours to supplement watering done by the Contractor. All watering shall comply with City of Austin water conservation regulations. Watering by the public does not replace or reduce the Contractor's responsibility to irrigate.

H. Irrigation System Maintenance

The Contractor will maintain the functional capability of the cemetery irrigation systems. Repair of sprinkler heads, valves and other irrigation system equipment and components is the responsibility of the Contractor.

Contractor shall maintain the irrigation system in working condition. Annually, the Contractor shall provide a status report of the condition of the irrigation systems and a list of repairs and improvements necessary to restore the system to operating condition.

I. Clearing Live Vegetation Near Headstones, Curbs and Fence Lines

Contractor shall remove all small trees (2-inch caliper or less), overgrown shrubs, and other plants growing near headstones, curbs, or other objects that could be damaged by trees or shrubs. Undesirable vegetation in or near headstones, curbs, fence lines, and other objects shall be cleared as needed but no less than quarterly. Safety hazards shall be immediately corrected.

Removal of trees that are 3 inches or greater requires prior approval in accordance with the City's tree preservation statutes and the City's Rules and Regulations.

J. Insect Control

Contractor shall inspect for insect problems every 1-2 weeks, and apply corrective posture in the application of pesticides. Contractor shall always treat for damaging and heavy insect infestations in accordance with the Parks and Recreation Department Integrated Pest Management Plan.

K. Daily Custodial Services

Contractor shall provide daily janitorial and custodial services for all cemetery facilities. Contractor shall employ or subcontract routine and emergency cleaning and repair services.

Contractor shall clean and sanitize all restrooms daily unless demand dictates a higher frequency. Contractor shall provide contact information in the restrooms to allow citizens to alert the Contractor when the restrooms are in need of attention. Care shall be furnished for all cemetery buildings. "Care" includes the maintenance of buildings and grounds required to preserve the pleasing appearance of the cemeteries.

L. Building, Fencing & Signage

Initial Conditions Assessment: The Contractor will conduct a facilities conditions assessment for compliance with all federal, state and local codes of all properties (public and non-public, as identified below) and prioritize repairs to be made within ninety (90) days of contract execution, with written and photographic evidence of condition. Such report shall be submitted to the City for review and concurrence. Initial needs identified with a value of \$5,000 or less will be completed within 24 months of the contract execution at Contractor's expense. Items greater than \$5,000 will be submitted to CCM.

Maintenance: Contractor shall maintain all buildings. Contractor shall be responsible for keeping the buildings clean and free of debris. Routine inspections of plumbing, HVAC, and structural components of the building shall be conducted by the Contractor on an annual basis, and submitted to the CCM no later than September 30th of each year. The City shall review inspection reports for compliance. Repairs under \$5,000 are to be completed by Contractor using the City's corrective repair requirements (to be provided upon award of contract). Contractor shall notify the City in writing of any broken or deteriorated conditions requiring repairs that exceed \$5,000 within three (3) business days.

Non-public access buildings and designated storage facilities shall be maintained to ensure aesthetic and structural integrity. Storage in these buildings shall comply with all applicable federal, state and local codes and ordinances.

Contractor at a minimum shall ensure fences, walls, and gates are repaired, replaced and maintained in good functional order. Contractor shall be responsible for sidewalk repair of 100 square feet or less. Repairs shall be made upon coordination and approval of the CCM. Contractor shall enforce placement of City-owned benches in common areas as approved by the City and consistent with City's Cemetery Rules and Regulations.

Property Signage: City will provide property, street and section signs as the City determines necessary to assist the public in locating gravesites. Contractor shall install, maintain and repair all signs.

Historic Buildings: Contractor shall be advised that all buildings located within City of Austin cemeteries are historic and some buildings may hold official historic designations. While Contractor is not responsible for major capital improvements, Contractor is advised that any improvements that result in an exterior change to any building on cemetery land must be approved by the City of Austin to ensure that all exterior changes are appropriate and properly permitted, and subject to review by the Historic Preservation Office.

M. Hardscape Maintenance – Roads, Sidewalks

Contractor shall maintain all hardscape areas and provide routine pothole and minor road and walkway repairs for all cemeteries. Minor road and walkway repair is defined as repairs less than \$5,000 per individual repair.

N. Trash and Debris Management

Contractor shall inspect and collect ground litter and maintain/empty trash cans in all cemeteries, and dispose of trash daily. Contractor shall maintain the public trash containers to ensure they are adequate in number, well-marked, clean, neat, and in good repair.

Recycling: Contractor shall adhere to all recycling policies administered by the City of Austin.

O. Floral and Gravesites Tributes Removal

Contractor shall remove unsightly flowers and deteriorated items on graves and monuments in accordance with the Cemetery Rules at least twice per year during the semi-annual cleanup campaigns. Contractor shall post signs two (2) weeks in advance at each cemetery advising the public of the scheduled clean-up events.

P. Turf Care

Contractor shall provide turf care as described below. Turf care includes all labor, materials, superintendence, machinery, insurance, equipment, supplies, tools, incidentals and services to maintain in superior condition all areas in the developed sections of the cemeteries. The activities are to include mowing, edging, fertilizing, weed and pest control, irrigating, and planting grass and vegetation as required. At a minimum, maintenance standards which call for mowing and trimming will be to keep the grounds in an aesthetically pleasant and safe condition. Such mowing and trimming shall be accomplished on an average 7-14 day cycle adjusted for seasonal demands. Line trim every cycle. Turf aeration shall be conducted once per year in all areas.

Contractor shall reseed or sod over non-shaded bare spots in late spring and fall. Approved grasses include hulled Bermuda 3 lbs. per 1,000 sq. ft. and 6 lbs. winter rye per 1,000 sq. ft. in fall. Contractor shall ensure visually prominent areas have a well-established, healthy stand of turf that is weed-free, free of bare areas, and maintained for the region according to the Operations Management Plan.

The turf planted by the Contractor and/or the Contractor's subcontractor shall be compatible with the geographic region, drought resistant and free of debris, (i.e., leaves, fallen branches and trash/litter). Visually prominent areas shall be kept cleared of debris as needed or at a minimum weekly. Turf damage due to grounds maintenance tasks shall be identified and corrective action initiated by close of business the same day.

Q. Turf Maintenance

Contractor shall ensure that turf maintenance activities do not detract from the overall function of the cemetery. Contractor shall be responsible for mowing, edging and trimming all grass within the cemetery. All areas where grounds maintenance activities have been conducted are neat, clean, and free of debris and equipment at the end of the workday. Necessary personal protective equipment and safety measures shall be adhered to at all times during grounds maintenance operations. Turf in visually prominent areas is maintained within 1 inch above the range of that which is professionally recommended for that type of turf and region. Turf surrounding a headstone or marker is trimmed to its recommended height of 2½ inches to 3 inches. There shall be no signs of "grass burns" caused by mowers. There shall be no signs of turf

being “scalped” by string trimmers. Contractor’s employees shall prevent trimmer lines from coming into contact with the trees, bushes, stones, tombs, and monuments. Any damage resulting from Contractor’s work shall be the responsibility of the Contractor.

Contractor shall ensure all un-mowed grass around headstones, monuments, markers, and other vertical surfaces and structures are trimmed. When trimming near stones, tombs, and monuments, Contractor shall ensure the cuttings are ejected away from the monument or headstone. This will help prevent any objects (such as rocks or sticks, etc.) from being thrown toward fragile monuments, thereby minimizing the potential for accidental damage.

All streets, curbs, walkways, tree wells and shrub beds shall be edged inside and outside cemetery grounds. Damage to asphalt/concrete shall be avoided. Debris from edging shall be removed from the site on the same day. Walkways and roads shall be cleared of grass clippings and leaves after mowing, weed-eating, edging, and trimming.

Turf shall be cut to maintain heights between 2½ inches and 3 inches. Mowing will be inspected by the CCM or designee. No mower will be operated within 12 inches of trees, any marker, monument, headstone, footstone or other memorial. Do not mow over buttress roots of existing large trees. All turf between these markers and mown areas must be trimmed using a filament line trimmer equipped with line no heavier than 0.08-inch.

R. Equipment

Contractor shall acquire and own all equipment and portable structures necessary for the performance of this SOW. Contractor shall be responsible for the maintenance and replacement of any equipment. City may grant Contractor the right to store certain equipment in a designated area approved by the City exclusively used for sole purpose of performing responsibilities of City of Austin cemeteries. Storage shall not exceed the storage space authorized by the City.

Riding mowers may not be used within 12 inches of headstones, markers, monuments, tree or other vertical surfaces. Commercial power trimmers and power edgers shall be used to trim grass from around trees, headstones, monuments, markers, etc. Cutting blades on mowing and trimming equipment must be sharpened so that grass tips are properly cut, not torn or damaged. Cutting heights of all mowing equipment shall be set according to heights specified in in this SOW. The height of grass is what is measured to get correct cutting height.

The Contractor shall, as much as possible, use equipment which uses fuel that is more environmentally friendly (propane, electric, CNG etc.).

Fuel Management: Contractor shall adhere to all state and federal laws that apply to storage of fuel, to include proper storage containers and inspection from the Austin Fire Department. Contractor shall store no more than 50 gallons of fuel on a temporary basis.

S. Aerification

Contractor shall aerate non-burial areas once per year. To prevent the germination of weeds, aerification shall not be performed during the spring months. Aerification shall be a minimum of a 3-inch core plug extracted at not less than 6-inch square spacing. Aerification shall not cause damage to surrounding trees, tree roots, vegetation or structures to include sprinkler heads, vases, valve boxes, and control markers.

T. Fertilization and Weed Control

Contractor shall be responsible for maintaining the turf area of the cemetery and the immediate area surrounding the cemetery in a healthy, visually pleasing condition with proper application of fertilizers and herbicides to control weeds and insect pests, in accordance with the Parks and Recreation Department Integrated Pest Management Plan. Herbicides will be used as a last resort, per Integrated Pest Management Plan principles. Cultural and mechanical pest control practices will be used preferentially.

Contractor shall adhere to all state and federal laws that apply to spraying herbicide and pesticides. All applicators shall be licensed and all records will be transmitted to the CCM on a semi-annual schedule.

Fertilizer Application: Contractor shall have soil tested before applying fertilizer. A copy of the soil test results shall be provided to the CCM for approval prior to the fertilizer purchase. Contractor shall provide and apply fertilizer in the spring and/or fall according to the annual soil test. Documentation of compliance with the soil test application rate shall be provided to the CCM within five (5) working days of fertilizer application. Examples of suitable documentation include the fertilizer purchase order, invoice, or delivery document.

Weed Control: Contractor shall control weeds year round in all burial sections, landscape beds, tree wells, and around all buildings, walkways and roadways.

Contractor shall ensure that all turf weed growth be controlled by means of mowing, trimming, pesticide application or any other method approved by the CCM. Herbicide applications for the control of broadleaf and grassy weeds shall be applied as requested by the CCM. The CCM may determine the exact number of applications to achieve the desired control. Additional spot applications may be required at no extra cost to the City. Contractor shall provide the CCM information on the type of herbicide and rate of application for review and prior approval. Weed control shall be performed according to the Parks and Recreation Department Integrated Pest Management Plan. Herbicides will be used as a last resort, per Integrated Pest Management Plan principles. Cultural and mechanical pest control practices will be used preferentially.

Record(s) of pesticides/herbicides applied (type, amount, application area, weather conditions) shall be furnished to CCM within five (5) days of application. Appropriate signs (with application date and time) shall be posted in accordance with Texas Department of Agriculture notification requirements informing the public five (5) days prior to chemical application.

Contractor shall remove weeds and other undesirable vegetative growth in gravel roads, gravel pads, walkways, sidewalks, retaining walls and fence lines during each mow cycle, but no less than once every fourteen (14) calendar days.

U. Leveling of Existing Graves

The City is committed to maintaining existing gravesites to be level with surrounding terrain. Existing graves shall not show evidence of standing water.

The Contractor will conduct an assessment that will provide a review of all existing gravesites and a priority schedule for leveling. This report will be due within 180 days of contract initiation.

V. Comprehensive Tree Survey and Annual Tree Maintenance Work Plan

Contractor shall conduct an initial tree survey consistent with the City of Austin Environmental Criteria Manual within six (6) months and shall include all trees with a diameter at breast height (DBH) of three (3) inches or larger.

Contractor shall conduct a Level Two Basic tree risk assessment per ANSI A300 Part 9 standards at least once every five (5) years and a Level 1 visual basic inspection at least once every year on all trees included in the initial survey. The assessment shall be conducted by an International Society of Arboriculture (ISA) certified arborist. The results shall be reported to the CCM. From those assessments, Contractor shall submit an annual tree maintenance work plan subject to prior approval from the CCM and the City's Urban Forester, prior to any tree maintenance performed. The Contractor shall perform all tree maintenance included in the annual plan within ten (10) months.

W. Tree Maintenance

Contractor shall be responsible for tree maintenance. Tree maintenance includes tree removal, tree pruning, tree planting, and the assessment of tree health. All tree work shall be directly supervised or performed by an ISA certified arborist. The Contractor shall obtain all required permits for tree maintenance. Contractor's Operations Management Plan shall include a specific section for tree maintenance as follows:

Tree, Shrub, Planting Bed Maintenance

- Trees and shrubs shall be maintained in a healthy, vigorous condition free of pests and disease. Trees and shrubs shall be trimmed and maintained at a proper size and shape for its particular size and type according ANSI A300 and Z133 standards. Trees shall be maintained in a condition free of broken limbs or branches.
- Contractor shall trim and prune trees to raise canopies and ground level branches a minimum of 8 feet for ADA compliance or as needed for necessary grounds maintenance activities. Canopies will not be raised in "undeveloped" areas unless there is an ADA or grounds maintenance need. Young trees are excepted from this requirement.
- Ornamental trees and shrubs shall be maintained so that they enhance and do not detract from the appearance of public areas or pose a hazard to staff and visitors.
- Cemetery planting beds shall be well maintained and attractive.
- High maintenance areas, in which turf is not a part of the cemetery design, shall be maintained in a manner that is appropriate for the medium in place.
- If damaged trees and shrubs pose an imminent safety risk to staff and visitors, the Contractor shall secure the fall zone area immediately, and take corrective action within three (3) days.
- Work consists of maintaining shrubs and trees in a healthy and attractive condition by proper pruning, removal of dead branches, cultivation and mulching techniques. Within two (2) working days, Contractor shall notify the CCM of any serious pest infestation in trees and planting beds. Pruning should focus on maintaining tree structure, form, health and appearance.
- Personnel shall be properly trained in the operations they are to perform. If pesticide sprays are used, the person in direct charge shall be licensed by the state. All tree and shrub pruning and hedge trimming shall comply with ANSI A300 (Part 1) – 200 Pruning and companion publication "Best Management Practices" (2002 ISA) and shall be directly supervised by an ISA certified arborist.

Pruning/Trimming

- Tree care and maintenance operations shall comply with ANSI A300 and Z133.1, the Standard of Care for trees and plants in Austin. All pruning cuts shall be made according to ANSI A300 (Part 1) Standards.
- Trees shall be kept free of suckers, dead tree parts over 2 inches in diameter, and broken branches.
- Conforming to the current pattern of growth, at the direction of the CCM, Contractor shall trim shrubs/hedges monthly during summer months/growing season. Shrub trimmings shall be removed. Shrub area shall be kept free of shrub trimmings and any other debris.
- Contractor shall recommend to the CCM corrective action to address trees/branches that are identified as a safety risk to staff and visitors. Recommendation shall be provided to the CCM within ten (10) business days of notice. The CCM will respond to the Contractor's corrective action recommendation within five (5) business days with a determination regarding permission to proceed with corrective action. The Contractor will then be responsible for obtaining any required permits necessary to implement the recommended corrective action(s). Corrective action shall be completed within thirty (30) days.
- Contractor shall ensure that no more than 25 percent of live foliage should be removed without securing the proper City permit.
- The Contractor shall implement standard work procedures that minimize the possibility of limbs or debris damaging or injuring vehicles, private property, or pedestrians.
- In locations where ordinary tree felling operations might cause damage to property, the Contractor must dismember and fell trees using recognized forestry rigging practices as stated in the most current revision of ANSI Z133 (encompassing OSHA work-site safety regulation), ensuring that any severed portion of the tree is under control at all times.
- The Contractor must grind stumps of removed trees to ground level and reestablish grass on the site.

Planting

- Contractor shall ensure any donated plant material offered for installation shall be subject to approval by the CCM prior to acceptance of the donation. All plant material shall comply with ANSI Z60.1 and shall consist of native or adapted non-invasive species. Plant material shall be installed and maintained by the Contractor or as determined by the CCM.
- Trees shall be planted in accordance with ANSI A300 (Part 6) Standards. All new trees shall be staked using flexible ties for up to three (3) years following planting. Any tree showing adverse effect from high winds shall also be staked. Staking shall be removed after three (3) years.
- Trees, which have been damaged in any way, shall be reported to the CCM without delay. All plant material damaged by the Contractor shall be replaced at Contractor's expense.
- The Contractor shall provide the equivalent of 1 inch of precipitation per week of irrigation to newly planted trees for a period of three (3) years following planting.

Mulch Rings

- At the direction of the CCM, Contractor shall construct mulch rings around any newly planted trees, and/or young trees exposed to damage by mowers, trimmers or any other type of mechanical damage. The ring shall have a radius of no less than 3 feet

from the tree trunk base and mulch materials shall be at least 3 inches from the base of the tree, monuments and headstones. The ring shall be filled and maintained with no less than 2 inches and no more than 4 inches of double-shredded hardwood mulch as per ANSI standard, A300 Part 2 – Soil Management. Mulch material is supplied by the Contractor. Mulch material must be aesthetically pleasing, free of any weeds or pests, and be approved by the CCM before installation. The mulch rings shall be kept free of weeds.

- Mulch shall be applied to mature tree critical root zones when it does not interfere or impede monuments or cover burial sites.

X. Ball Moss Removal and Enforcement

Contractor shall submit a supplemental proposal for the removal of ball moss from trees every two years for each cemetery. Removal costs should be calculated by the size of the trunk of the tree, based on 0"-10", 11"-20", 21"-30", 31"+ diameter at breast height (DBH).

Y. Brush Removal

All brush and debris will be collected and deposited into a roll-off dumpster in a concealed area approved by the CCM until job is complete or dumpster is full. Safety hazards shall be immediately corrected.

All wood chips, brush, limbs, and logs, unless otherwise specified and approved by the CCM, shall be disposed of at the City of Austin Hornsby Bend Processing Center to ensure that 100 percent recycling is met for woody material.

Z. Spoils Management

Contractor shall be responsible for the general management of cemetery spoils generated.

Only in the event of prolonged inclement weather and with approval of the CCM, Contractor, burial service providers, or subcontractors may be allowed to temporarily store spoils for no more than three (3) working days once conditions have improved. Temporary storage will only be allowed with a visual barrier to be approved by the CCM.

AA. City of Austin Responsibilities

Major Infrastructure Development and Improvements: The City of Austin is responsible for new major infrastructure development to include: roadway development; installation of complete new irrigation systems; platting; surveying and laying-out of new sections of cemetery land; building restorations; new buildings; and major landscaping installations of new section development.

BB. Cemetery Operations Performance Standards

The following describes the minimum quality maintenance standards for all cemetery properties. Standards are expected to be achieved 100 percent of the time.

- All operational activities are included in an Operations Management Plan and reviewed and updated annually.
- Daily grounds maintenance activities do not detract from the dignity and solemnity of the cemetery.
- Turf is free of debris, fallen branches and trash.
- All areas where cemetery operations have been conducted are neat, clean and free of debris and equipment at the end of the workday.

- Debris, equipment, tools and supplies are removed at the conclusion of each task or at the end of the workday.
- Spoils are collected, transported and disposed of daily.
- Central trash and brush collection points established in locations are screened from public view.
- Planting beds are well-maintained, attractive, healthy and vigorous, free of pests and disease, and are generally weed free.
- Trees and shrubs are healthy, vigorous, free of pests and disease, and are maintained in accordance with the Operations Management Plan and ANSI standards.
- Visually prominent areas have a well-established, healthy stand of turf and are generally free of bare areas.
- Visually prominent areas in the cemetery are properly trimmed and edged.
- Areas surrounding headstones and other features show turf trimmed to recommended mowing height.
- Headstones and markers are handled and stored to prevent damage prior to and during setting.
- Roads, parking lots, curbs, walks, paths, entry features, and perimeter walls/fences are clean and well-maintained.
- Grounds are maintained in a manner that avoids safety hazards for visitors and staff.
- Safety hazards (holes, pests, hazardous trees and branches, sprinkler heads, etc.) are identified and corrective action initiated within the same workday.
- Trash is collected, disposed of, and does not detract from cemetery appearance.
- Publicly used trash containers are adequate in number, well-marked, clean, neat, and in good repair.

Remaining page left intentionally blank.

III. INTERMENTS & BURIAL SERVICES

A. Administration and Management

A Contractor for this operational area shall adhere to the 1) administration and management, and 2) records management requirements as detailed in sections of the Sales Administration and Management operational areas referenced below:

- Administration and Management
- General Records Requirements

B. Space Opening/Closing, Interments and Burial Services

Contractor shall bury remains presented for interment in the designated burial space. In a timely manner, Contractor shall prepare the ground to receive a body without covering or damaging other graves. Contractor will ensure that the depth of each grave complies with state regulations and City Code. Contractor will superintend (manage) the burial of the body, refill and properly finish a grave after burial.

Contractor shall collect, transport and dispose of all remaining spoils after each grave closing. Only in the event of prolonged inclement weather and with approval of the CCM, Contractor, burial service providers, or subcontractors may be allowed to temporarily store spoils for no more than three (3) working days once conditions have improved. Temporary storage will only be allowed with a visual barrier to be approved by the CCM. Spoils shall be taken to a City of Austin approved non-cemetery disposal site.

C. Plot Ownership Confirmation Prior to Burial

Contractor shall be responsible for obtaining and confirming space ownership documentation. Confirmation shall occur prior to opening of gravesite and burial. Gravesite preparation shall be accomplished in a timely fashion, so as not impede scheduled services.

D. Grave Preparation/Funeral Set-up

Contractor shall retain ultimate responsibility for grave preparation/funeral set-up services. Process shall include locating grave space, marking the spaces for excavation, and avoiding tree-root zones during excavation as appropriate.

E. Closing of Gravesites

New gravesites are to be cleared, tamped sunk, and leveled with the surrounding terrain within seven (7) calendar days of burial services. Within twenty (20) calendar days following initial leveling, perform a follow-up leveling for re-vegetation. Re-vegetation consists of seeding using existing turf or planting new sod. Re-vegetate areas as needed and as feasible to maintain

Interment & Burial Services

Administration and Management

Plot Ownership Verification

Space Opening / Closing &
Re-interments

Pre- & Post-Graveside Service
Set-up & Clean-up

Grave Leveling & Re-vegetation
For New Burials

consistent turf coverage within thirty (30) calendar days of the burial service. New graves shall not show evidence of standing water.

F. Grave Liner Installation

Contractor shall have equipment and personnel to safely prepare and install grave liners as requested for burial services.

G. Re-interments

Contractor shall provide staff and equipment to provide disinterment and re-interment services when requested and authorized by the City.

H. Pre- & Post-Graveside Service/Set-up & Clean-up

Contractor shall perform all aspects of pre- and post-graveside service, including planning, preparation, coordination, installation, repairing, de-installation, removing, cleaning, clearing and maintenance of all supplies, equipment acquisition and management, and services associated with memorial and graveside services.

I. Tent Set-up, Removal, and Storage

Contractor shall be responsible for gravesite tent set-up. Tents shall be secured with ropes and stakes. All tent stake heads shall be covered with a bar guard or marked with a distinct bright color. The lowering device shall be elevated and level to knee height. All boards and blocks used to level the set-up shall be stable. The lowering device shall be opened to a length and width accommodating the casket, and the straps are drawn tight and locked. Safety straps and rollers shall be used on all set-ups. All lowering devices should be professionally serviced at least once a year.

Chairs and Set-up

- A full set of green carpet shall be used. The T's and sides shall extend into the grave to cover the dirt. The entire area under the tent shall be covered with green carpet.
- Each chair shall be checked to ensure it is stable and on good footing. Any unstable chairs must be moved or corrected.
- Any set-up on a hill shall have chairs on the upper side facing the downgrade.

Tear Down

- Unless local customs or family preferences dictate otherwise, at least one member from the Contractor's burial crew remains onsite until the family has left the cemetery.
- Lowering the casket, tearing down the set-up and placing the lid shall be conducted in a professional, careful, and considerate manner.

J. Equipment

Contractor shall acquire and own all equipment and portable structures necessary for the performance of this SOW. Contractor shall be responsible for the maintenance and replacement of any equipment. City may grant Contractor the right to store certain equipment in a designated area approved by the City exclusively used for sole purpose of performing responsibilities of City of Austin cemeteries. Storage shall not exceed the storage space authorized by the City.

K. Procedures Manual

Within sixty (60) days of the effective date of the agreement, Contractor shall submit a procedures manual for interment and burial operations and shall make it available to the CCM

for review prior to adoption. Contractor shall provide services in accordance with the procedures manual.

L. Interment and Burial Services Performance Standards

The following describes the minimum quality maintenance standards for all cemetery properties. Standards are expected to be achieved 100 percent of the time.

- Each day's burial site(s) present a neat appearance prior to burial.
- Integrity of existing graves around the worksite is preserved.
- Corrective action to repair damage as a result of graveside preparation is initiated by close of business the same day.
- Open graves are identified and protected by appropriate devices while unattended.
- Each day's burial site(s) are covered, initially groomed, marked, and presentable for visitors before close of business each day.
- All spoils are removed from site to a City of Austin approved disposal site.

Remaining page left intentionally blank.

General Responsibilities

Contractor shall obtain all necessary licenses and/or permits required to perform services outlined in the SOW. Contractor shall take all precautions necessary to protect persons and property from injury or damage. Contractor shall be responsible for any injury to itself, its employees, or others, as well as for any damage to personal or public property that occurs during the performance of a resultant contract that is caused by Contractor or Contractor's employees' fault or negligence. Contractor shall maintain personal liability and property damage insurance prescribed by the City and the laws of the State of Texas.

Contractor shall preserve the health, appearance, and aesthetic value of all trees/shrubs while preventing damage to human life, property and the ecosystem. Contractor shall demonstrate a clear understanding of and sensitivity to environmental issues. Performance shall be consistent and fully compliant with all applicable federal, state, county and city laws. Adequate warning devices, barricades, guards, flagmen or other necessary precautions shall be used. Contractor shall perform required services with the least possible interference with cemetery operations or annoyance to the public. Contractor and its subcontractors shall be qualified and trained to do the work and services outlined. All tools shall be clean, sharp, in proper working order, and shall be checked for safety prior to use.

Contractor shall be responsible and accountable for the grounds, buildings and amenities provided for Contractor's use and shall take all necessary precautions to prevent herbicide spills, fire hazards, odors and vermin.

Laws, Statutes and Governmental Requirements

Chapter 10-1 of the Austin City Code sets forth certain regulatory standards for the administration and management of Austin cemeteries. A cemetery, as defined by Austin City Code, is the use of land that is dedicated for cemetery purposes for the burial of the dead, including columbarium, crematoriums, mausoleums, and mortuaries.

Contractor shall comply with all applicable laws, statutes, and governmental provisions prevailing during the term of this SOW, including the following:

- Compliance with Austin City Code, Chapter 10-1, Cemeteries ([http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title10publichealthservicesandsanitation/chapter10-1cemeteries?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_tx](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title10publichealthservicesandsanitation/chapter10-1cemeteries?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx))
- City of Austin Cemetery Rules and Regulations (<http://www.austintexas.gov/departments/cemeteries>)
- Health and Safety Code, all provisions relating to municipal cemeteries. <http://codes.lp.findlaw.com/txstatutes/HS>
- Tree Preservation – Environmental Criteria Manual, Chapter 3, Tree and Natural Area Preservation ([http://austintech.amlegal.com/nxt/gateway.dll/Texas/enviro/section3-treeandnaturalareapreservation?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_enviro](http://austintech.amlegal.com/nxt/gateway.dll/Texas/enviro/section3-treeandnaturalareapreservation?f=templates$fn=default.htm$3.0$vid=amlegal:austin_enviro))
- Compliance with Austin City Code, Chapter 6-3, Trees and Vegetation ([http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title6environmentalcontrolandconservation/chapter6-3treesandvegetation?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_tx](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title6environmentalcontrolandconservation/chapter6-3treesandvegetation?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx))
- Texas Department of State Health Services (<http://www.dshs.state.tx.us/default.shtm>)

- Chapter 711. General Provisions Relating to Cemeteries. Texas Health and Safety Code
<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.711.htm>
- Chapter 713. Local Regulation of Cemeteries. Texas Health and Safety Code
<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.713.htm>
- American National Standards Institute (ANSI): A300 and Z133.1 <http://webstore.ansi.org/>
- OSHA (<http://www.osha.gov/index.html>)
- City of Austin Local Government Records Control Schedule for Cemetery Unit approved and adopted 5/18/09 by the Texas State Library Commission (Exhibit A)

Definitions

Cemetery terms contained in this section shall take the definitions as defined in the Texas Health and Safety Code.

Attachment A

Pricing Proposal Form Instructions

As this RFP allows for Proposers to respond to all or part of the requested services (Operational Areas), the Proposer shall submit a Pricing Proposal Form for all five cemeteries for each Operational Area proposed. Proposer shall use Attachment "A", Pricing Proposal Form, to provide pricing for each Operational Area and Supplemental Services.

If Submitting a proposal for the Operational Area "Cemetery Operations" (section II of the Pricing Proposal Form), pricing must also be submitted for Supplemental Services (section IV).

There are three Operational Areas and one Supplemental Service:

- I. Sales, Administration, and Management
- II. Cemetery Operations
- III. Interment and Burial Services
- IV. Supplemental Services (Ball Moss Removal, Facility Assessment and Monuments Assessment are services related to Section II, Cemetery Operations)

A Pricing Proposal must be submitted for each of the five cemeteries per Operational Area for which a proposal is submitted. Proposer shall not submit a Pricing Proposal for only one or some of the cemeteries, but rather all of the cemeteries. Indicate with a check-mark at the top of the Pricing Proposal Form, the cemetery for which pricing is being submitted.

For example; if submitting a proposal for the Interment and Burial Services Operational Area, submit a Pricing Proposal for each of the five cemeteries with pricing for Section III, Interment and Burial Services of Attachment A completed; a total of five Pricing Proposals will be submitted, one for each cemetery with Section III of the Pricing Proposal completed. This applies to each Operational Area.

If submitting a proposal for more than one Operational Area, submit a Pricing Proposal for each cemetery per Operational Area proposed.



Council Question and Answer

Related To	Agenda Item # 75	Meeting Date	June 27, 2013
------------	------------------	--------------	---------------

Additional Answer Information

Listed below are the primary environmental protections and standards established under LA zoning regulations, including a brief summary of how they relate to two zoning cases posted on the June 27th Council agenda, Item 98 and Item 100:

- The minimum lot size is 1 acre. Item # 98 – Huber does not meet this criteria; Item # 100 – Westlake does not meet the minimum lot size requirement, however, the applicant has 2 lots for a total of 1.2 acres and may straddle the house across both lots
- Construction on slopes greater than 35 percent is not allowed. Item # 98 and # 100 – Both lots have slopes greater than 35 percent.
- There is a 75 foot setback from the shore (this is reduced to 25 feet if lot is less than 200 feet deep). Item 98 has a 25 foot setback from the shoreline; Item # 100 has a 75 foot setback from the shoreline.
- Not more than 30 percent of wooded vegetation w/in shoreline setback can be removed. This would be applicable to any new construction for both # 98 and # 100.
- Septic field must be at least 100 feet horizontally from the shoreline. This would be applicable to any new construction for both # 98 and # 100.
- Please note that there is not a prescribed maximum amount of impervious cover, however, the impervious cover is tied to slopes on the property. This would be applicable to any new construction for both # 98 and # 100.

As information, the Lake Austin Regulations are provided below:

§ 25-2-551 LAKE AUSTIN (LA) DISTRICT REGULATIONS.

(A) In this section:

- (1) SHORELINE means the 492.8 topographic contour line along the shores of Lake Austin.
- (2) SHORELINE SETBACK means a line parallel to the shoreline and at a distance from the shoreline that is prescribed in this section.
- (3) SHORELINE SETBACK AREA means an area between the shoreline and the shoreline setback.

(B) This subsection applies in a Lake Austin (LA) district.

- (1) A shoreline setback area is excluded from impervious cover calculations.
- (2) A permanent improvement is prohibited in a shoreline setback area, except for a retaining wall, pier, wharf, boat-house, or marina, or a driveway to the structures.
- (3) Not more than 30 percent of the woody vegetation within a shoreline setback area may be removed.
- (4) Except for surveying or testing, vegetation within a shoreline setback area may not be removed before a building permit is issued. For surveying or testing, areas up to 15 feet wide may be cleared, and trees smaller than six inches in diameter may be removed.

(5) Development is prohibited on land with a gradient that exceeds 35 percent. This prohibition does not apply to a fence, driveway, road or utility that cannot be reasonably placed elsewhere, or a pedestrian facility.

(6) A sewage holding tank that is at least partially below ground level, or an effluent disposal site, must be at least 100 feet horizontally from the shoreline. A sewage facility drain field that uses soil as a filter medium may not be located on land with a gradient of more than 15 percent.

(C) Except for a lot included in a subdivision plat recorded before April 22, 1982 or a tract that is not required to be platted, this subsection applies in an LA district.

(1) The shoreline setback is 75 feet.

(2) A lot that fronts on a cul-de-sac must have:

- (a) a chord width of not less than 33 feet at the front lot line;
- (b) a width of not less than 60 feet at the front yard setback line; and
- (c) a width of not less than 100 feet at all points 100 feet or more behind the front lot line.

(3) Impervious cover may not exceed:

- (a) 20 percent, on a slope with a gradient of 25 percent or less;
- (b) 10 percent, on a slope with a gradient of more than 25 percent and not more than 35 percent; or
- (c) if impervious cover is transferred under Subsection (E), 30 percent.

(D) This subsection applies to a lot included in a subdivision plat recorded before April 22, 1982 or a tract that is not required to be platted, and that is located in an LA district.

(1) The shoreline setback is:

- (a) 75 feet; or
- (b) if the front line of the lot or tract is 200 feet or less from the shoreline, 25 feet.

(2) The lot or tract must comply with the front yard, street side yard, interior side yard, and rear yard setback requirements applicable in an SF-2 district.

(3) Impervious cover may not exceed:

- (a) 35 percent, on a slope with a gradient of 15 percent or less;
- (b) 10 percent, on a slope with a gradient of more than 15 percent and not more than 25 percent;
- (c) 5 percent, on a slope with a gradient of more than 25 percent and not more than 35 percent; or
- (d) if impervious cover is transferred under Subsection (E), 40 percent.

(E) In an LA district, a person may transfer impervious cover in accordance with this subsection.

(1) Impervious cover may be transferred only:

- (a) between tracts within an LA district; and
- (b) from land with a gradient of 35 percent or less, to land with a gradient of 15 percent or less.

(2) Land from which impervious cover is transferred may not be developed. The land must either remain undisturbed or be restored to a natural state.

(3) A transfer of impervious cover must be described in a restrictive covenant that runs with the land, is approved by the city attorney, and is recorded in the county deed records.



Council Question and Answer

Related To	Agenda Item #93	Meeting Date	June 27, 2013
------------	-----------------	--------------	---------------

Additional Answer Information

There are three cases within 1,000 feet of the Lake Austin shoreline that have been filed and are in progress:

C14-2013-0045 – Huber Family Tract – Item 98 on Council’s June 27, 2013 agenda

C14-2013-0048 – Westlake Zoning – Item 100 on Council’s June 27, 2013 agenda; due to a posting error, Staff will request postponement until August 8, 2013

C14-2013-0062 – Sutton-Lakeshore Addition, located at 3909 Westlake Drive. The request is from LA to SF-2 for a 0.853 acre lot; case has not yet been scheduled for consideration by the Zoning and Platting Commission.

Based on the short turnaround time on this we have identified the following properties within 500’ of Lake Austin that have potential environmental variances currently in process. We will continue to research this item and provide any updated information. Note: Staff is prohibited from granting administrative variances within 500’ of Lake Austin per LDC Section 25-8-42.

- 5 Humbolt SP-2013-0133D (to reduce the setback of Critical Environmental Features (CEF) to construct shoreline access and associated termination of an existing Restrictive Covenant
- Heinrich Bulkhead SP-2012-0261D (BOA variance to allow land capture, LUC variance for unpermitted development within a Critical Water Quality Zone (CWQZ) and impacts to a wetland CEF)
- 14708 Flat Top Ranch SP-2013-0121D (for proposed shoreline stabilization that would require a CWQZ variance)
- 3213 Smoky Ridge SP-2012-0366DS (to reduce the setback of a CEF to construct shoreline access)
- 3303 Far View SP-2013-0104DS (to allow cut in excess of 4’ for shoreline access associated with an environmental enforcement code violation)
- 3301 Far View SP-2013-0106DS (to allow cut in excess of 4’ for shoreline access associated with an environmental enforcement code violation)
- 3602 Rivercrest SP-2013-0033DS (BOA variance to allow unpermitted land capture to remain, LUC variance for unpermitted development within a Critical Water Quality Zone (CWQZ))
- 3604 Rivercrest (BOA variance to allow land capture, LUC variance for unpermitted development within a Critical Water Quality Zone (CWQZ) and impacts to a wetland CEF)
- Lakeside Villas II SP-2013-0093D (Variance to allow cut and fill in excess of 4’ and to allow construction of a driveway on slopes greater than 15%)
- 2921 Westlake Cove SP-2013-0159D (BOA variance to allow proposed land capture, possible LUC variance for construction in a CWQZ).



Council Question and Answer

Related To	Agenda Item # 83	Meeting Date	June 27, 2013
------------	------------------	--------------	---------------

Additional Answer Information

OPERATING BUDGET FISCAL NOTE

DATE OF COUNCIL CONSIDERATION:

6/27/13

CONTACT DEPARTMENT(S):

Austin Transportation

FUND(S):

Transportation

SUBJECT: Approve an ordinance amending City Code Chapter 14-11 relating to annual fees for license agreements.

CURRENT YEAR IMPACT: The FY 2013 Facility Rental revenue estimate is \$150,000. So far this year, \$181,000 has been collected. The drop-off area is approximately \$40,335 paid annually.

FIVE-YEAR IMPACT:

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Total Revenue*	<u>150,000</u>	<u>150,000</u>	<u>150,000</u>	<u>150,000</u>	<u>150,000</u>
Net Budget Impact	<u>13,478</u>	<u>20,218</u>	<u>26,957</u>	<u>33,696</u>	<u>40,435</u>
Remaining Obligation	<u>136,522</u>	<u>129,782</u>	<u>123,043</u>	<u>116,304</u>	<u>109,565</u>

ANALYSIS / ADDITIONAL INFORMATION:

The valet zone is comprised of 9 spaces, offering service 24 hours a day. Per fee ordinance, fees are only charged for the hours of usage from 8:00 a.m. until midnight (16 hours). That is 144 hours of service per space, per week. 144 hours x 9 spaces x \$0.20 per hour x 52 weeks = \$13,478.40 for FY 2013. The proposed cost per hour in FY2014 increases to \$0.30 per hour - \$20,217.60. The proposed cost per hour in FY2015 increases to \$0.40 per hour - \$26,956.80. The proposed cost per hour in FY2016 increases to \$0.50 per hour - \$33,696.00. The proposed cost per hour in FY2017 increases to \$0.60 per hour - \$40,435.20.

* Any rate increases are subject to future Council approval.