



# City Council Questions and Answers

City Council Questions and Answers for  
Thursday, January 30, 2014

These questions and answers are related to the  
Austin City Council meeting that will convene at 10:00 AM on  
Thursday, January 30, 2014 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 5:00 p.m. the Tuesday before the Council meeting. The final report is distributed at noon to City Council the Wednesday before the council meeting.*

## **QUESTIONS FROM COUNCIL**

1. Agenda Item # 3 - Authorize reimbursement of costs to Austin 18 Hotel, LLC, an Indiana Limited Liability Company, for the purchase of heat exchangers required to interconnect the JW Marriott Hotel to Austin Energy's Downtown District Cooling System, in an amount not to exceed \$295,000.
  - a. QUESTION: Please clarify the relationship between the posting /RCA information for reimbursement of \$295,000 to Austin 18 Hotel, LLC and the fiscal note in backup which addresses award of a contract to Johnson Controls for ~\$2.4M. COUNCIL MEMBER MORRISON
  - b. ANSWER: The fiscal note originally attached to this item was done in error. A revised fiscal note will be uploaded to the website and is attached to this response. See attachment.
  - c. QUESTION: Please provide an update about the status of the legal situation regarding the J.W. Marriott. Please also include updated amounts of waivers the J. W. Marriott has received minus any waiver money that has been subsequently reimbursed to the City of Austin. COUNCIL MEMBER TOVO
  - d. ANSWER: See attachment
2. Agenda Item # 17 - Authorize award and execution of a contract through the Texas Local Government Purchasing Cooperative (TXMAS) with POLARIS SALES, INC. for the purchase of four light-duty all-terrain vehicles in an amount not to exceed \$67,947.
  - a. QUESTION: Please provide additional information on the use of these vehicles during non-emergency times. If emergencies require a need for more vehicles is there an opportunity to rent them or to share among various jurisdictions? COUNCIL MEMBER SPELMAN
  - b. ANSWER: See attachment.
3. Agenda Item # 28 - C14-2013-0144 – Crescent Tract - Conduct a public hearing and approve an ordinance amending City Code Chapter 25-2 by rezoning property locally known as 812 ½ West Second Street (Lady Bird Lake Watershed) from downtown mixed use-conditional overlay (DMU-CO) combining district zoning to public (P) district zoning. Staff Recommendation: To grant public (P) district zoning. Planning Commission Recommendation: To grant public (P) district zoning. Owner: Austin Energy (Sonny Poole). Applicant: Austin Energy (Eben


Kellogg). City Staff: Lee Heckman, 512-974-7604.

- a. QUESTION: Will the change in planned use for this tract affect plans for the Bowie underpass? Please provide a map showing the location of the planned Bowie underpass in relation to the subject tract, as well as a brief update on the schedule for construction of the underpass. COUNCIL MEMBER RILEY
  - b. ANSWER: This Request for Council Action is for a rezoning request from Austin Energy for the Crescent Tract, and the rezoning does not impact the Bowie Underpass project (map attached). AE agreed to provide an easement as a condition of the property transfer. The Bowie Street Underpass and associated pedestrian crossing are currently scheduled to be advertised for bids and go to Council for approval in Fall 2014/Winter 2015, with construction beginning in early 2015 and completion in Fall 2015.
4. Agenda Item # 32 - C814-88-0001.10 (RCA) - Canyons @ Rob Roy Rezoning - Conduct a public hearing and approve an ordinance amending City Code Chapter 25-2 by rezoning property locally known as 800 North Capital of Texas Highway (Bee Creek Watershed) from planned unit development (PUD) district zoning to planned unit development (PUD) district zoning, to change a condition of zoning. Staff Recommendation: To grant planned unit development (PUD) district zoning, to change a condition of zoning. Zoning and Platting Commission Recommendation: To grant planned unit development (PUD) district zoning, to change a condition of zoning. Applicant: Brandywine Acquisition Partners (Ralph Bistline). Agent: Armbrust & Brown, PLLC (Richard Suttle). City Staff: Wendy Rhoades, 512-974-7719.
  - a. QUESTION: Please provide a list (and links to) the other restrictive covenant agreements that the city has entered into that use language similar to this RCA regarding who must agree to make changes to the RC, e.g. including owners of the property that are "directly affected by the proposed change". COUNCIL MEMBER MORRISON
  - b. ANSWER: Staff reviewed several restrictive covenants and could not find an example that uses the same "directly affected" language. All of the restrictive covenants reviewed by staff have language that states that the agreements may be modified by the majority members of the City Council and "the owners of the above described property at the time of amendment, modification or termination." Copies of the referenced restrictive covenants can be provided upon request.
5. Agenda Item # 38 - Conduct a public hearing and consider an ordinance creating an economic development program with athenahealth, Inc., and authorizing the negotiation and execution of an Economic Development Agreement with athenahealth, Inc.
  - a. QUESTION: 1) The Business Information Form notes that "... athenahealth is faced with the decision to expand in either (emphasis added) its existing

locations of California, Massachusetts or Georgia... or (emphasis added) in Texas..." In June 2013, the media reported that athenahealth "will expand" in Georgia with similar reports about their expansion in Massachusetts. Please clarify how the athenahealth expansion announcements for Georgia and Massachusetts made last year relate to the "either" "or" decision, noted above. More specifically, please clarify: are we to understand that Austin is in competition with Georgia and Massachusetts for this specific expansion opportunity, or not? 2) Are there claw-back terms in the agreement, e.g. if the number of projected jobs are not met, will the company return the payments from the previous years? If not, please provide some understanding of why that would not be the case. COUNCIL MEMBER MORRISON

b. ANSWER: See attachment

**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 (512) 974-2210 OR (512) 974-2445 TDD.*

## CIP BUDGET EXPENSE DETAIL

**DATE OF COUNCIL CONSIDERATION:**  
**CONTACT DEPARTMENT(S):**

1/30/14  
Austin Energy

**SUBJECT:** Authorize reimbursement of costs to Austin 18 Hotel, LLC, an Indiana Limited Liability Company, for the purchase of heat exchangers required to interconnect the JW Marriott Hotel to Austin Energy's Downtown District Cooling System, in an amount not to exceed \$295,000.

**CURRENT YEAR IMPACT:**

<b>Department:</b>	<b>Austin Energy</b>
Project Name:	On Site Energy Resources
Fund/Dept/Unit:	3060-1107-0259
Funding Source:	100% Taxable Debt

Current Appropriation	248,791,671
Unencumbered Balance	31,690,859
Amount of This Action	<u>(295,000)</u>
Estimated Available	<u>31,395,859</u>

**ANALYSIS / ADDITIONAL INFORMATION:** Funding is available in the Fiscal Year 2013-2014 Capital Budget of Austin Energy.



## Council Question and Answer

Related To	Agenda Item #3	Meeting Date	January 30, 2014
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### Additional Answer Information

**QUESTION:** Please provide an update about the status of the legal situation regarding the J.W. Marriott. Please also include updated amounts of waivers the J. W. Marriott has received minus any waiver money that has been subsequently reimbursed to the City of Austin. COUNCIL MEMBER TOVO

#### **ANSWER:**

#### **Update on litigation concerning the JW Marriott (the White Lodging lawsuit)**

The White Lodging lawsuit, filed by the developer in federal district court in September, 2013, challenges the City's license and right-of-way use fees connected to temporary construction access in the public right-of-way. The suit alleges that such fees violate Plaintiffs' due process rights under the U.S. Constitution. The lawsuit also challenges the City's authority to seek reimbursement for the fees waived. Current status:

- The City has filed a motion to dismiss based on Plaintiff's failure to state a valid claim under federal law.
- The City has alternatively requested that the federal court abstain from addressing federal questions of law until preliminary questions of state law are determined—including whether Plaintiffs' use of the public right-of-way without compensation to the City violates the Texas Constitution.
- The City has also requested dismissal of Plaintiffs' claim of "vested rights" in the fee waivers because Plaintiffs failed to pay its workers the required prevailing wage rates.

#### **Update on Waivers Received Minus Reimbursements**

##### **Transportation:**

On January 10, 2014 JW Marriot's Contractor was provided the most current invoices for Right-of-Way fees, totaling \$911,065.40. This is the amount owed from the start of the project through February 12, 2014.

##### **Planning and Development Review Department (PDRD):**

Although no reimbursement has been paid by JW Marriot pending the lawsuit, JW Marriot did begin paying building permit fees under protest starting in July 2013, and according to PDRD, the amount waived and owed to their department is \$265,676.49.



## Council Question and Answer

Related To	Agenda Item # 17	Meeting Date	January 30, 2014
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### Additional Answer Information

**QUESTION:** QUESTION: Please provide additional information on the use of these vehicles during non-emergency times. If emergencies require a need for more vehicles is there an opportunity to rent them or to share among various jurisdictions? COUNCIL MEMBER SPELMAN

**ANSWER:**

During non-emergency times, the requested vehicles will be used by the Park Rangers and other Nature Based Programs Division staff, including the Urban Forestry Program, Austin Nature Science Center & Zilker Botanical Gardens, Community Gardens, and the Austin Nature Preserve System (>90 total staff).

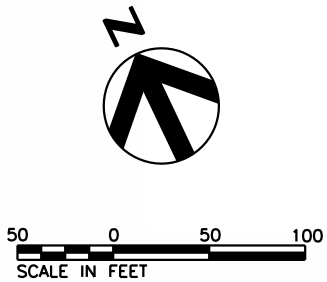
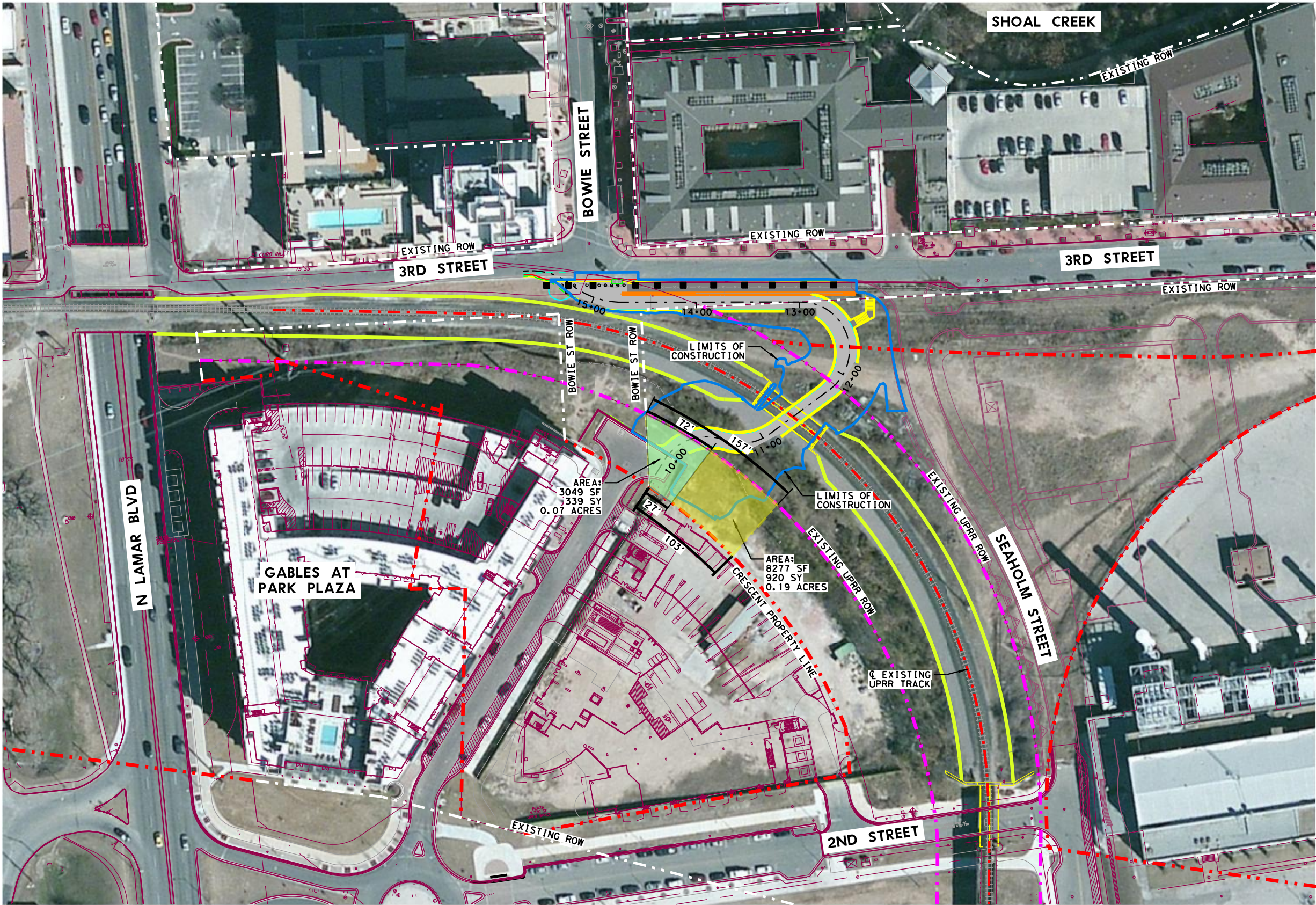
Regular uses will include:

- More efficient patrol of the currently 200+ miles of authorized trails on City of Austin parkland, with 17 additional miles of trails expected to be added in the next 24 months
- Park Ranger patrol operations at special events in the parks such as ACL, Reggae Fest, Urban Fest, Fun Fun Fun Fest, Kite Fest, Trail of Lights, etc.
- Downtown trail patrol during inclement or severe weather (as opposed to automobile patrol around periphery)
- Transportation of personnel and equipment, including chainsaws and other power-tools, wood chippers, small trailers, etc., to areas not accessible by automobile for work such as:
  - Wildfire mitigation, invasive plant removal and other tree maintenance activities;
  - Encroachment and parkland-trespass investigation;
  - General park boundary patrol;
  - Homeless camp clean-up and removal; and
  - Volunteer project management
- General assistance of other PARD staff and COA Departments as requested

PARD would welcome any opportunity to work with other City departments, like HSEM, to enter into agreements with other jurisdictions for the sharing of emergency vehicles.



PLOT DRIVER: TXDOT\_PDF\_COLOR\_FULL.plt PENTABLE: 000000000077601.tbl  
USER: ftudud DATE: 12/20/2013 TIME: 10:56:13 AM SCALE: H00  
FILE: City\_of\_Austin\_Texas\Bowie\_Blkway\_Design\3.00\_CAD\3.03\_Enblts\20303\3\_CrescentEasement\Crescent\_Exhibit.dgn



HDR Engineering, Inc.  
Firm Registration No. 754  
4401 WEST GATE BLVD., SUITE 400  
AUSTIN, TX 78745  
PHONE# (512) 912-5100  
FAX# (512) 912-5158

ISSUE	DATE	DESCRIPTION

PROJECT MANAGER	MARK D. BORENSTEIN
DESIGNED BY	F. TUDTUD
DRAWN BY	K. BERGER
CHECKED BY	
DATE	
PROJECT NUMBER	000000000077601

**PRELIMINARY DESIGN DOCUMENT**

THIS DOCUMENT IS  
RELEASED FOR THE  
PURPOSE OF REVIEW  
UNDER THE AUTHORITY OF  
FELIPE S. TUDTUD  
TEXAS P.E. NO. 104836  
DATE: 12/20/2013

**60% PLANS**



### Bowie Street Underpass

Austin, Texas

UNION PACIFIC RAILROAD  
MP 179.69 AUSTIN SUBDIVISION

### CRESCENT EXHIBIT

1	1	FILENAME	Crescent_Exhibit.dgn
		SCALE	1"=50'





## Council Question and Answer

Related To	Agenda Item # 38	Meeting Date	January 30, 2014
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### Additional Answer Information

#### **QUESTION (CM MORRISON):**

The Business Information Form notes that "... athenahealth is faced with the decision to expand in *either* (emphasis added) its existing locations of California, Massachusetts or Georgia... *or* (emphasis added) in Texas..." In June 2013, the media reported that athenahealth "will expand" in Georgia with similar reports about their expansion in Massachusetts. Please clarify how the athenahealth expansion announcements for Georgia and Massachusetts made last year relate to the "either" "or" decision, noted above.

More specifically, please clarify: are we to understand that Austin is in competition with Georgia and Massachusetts for this specific expansion opportunity, or not?

#### **RESPONSE:**

Yes, Athenahealth's statement referred to in the Business Information Form (BIF) states that Austin is in competition with Georgia, Massachusetts, and California for this expansion project. Additionally, Athenahealth has certified and signed that this information is true and correct.

Athenahealth's headquarters is in Massachusetts and it has offices in Georgia, California, and Austin. Athenahealth is growing and is deciding on a location for its research and development facility and the associated 607 new jobs. Austin is one location being considered, along with one of these three current Athenahealth locations. Athenahealth has reported that the incentive packages already secured in Massachusetts and Georgia allow for the company to locate their new research and development facility in either state, for which the company will receive additional incentives.

#### **QUESTION (CM MORRISON):**

Are there claw-back terms in the agreement, e.g. if the number of projected jobs are not met, will the company return the payments from the previous years? If not, please provide some understanding of why that would not be the case.

#### **RESPONSE:**

The City uses performance-based economic development agreements, meaning that no annual incentives are awarded until performance is demonstrated and confirmed for that respective year.

There are not claw-backs in performance-based agreements because companies cannot get paid without demonstrating performance. If any one of the company's obligations are not met and verified by staff (which is confirmed by independent third-party), then no payment is made.

For any given year in the agreement, the company must create the agreed-upon number of jobs, make capital investment, provide opportunities for minority and women-owned businesses, and other obligations. In those years that the company has performed, the City has received its computed benefits and will pay the agreed-upon incentive for that year. Enacting a claw-back in a future year would disregard that a company has performed each previous year as agreed.