



Amendment No. 5
to
Contract No. R040012
for
Golf Course Management at Butler Pitch & Putt Golf Course
between
Lee Hawley Kinser dba Butler Park Pitch & Putt
and the
City of Austin

1.0 The City hereby amends the referenced contract as follows:

1.1 The last sentence in Section 6.9 Notices is deleted and replaced in its entirety with:

Notices to the City and the Contractor shall be addressed as follows:

to the City:

City of Austin
Parks and Recreation Dept.
ATTN: Jimmy Olivares III
2901 Enfield Rd.
Austin, TX 78703
Lions: 512-477-6963
Annex: 512-974-9350
Cell: 512-797-8213
Jimmy.olivaresIII@austintexas.gov

to the Contractor:

Butler Park Pitch and Putt
Lee H. Kinser
201 Lee Barton Dr.
Austin, TX 78704
512-848-1848
kinserlee@yahoo.com

2.0 The total Contract amount is increased by \$0. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 8/13/04 – 8/12/09	\$0.00	\$0.00
Amendment No. 1: Name Change	\$0.00	\$0.00
Amendment No. 2: Option 1 8/13/09 – 8/12/15	\$0.00	\$0.00
Amendment No. 3: 120 day holdover 8/13/14 – 12/11/14	\$0.00	\$0.00
Amendment No. 4: Option 2 and additional contract language changes. This amendment supersedes Amendment No.3. 8/13/14 – 8/12/19	\$0.00	\$0.00
Amendment No. 5: Update addresses for notices.	\$0.00	\$0.00

3.0 MBE/WBE goals were not established for this Contract.

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

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced Contract.

**LEE HAWLEY KINSER dba BUTLER
PITCH AND PUTT GOLF COURSE**

Lee Ki
Signature

Lee Kinser
Printed Name of Authorized Person

President
Title

12-7-16
Date

CITY OF AUSTIN

Sandy Wirtanen
Signature

Sandy Wirtanen
Printed Name of Authorized Person

Senior Buyer
Title

12/15/16
Date



Amendment No. 4
to
Contract No. R040012
for
Golf Course Management at Butler Pitch & Putt Golf Course
Between
Lee Hawley Kinser dba Butler Park Pitch & Putt
and the
City of Austin, Texas

- 1.0 The City hereby amends the referenced contract as to add the following to Section II, Scope of Work:

Section 2.14 - Programming and Instruction: The Operator shall enter into partnerships with the University of Texas at Austin, Golf in Schools and the PGA's *Get Golf Ready*, and other programs to bring younger and less experienced players to the golf course. Contractor shall provide the City no later than January 10th of each calendar year a summary of the number and type of programs and number of golfers participating by program and age.

Section 2.15 - Property: The Operator shall landscape the grounds around the clubhouse; upgrade the golf course and irrigation system; add picnic tables and benches; install signage, and ensure ADA accessibility from the parking lot to the clubhouse. Contractor shall complete the improvements to the satisfaction of the Parks and Recreation Department no later than 12 months after the effective date of this Amendment.

Section 2.16 - Marketing and Participation: The Operator shall accept credit cards; expand food and beverage options; host special events; improve concession marketing by enhancing their website, and utilize social media outlets.

- 2.0 The City hereby replaces the language in Section 4.1 with the following:

Agreement Amount. The Contractor shall pay the City the sum of \$13,200 annually during the initial term of this Agreement. This sum shall be paid to the City in monthly installments of \$1,100. During the first five-year extension option, if exercised by the City, such annual sum shall increase to \$14,400, payable in monthly installments of \$1,200.

During the second five-year extension option, hereby exercised by the City through the execution of this amendment by both parties, the Operator shall increase the revenue share paid to the Golf Enterprise Fund to 18% of its Annual Gross Revenue. Payments shall include a flat monthly fee of \$2,625.00 plus a one-time, annual lump sum payment equal to 18% of annual gross revenue within the contract year minus the sum of the monthly fees. Annual Gross Revenue shall be calculated based on the contract year that starts August 13 and closes August 12th of the subsequent year. Contractor shall submit the annual lump sum payment to the City no later than September 10th following the closing of a contract year.

- 3.0 The total contract amount is recapped below:

Term
Basic Term: August 13, 2004 – August 12, 2009
Amendment No. 1: Name Change 08/13/04 – 08/12/09
Amendment No. 2: Option 1 08/13/09 – 08/12/14
Amendment No. 3: 210 day hold over 08/13/14 – 03/11/15
Amendment No 4: Option 2 and additional contract language changes. This amendment supercedes Amendment No. 3. 08/13/14 – 08/12/19

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration

(GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

6.0 All other terms and conditions remain the same.

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

Signature & Date: Lee Kinser 12-6-14

Printed Name: Lee Kinser
Authorized Representative

Lee Hawley Kinser
201 Lee Barton Dr.
Austin, TX 78704

Signature & Date: [Signature] 12/8/14

Terry Nicholson, Senior Buyer Specialist
City of Austin
Purchasing Office



**Amendment No. 3 Revised
to
Contract No. R040012
for
Golf Course Management at Butler Pitch & Putt Golf Course
Between
Lee Hawley Kinser
and the
City of Austin, Texas**

- 1.0 The City hereby hold over the above referenced contract for a period of 120 days in accordance with the holdover language in the "Term of Contract" provision in Section 0400, Supplemental Purchase Provisions, which reads as follows:

"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)."

- 2.0 Effective August 12, 2014, the term for the holdover will be August 13, 2014 to December 11/2014.
- 3.0 The total contract amount is recapped below:

Term
Basic Term: August 13, 2004 – August 12 ,2009
Amendment No. 1: Name Change 08/13/04 – 08/12/09
Amendment No. 2: Option 1 08/13/09 – 08/12/14
Amendment No. 3: 120 day hold over 08/13/14 – 12/11/14

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 All other terms and conditions remain the same.

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

Signature & Date:

A handwritten signature in black ink, appearing to read "Terry Nicholson".

8/25/14

Terry Nicholson, Senior Buyer Specialist
City of Austin
Purchasing Office



**Amendment No. 3
to
Contract No. R040012
for
Golf Course Management at Butler Pitch & Putt Golf Course
Between
Lee Hawley Kinser
and the
City of Austin, Texas**

- 1.0 The City hereby hold over the above referenced contract for a period of 210 days in accordance with the holdover language in the "Term of Contract" provision in Section 0400, Supplemental Purchase Provisions, which reads as follows:

"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)."

- 1.0 Effective August 12, 2014, the term for the holdover will be August 13, 2014 to March 11, 2015.
2.0 The total contract amount is recapped below:

Term
Basic Term: August 13, 2014 – August 12 ,2009
Amendment No. 1: Name Change 08/13/04 – 08/12/09
Amendment No. 2: Option 1 08/13/09 – 08/12/14
Amendment No. 3: 210 day hold over 08/13/14 – 03/11/15

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

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

Signature & Date: Lee H. Kinser 12-4-14
Printed Name: Lee H. Kinser
Authorized Representative

Signature & Date: Terry Nicholson 12/5/14
Terry Nicholson, Senior Buyer Specialist
City of Austin
Purchasing Office

Lee Hawley Kinser
201 Lee Barton Dr.
Austin, TX 78704



Amendment No. 2

to *BUY*
Contract No. ~~R000010~~ *R040012*
for

Golf Course Management at Butler Pitch & Putt Golf Course
between

Lee Hawley Kinser
dba Butler Park Pitch & Putt
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above referenced revenue contract. Effective August 13, 2009, the term for the extension option will be August 13, 2009 to August 12, 2014 and there is one remaining option.
- 2.0 The total contract is recapped below:

Term:
Basic Term: 08/13/04 – 08/12/09
Amendment No. 1: Name change
Amendment No. 2: Option 1 08/13/09 – 08/12/14

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

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

Sign a Date Ben Washington for
Cruz Banda, Buyer II 8/11/09
City of Austin
Purchasing Office

Signature & Date:

Printed Name:
Authorized Representative

Lee Hawley Kinser
Lee Hawley Kinser
201 Lee Barton Dr.

Signature

Cruz
City of
Purchasing

Reviewed and Approved

N/A

Cynthia Gonzales

Date



Amendment No. 2
to
Contract No. R060010
for
Golf Course Management at Butler Pitch & Putt Golf Course
between
Lee Hawley Kinser
dba Butler Park Pitch & Putt
and the
City of Austin

1.0 The City hereby exercises the extension option for the above referenced revenue contract. Effective August 13, 2009, the term for the extension option will be August 13, 2009 to August 12, 2014 and there is one remaining option.

2.0 The total contract is recapped below:

Term:
Basic Term: 08/13/04 – 08/12/09
Amendment No. 1: Name change
Amendment No. 2: Option 1 08/13/09 – 08/12/14

3.0 MBE/WBE goals were not established for this contract.

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

5.0 All other terms and conditions remain the same.

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

Signature & Date: Lee Hawley Kinser

Printed Name:
Authorized Representative

Lee Hawley Kinser
201 Lee Barton Dr.
Austin, TX. 78704

Signature & Date: Bea Washington for 8/7/09

Cruz Banda, Buyer II
City of Austin
Purchasing Office

Reviewed and Approved
N/A

Cynthia Gonzales

Date



**Amendment No. 1
to
Contract No. R040012
for
Golf Course Management at Butler Pitch & Putt Golf Course
between
Kinser Ranch LLC
and the
City of Austin, Texas**

- 1.0 The Contract is hereby amended as follows: Change the Contractor's information per the Contractor's request dated October 7, 2007 to read as follows:

Change From:

Change To:

Kinser Ranch LLC
KIN83131891

Lee Hawley Kinser DBA Butler Park
Pitch & Putt
VC0000101701

Telephone: (512)-477-9025
Fax: (512)-288-3683

Telephone: (512)-848-1848
Fax: (512)-477-4430

- 2.0 All other terms and conditions of this contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, Amendment No. 1 is hereby incorporated into and made a part of the above-referenced contract.

Cynthia Gonzales

Cynthia Gonzales, Contract Compliance Manager
City of Austin, Purchasing Office

3/27/08

Date

**INSTRUCTIONS AND SUPPLEMENTAL PROVISIONS / CLAUSES
FOR PRICE AGREEMENT NOTICES**

1.0 RELEASE OR ORDERING METHOD:

User department shall use the Purchase Release (PG) (form FIN9059) in releasing against and payment for goods or services covered by this Agreement. Refer to LGFS Procedures Manual, AP-05 for details. When giving a "verbal" release, provide the Supplier the Purchase Release (PG) number and assigned Price Agreement number and request that such numbers be included on his invoice. Also, require supplier to indicate name of user department on all supplier documents.

2.0 INVOICING AND PAYMENT:

Purchase Releases. The Supplier shall furnish the user Department a copy of invoice. The Purchase Release (PG) shall then be processed in accordance with AP-07, Processing Payments forwarded to Accounts Payable within two (2) working days after user receipt of invoice.

3.0 TIMELY DELIVERY:

Orders for delivery shall be placed with the supplier by the user department or Purchasing Office. Supplier shall make delivery of the units or services requested in the time specified in the terms of the contract. If the order for delivery is not met, the user department is to contact the applicable buyer by memorandum for disposition, citing details and forward a copy of the Purchase Release transmitted to the Supplier.

4.0 UNSATISFACTORY PERFORMANCE:

Departments incurring consistent unsatisfactory performance under an Agreement shall notify the appropriate Buyer in writing, outlining all the facts in such cases. Only by such notice can the Buyer remedy unsatisfactory performance.

5.0 MATERIAL DISCREPANCY RESOLUTION AND REPORTING:

The user department by this Notice is hereby delegated responsibility and authority to administer the resolution of significant material discrepancies as may be encountered. Reference Procedure P-8.3, Receiving and Inspecting Materials. Two copies of completed form PSD 5186, Material Discrepancy Report are to be forwarded to the affected Buyer.

6.0 CHANGES TO AGREEMENT:

Any and all changes to this Agreement are subject to review and advance approval of the Purchasing Office prior to any commitments including, but not necessarily limited to the addition of associated equipment, scope of work, increased services, upgrading, exercising of extensions or price changes. The user department shall institute no changes without the prior written approval of the Purchasing Office.

7.0 CONTRACT ADMINISTRATION:

Administration of this contract for the City shall be the responsibility of the Contract Administrator; Purchasing's involvement with the source shall occur only on a exception basis as may become necessary.

The Requisitioner shall be the Contract Administrator unless Purchasing is notified otherwise by the user department. (If applicable, the Contract Administrator shall establish milestones enabling him to determine if the source is working on schedule.) All communications between the Contract Administrator and the source shall be in writing with a copy sent to the Purchasing Office.

If substandard performance should occur (or milestones are not met) the source shall be advised in writing to correct the problem; a copy of this communication shall be sent to the Purchasing Office. Should substandard performance not be corrected within a reasonable amount of time after the source has been made aware of the problem, the Contract Administrator shall withhold payment and advise the Purchasing Office of the situation.

**SERVICE AGREEMENT BETWEEN THE CITY OF AUSTIN, TEXAS
AND
KINSER RANCH, LLC
TO
PROVIDE
GOLF COURSE MANAGEMENT SERVICES**

This agreement (the "Agreement") is made on the 5th day of July, 2005 and to begin on the 1st day of August 2005 by and between Kinser Ranch, LLC, a Texas Limited Liability Corporation ("Contractor"), located at 201 Lee Barton Drive, Austin, Texas 78704, and the City of Austin ("City"), a home-rule municipality incorporated in the State of Texas.

WHEREAS, the City solicited proposals (via Request for Proposal (RFP) LT04300034 dated March 15, 2004) from firms qualified and experienced in golf operations to manage, and provide landscape maintenance for, the Butler Pitch and Putt Golf Course; and,

WHEREAS, Contractor responded with its proposal dated March 19, 2004 to provide the services requested via City's RFP; and,

WHEREAS, the City has evaluated Contractor's proposal based on the criteria specified in City's RFP, and has favorably scored said proposal in accord with those criteria; and,

WHEREAS, the City Council has acted to award a service agreement to Contractor through approval of Recommendation for Council Action (RCA) Number 31, dated August 12, 2004; and,

WHEREAS, the City desires to engage the services of the Contractor to provide golf course management (including landscape maintenance), merchandise sales, and programming for public participation at Butler Pitch and Putt Golf Course, located at 201 Lee Barton Drive, Austin, Texas 78704 and the Contractor desires to accept such an engagement;

NOW, THEREFORE, for and in consideration of the services to be performed hereunder, and the monetary consideration to be paid therefore as provided herein, and other good and valuable considerations, the parties hereto agree as follows:

SECTION I. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City, and subject to the provisions of the terms and conditions contained herein, the Contractor is engaged to carry out the tasks set forth in Section II, the Scope of Work for Golf Course Management Services. The

Contractor shall begin work on the tasks immediately upon Agreement execution.

- 1.2 Responsibilities of the Contractor.** Except as otherwise specified, the Contractor shall provide all personnel, management, materials, and administrative support necessary to complete all of the tasks in the Scope of Work (Section II of this Agreement)(the "Program") and the Contractor's response to the City's RFP LT04300034. The Contractor shall provide all off-site workspace, equipment, and communications necessary to perform its tasks under this Agreement. The Contractor will promptly inform the City's designated Contract Manager of any problems encountered that might threaten the timely completion or the adequacy of results obtained in executing the tasks in the Scope of Work. Any schedule adjustments affecting the overall project or the completion of specific Scope of Work Tasks shall be made only after timely consultation between the Contractor and the City's Contract Manager, and following final approval by City.

- 1.3 Responsibilities of the City.** The City shall designate a Contract Manager, who will be responsible for exercising general oversight and direction of Contractor efforts in completing the tasks in the Scope of Work as outlined in this Agreement and in the Contractor's response to RFP LT04300034. The Contract Manager shall meet with the Contractor as may be reasonably required to discuss any operational issues or the status of the Program, and to provide timely responses to issues related to performing tasks in the Scope of Work, as raised by the Contractor. Throughout the term of this Agreement, the Contract Manager shall monitor project activities and ensure that all resources to be furnished by the City are available as required to support timely execution of the Tasks outlined in the Scope of Work.

1.3.1 The City will supply weekly cash report forms that the Contractor will turn in along with the deposit slips and cash register "z" tapes.

1.3.2 The City reserves the right to conduct random inspections of the facility to insure all provisions of the Agreement are being met. The City shall document the results of such inspections in a report submitted to the Contractor.

- 1.4 Designation of Key Personnel.** The Contractor will assign a Project Manager for this Agreement. The Project Manager shall be responsible for maintaining the program schedule under this Agreement, ensuring quality of performance, and engaging in all written and verbal communications with the City. The City of Austin's Contract Manager is Jay Stone, Parks and Recreation Department, whose office is located at 200 South Lamar Boulevard, Austin, TX 78704, phone number (512) 974-6712. The City's Contract Manager shall exercise oversight of week-to-week progress in this engagement, as monitored through

face-to-face and written communications and reporting. The Contract Manager shall represent the interests of the City in resolving any and all issues that may arise incidental to and during the execution of this Agreement. The City and the Contractor agree to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace its key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City's Contract Manager and obtain approval for the replacement. Should the identity of the City's Contract Manager or other key personnel change, City will identify replacements that possess similar experience and competence and shall promptly notify Contractor of such change.

SECTION II. SCOPE OF WORK

- 2.1 The Contractor shall operate and maintain the golf course including staffing, management, and any other functions consistent with an operation of this type.
- 2.2 The Contractor shall maintain as its minimum hours of operation seven (7) days per week, 9 a.m. to dusk on weekdays and 8:30a.m. to dusk on weekends, except during days of inclement weather.
- 2.3 The Contractor shall hire at his own cost and expense, and train and supervise staff whose appearance, manner and character will reflect credit on the City and will be acceptable to the patrons of the golf course, to assist in the performance of services under this Agreement.
- 2.4 The Contractor shall provide all equipment necessary to the performance of services under this Agreement, including separate containers for any recyclable materials.
- 2.5 The Contractor shall provide services and items available for purchase, including but not limited to:
 - 2.5.1 golf rounds;
 - 2.5.2 rental clubs;
 - 2.5.3 golf merchandise; and
 - 2.5.4 soft drinks and snacks.
- 2.6 Contractor's prices submitted in the Contractor's response to RFP LT04300034 shall not be changed for a minimum of ninety (90) days after the award of this Agreement. After such ninety (90) day period, the Contractor shall notify the City's Contract Manager of any proposed changes in prices or

items sold or services provided. All changes in prices or items sold must have prior written approval from the City's Contract Manager.

- 2.7 The Contractor shall provide and maintain, in a conspicuous place, a menu sign. The menu sign shall list the prices of all items offered for sale, the hours of operation, and the phone number of the City's assigned Contract Manager for the phoning in of comments. The design and location of the sign shall be subject to the approval of the City's Director of the Parks and Recreation Department or his designee.
- 2.8 The Contractor shall not make any structural alterations, repairs, or improvements of the premises, without written permission from the City's Contract Manager. Any such alterations made without the City's prior written approval shall be done at the expense of the Contractor and shall become the property of the City at the termination of this Agreement. The City shall have the right to require the Contractor to restore the property to its original condition at the Contractor's expense. The Contractor shall submit a written report to the City's Contract Manager describing any needed repairs or suggested alteration or improvements. The Contractor shall allow no liens to be filed against City property.
- 2.9 The following conditions shall be in effect as to the Contractor's concession rights:
 - 2.9.1 Contractor shall conduct his business in a manner that is efficient and orderly and which will reflect credit upon both himself and the City. The Contractor shall perform as follows:
 - 2.9.1.1 Contractor shall not permit any defacing of the building or buildings where his physical facilities are located;
 - 2.9.1.2 Contractor shall permit no undue loitering;
 - 2.9.1.3 Contractor shall permit no objectionable language.
 - 2.9.2 The Contractor shall comply with all City, County, State and Federal regulations and laws pertaining to the operation of the concession, particularly sanitary and health regulations pertaining to the preparation and service of food. All health cards and permits shall be mounted in a conspicuous location.
 - 2.9.3 The Contractor shall keep the golf course area free and clear from rubbish, filth, and refuse. The Contractor must employ the necessary number of personnel to place garbage in large containers, which when full must be closed with securely fitting lids and placed by the Contractor at a location to be designated by the City's Contract

Manager. Further, Contractor shall establish and consistently enforce among his employees such regulations in regard to cleanliness and disposal of garbage and waste as will tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance.

- 2.9.4 Contractor shall keep the following custodial duty schedule. All items shall be performed as scheduled and repeated at more frequent intervals should such items as weather, use or litter make such repetition necessary to keep a clean appearance:

2.9.4.1 Daily Requirements

- 2.9.4.1.1 the entire area shall be kept neat and clean;
- 2.9.4.1.2 clean all counter tops and tables;
- 2.9.4.1.3 empty and clean trash receptacles and install new liners;
- 2.9.4.1.4 remove all waste from site to container.

- 2.10 The Contractor shall establish and maintain during the term of this Agreement separate records and accounts, including a separate bank account, relating to the operation of the Butler Pitch and Putt Golf Course. Records and accounts shall be subject to examination and audit by the City at any time.
- 2.11 The Contractor, not the City, will be responsible for any debts incurred by the Contractor.
- 2.12 The Contractor shall act to correct any infractions against the terms and conditions of this Agreement, including, but not limited to: not opening during the required hours, not meeting cleanliness standards, or not meeting fire codes. Failure to correct such deficiencies may result in a material breach of this Agreement.
- 2.13 The Contractor shall be responsible for placing barriers (such as fencing, shrubbery, trees or other means) to minimize the damage to persons or property from errant golf balls. These protective barriers shall blend with the aesthetic appearance of the golf course area.

SECTION III. REPORTING REQUIREMENTS

- 3.1 The Contractor shall provide to the City's Contract Manager a copy of Internal Revenue Service (IRS) Form 1040, Schedule C (Statement of Operations) pertaining specifically to concession income. This form

shall be submitted to Contract Manager annually within seven (7) calendar days of filing with the IRS.

- 3.2 The Contractor shall submit to the City's Contract Manager a copy of their monthly sales tax report within fifteen (15) calendar days of filing the report.
- 3.3 The Contractor shall submit to the City's Contract Manager, by the tenth calendar day of each month, the Monthly Concession Revenue Report and the cash register tapes (Z tapes) from the previous month. The Contractor's copies of the cash register tapes shall be retained by the Contractor for three (3) years after the Agreement expires.

SECTION IV. COMPENSATION PLAN

- 4.1 **Agreement Amount.** The Contractor shall pay the City the sum of \$13,200 annually during the initial term of this Agreement. This sum shall be paid to the City in monthly installments of \$1,100. During the first five-year extension option, if exercised by the City, such annual sum shall increase to \$14,400, payable in monthly installments of \$1,200. During the second five-year extension option, if exercised by the City, such annual sum shall increase to \$15,600, payable in monthly installments of \$1,300. In addition, the Contractor shall pay the City an annual lump sum payment consisting of: one percent (1%) of the Contractor's gross annual sales up to \$80,000, plus one and one-half percent (1.5%) of the Contractor's gross annual sales in excess of \$80,000.
- 4.2 **Payment.** The Contractor's payment to the City for the monthly fee shall be made by check no later than the tenth calendar day of each month during the term of this Agreement, without demand from the City. Payment shall be made at the address indicated in Paragraph 6.9 herein. The Contractor's annual lump sum payment to the City shall be made by check no later than January 31st of each year during the term of this Agreement, without demand from the City. Payment shall be made at the address indicated in Paragraph 6.9 herein.
- 4.3 **Reconciliation and Revenue Share.** Each year, as soon as is convenient following the close of City's fiscal year, City will provide the Contractor with a statement showing the revenue collected at the golf course during the fiscal year just ended. This revenue shall include tournament fees (excluding annual fees). Contractor shall review this statement and notify the City of any questions or discrepancies within fifteen (15) days of receipt of the statement. The parties shall then address and resolve any discrepancies.
- 4.4 **Final Payment.** The making by Contractor, and acceptance by City, of final payment will constitute:
 - 4.4.1 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 failure of the Contractor to comply with the Agreement or the terms of any warranty specified herein, (3) arising from the Contractor's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (4) arising under the City's right to audit; and

- 4.4.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION V. TERM, TERMINATION AND WARRANTY

- 5.1 **Term.** This Agreement shall be in effect for a period of five (5) years beginning the first day of the month following the signing of this contract, and may be extended thereafter for up to two (2) additional five (5) year periods, subject to the approval of the Contractor and the City Manager or his designee.
- 5.2 **Hold Over of Agreement.** 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).
- 5.3 **Right to Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's assurance of the intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
- 5.4 **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.
- 5.5 **Default.** The Contractor shall be in default under the Agreement if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under Section 5.3, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 5.6 **Termination for Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Agreement for cause, by written notice effective thirty (30) days from date of receipt, 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. 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. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for up to three (3) years and any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

- 5.7 **Termination Without Cause.** The City Council shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all services performed and obligations incurred prior to the date of termination in accordance with the terms hereof. Also the City will reimburse contractor the depreciated amount as it relates to equipment purchased to maintain property.
- 5.8 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of this Agreement for cause by the City and may result in legal action.
- 5.9 **Warranty.** The Contractor warrants and represents that all services to be provided to the City under the Agreement 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 Agreement, and all applicable Federal, State and local laws, rules or regulations. 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.

SECTION VI. MISCELLANEOUS

- 6.1 **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. 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 Agreement. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
- 6.2 **Workforce.**
- 6.2.1 The Contractor shall employ only orderly workers, skilled in the performance of the services which they will perform under the Agreement.
- 6.2.2 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:
- 6.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement; or
- 6.2.2.2 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.
- 6.2.3 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 Agreement services, and may not employ such worker again on Agreement services without the City's prior written consent.
- 6.3 **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.

6.4 Right to Audit. 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 Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that 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.

6.5 Delays. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Agreement price and execute an amendment to the Agreement. The Contractor must assert its right to an adjustment within thirty (30) 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 6.20 herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

6.6 Indemnity

6.6.1 Definitions:

6.6.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

6.6.1.1.1 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

6.6.1.1.2 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).

6.6.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

6.6.2 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 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 Agreement. 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.

6.7 **Insurance.** Insurance shall be provided as follows:

6.7.1 General Requirements.

6.7.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement and during any warranty period.

6.7.1.2 The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage within 14 calendar days after notification of award, unless otherwise specified.

6.7.1.3 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by 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.

6.7.1.4 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or

better. The company writing the insurance policy must be acceptable to City. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

- 6.7.1.5 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the City's RFP number (LT04300034) and the following information:

City of Austin
Purchasing Office
ATTN: Lydia Rodriguez-Torres
P. O. Box 1088
Austin, Texas 78767

- 6.7.1.6 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 Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 6.7.1.7 If insurance policies are not written for amounts specified below, 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.
- 6.7.1.8 The City shall be entitled, upon request and without expense, to receive 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.
- 6.7.1.9 The City reserves the right to review the insurance requirements set forth during the effective period of this Agreement 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, and the

claims history of the industry or financial condition of the insurance company as well as the Contractor.

- 6.7.1.10 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
- 6.7.1.11 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- 6.7.1.12 The Contractor shall provide the City thirty (30) days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
- 6.7.1.13 The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of the Contractor.

6.7.2 Specific Requirements.

- 6.7.2.1 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.

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

- (i) Waiver of Subrogation, Form WC 420304
- (ii) Thirty (30) days Notice of Cancellation, Form WC 420601

- 6.7.2.2 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A and B.

- 6.7.2.2.1 The policy shall contain the following provisions:

- (i) Blanket contractual liability coverage for liability assumed under this Agreement and all Contracts related to the project.
- (ii) Independent Contractor's Coverage.
- (iii) Products/Completed Operations Liability for the duration of the warranty period.

- 6.7.2.2.2 The policy shall also include these endorsements in favor of the City of Austin:
- (i) Waiver of Subrogation, Endorsement CG 2404
 - (ii) Thirty (30) days Notice of Cancellation, Endorsement CG 0205
 - (iii) The City of Austin listed as an additional insured, Endorsement CG 2010

- 6.7.2.3 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.

- 6.7.2.3.1 The policy shall include these endorsements in favor of the City of Austin:
- (i) Waiver of Subrogation, Endorsement TE 2046A
 - (ii) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A
 - (iii) The City of Austin listed as an additional insured, Endorsement TE 9901B.

- 6.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse affect on the Contractor's ability to perform hereunder, the Contractor shall give written notice thereof to the City within ten 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 Norwood Tower, 114 West 7th Street, 5th floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

- 6.9 **Notices.** Any notice, request, or other communication required or appropriate to be given under this Agreement 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, facsimile, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

to the City:

City of Austin
Parks and Recreation Dept.
ATTN: Jay Stone
200 South Lamar Blvd.
Austin, Texas 78704

to the Contractor:

Kinser Ranch L L C
ATTN: Lee and Albert Kinser
201 Lee Barton Drive
Austin, TX 78704

- 6.10 **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 Open Records Act, Chapter 552, Texas Government Code.
- 6.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Agreement, except to the extent required by law.
- 6.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Agreement 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.

- 6.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Agreement 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 Agreement 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 Agreement 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.
- 6.14 **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 Agreement 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 Agreement voidable by the City.
- 6.15 **Independent Contractor.** The Agreement 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 Agreement does not grant any rights or privileges established for employees of the City.
- 6.16 **Assignment-Delegation.** The Agreement shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided, however, that no right or interest in the Agreement 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 Agreement 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 Agreement.
- 6.17 **Waiver.** No claim or right arising out of a breach of the Agreement 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 Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

6.18 **Modifications.** The Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

6.19 **Interpretation.** The Agreement 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 Agreement. Although the Agreement 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 Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

6.20 **Dispute Resolution**

6.20.1 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.

6.20.2 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 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. The City and the Contractor will share the costs of mediation equally.

- 6.21 **Jurisdiction and Venue.** The Agreement 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 Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 6.22 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement 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 Agreement from being void should a provision that is the essence of the Agreement be determined to be void.
- 6.23 **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 the Agreement.
- 6.24 **Incorporation of Agreement Documents/Order of Precedence.** The documents listed below, taken together, contain the terms and conditions of the Agreement between the parties. These documents are incorporated by reference and are an integral part of this Agreement. In the event of a conflict between any of the provisions governing this business relationship, any inconsistency shall be resolved by giving precedence in the following order: (1) this Agreement, (2) City's RFP LT04300034, and (3) Contractor's Proposal.

This Agreement is executed in duplicate originals.

KINSER RANCH, LLC:

CITY OF AUSTIN:

Signature:

Al Kinser Lee Ki
Name:

President Vice President
Title:

Date:

7-5-05

Signature:

[Signature]
Name:

Division Manager Finance
Title:

Date:

7-5-05

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS (RFP)**

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

1. **Addendum** means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
3. **Authorized City Representative** means a person designated by the City Manager to act for the Contract Awarding Authority.
4. **Best Proposal** means the best evaluated Proposal in response to an RFP.
5. **Best Proposer** means the Proposer submitting the Best Proposal.
6. **City** means the City of Austin, a Texas home-rule municipal corporation.
7. **Contract** means the binding legal agreement between the City and the Proposer. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
 - A. any exceptions to the Offer accepted in writing by the City
 - B. the Supplemental Purchase Terms and Conditions
 - C. the Standard Purchase Terms and Conditions
 - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
8. **Contract Awarding Authority** means a City department authorized to enter into Contracts on behalf of the City.
9. **Contractor** means the person, firm or entity selling goods and services to the City under a Contract.
10. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Proposer.
11. **Disadvantaged Business Enterprise** is defined in 49 CFR 23.62 or other applicable federal regulations.
12. **Due Date** means the date and time specified for receipt of Proposals.
13. **Goods** are supplies, materials, or equipment.
14. **Minority-Owned Business** is defined in chapter 5-7, 1992 City Code.
15. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE DEFINITIONS (RFP)**

16. **Offer** means a complete signed response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation for Bid, a proposal submitted in response to a Request for Proposal, a quote submitted in response to a Request for Quotation, or a statement of qualifications and interest submitted in response to a Request for Qualifications.
17. **Pre-Proposal Conference** means a conference conducted by the Purchasing Office, held in order to allow Proposers to ask questions about the proposed Contract and particularly the Contract specifications.
18. **Professional Services** means services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
19. **Proposal** is a complete, properly signed response to a Solicitation, that if accepted, would bind the Proposer to perform the resultant Contract.
20. **Proposal Guarantee** guarantees that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
21. **Proposals** are written responses to a Request for Proposal.
22. **Proposer** is a person, firm or entity that submits a Proposal in response to a Solicitation. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
23. **Purchase Order** is an order placed by the Purchasing Office for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Proposer, becomes a contract. The Purchase Order is the Proposer's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
24. **Purchasing Office** refers to the Purchasing Office in the Financial and Administrative Services Department for the City.
25. **Request for Proposal (RFP)** refers to a document requesting an offer be made by a Proposer, which allows for negotiations after a Proposal has been received but before award of the contract for Goods and Services procured in compliance with Tex. Loc. Government Code Ann., section 252.042.
26. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
27. **Solicitation** means, as applicable, an Invitation for Bid, Request for Proposal, Request for Qualifications or a Request for Quotation.
28. **Subcontractor** means a person, firm or entity providing goods and services to the Proposer to be used in the performance of the Proposer's obligations under the Contract.
29. **Woman-Owned Business** is defined in chapter 5-7, 1992 City Code.

**CITY OF AUSTIN
PURCHASING OFFICE
SOLICITATION INSTRUCTIONS (RFP)**

1. SOURCE GUIDE

All Proposers desiring to sell to the City of Austin are required to obtain a current copy of the City of Austin Source Guide. The Source Guide contains additional information on how to prepare Proposals and how to contract for City business. A copy of the source guide is available, upon request, in the Purchasing Office.

2. EQUAL OPPORTUNITY

- A. **Equal Employment Opportunity:** No Proposer, or Proposer's agent, shall engage in any discriminatory employment practice as defined in chapter 7-4, 1992 City Code. No Proposal submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Proposer has executed and filed with the City Purchasing Office a current Non-Discrimination Certificate. Proposers shall sign and return with their proposal, the Non-Discrimination Certification located in section 0700 herein.
- B. **Americans With Disabilities Act (ADA) Compliance:** No Proposer, or Proposer's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

3. MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE (MBE/WBE) PROCUREMENT PROGRAM

All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at chapter 5-7 of the 1992 City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts. Goals for MBE/WBE participation are stated in each Solicitation. Information on achieving the goals or documenting good faith efforts to achieve the goals are contained in the MBE/WBE Program Package attached to the Solicitation. When goals are established, Proposers are required to complete and return the MBE/WBE Compliance Plan with their Proposal. If a Compliance Plan is not submitted prior to the date and time set forth in the Solicitation, the Proposal will not be accepted for consideration.

4. SOLICITATION

- A. **Review of Documents:** Proposers are expected to examine all documents that make up the Solicitation. Proposers shall promptly notify the City of any omission, ambiguity, inconsistency or error that they may discover upon examination of the Solicitation. Proposers must use a complete Solicitation to prepare Proposals. The City assumes no responsibility for any errors or misrepresentations that result from the use of incomplete Solicitations.
- B. **Location of Documents:** Solicitations are issued by the Contract Awarding Authority. The location and phone number for the Contracting Awarding Authority are specified in the advertisement and in the Solicitation.

5. EXPLANATIONS OR CLARIFICATIONS

Any material information given to one Proposer concerning a Solicitation will be furnished as an Addendum to all Proposers who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Proposers shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding. Requests for explanations, clarifications or interpretations may be faxed to the City at (512) 499-2388. The fax must clearly identify the buyer's name and solicitation number. Any material information given to one Proposer concerning a Solicitation will be furnished as an Addendum to all Proposers who have been issued a Solicitation.

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6. PRE-PROPOSAL CONFERENCE

If a pre-proposal conference is mandatory, the time, place and mandatory nature of the conference will be specified on the cover page of the solicitation. If a pre-proposal conference is mandatory and is not attended by a Proposer, their proposal will be rejected.

7. PREPARATION OF PROPOSALS

- A. **Taxes:** Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Proposals should not include exempted taxes. The successful Proposer should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.
- B. **Brand Name or Equal:** If the Solicitation indicates brand name or "equal" products are acceptable, the Proposer may propose an "equal" product but must be prepared to demonstrate those features that render it equal. Final determination of a product as an "equal" remains with the City.
- C. **Delivery Time:** Delivery time, if stated as a number of days, will be based on calendar days. Time is of the essence in any City purchase. If the indicated date cannot be met or the date is not indicated, the Proposer shall state its best delivery time.
- D. **Free on Board (FOB) Point:** The Proposer should quote its lowest and best price, with the goods delivered to the place specified, at the Proposer's expense and risk, and there tender delivery to the City.
- E. **Prices:** Proposals shall be firm unless otherwise specified. In the event of a discrepancy between unit price and extended price, the unit price shall govern.
- F. **Signature:** The Proposer must sign each document in the Solicitation requiring a signature. Any change made to the Proposal must be initialed by the Proposer.
- G. **Proposal Guaranty:** When required by the Solicitation, a Proposal must be accompanied by a Proposal guaranty with Power of Attorney attached, issued by a solvent surety authorized under laws of the State of Texas and acceptable to the City.
- H. **Payment:** Payment terms shall be net 30 days.

8. SUBMISSION OF PROPOSALS

Unless otherwise specified, Proposers are required to submit an executed original and nine (9) copies of the Proposal.

- A. **Documents required with Proposal:** The following documents must be submitted with each Proposal prior to the Due Date:
 - i. the signed Offer and Award Sheet;
 - ii. the signed Non-Discrimination Certificate;
 - iii. the signed Affidavit of Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying;
 - iv. the signed MBE/WBE Compliance Plan or No Goals Form;
 - v. any other document included in the Solicitation requiring completion or execution by the Proposer; and
 - vi. any additional document required by the Solicitation.

All other pages in the Solicitation should be retained by the Proposer.

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- B. **Mailing:** Proposals and Compliance Plans (when required by the solicitation), must be returned in a sealed envelope or container marked on the outside with the:

Proposer's name & address
Solicitation number
Due date and time.

- i. If a MBE/WBE Compliance Plan is required, it may be submitted with the sealed Proposal or in a separate sealed envelope. If the Compliance Plan is included with the Proposal, the outside of the envelope must indicate that the Compliance Plan is included. If the Compliance Plan is submitted in a separate envelope, the outside of the envelope must identify the contents as the "Compliance Plan" and must also include the Proposer's name & address, the Solicitation number, and the Due Date and time. If a Compliance Plan is required but is not submitted prior to the time set forth in the Solicitation, the Proposal will not be accepted for consideration.
- ii. When sending a Proposal and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin
Purchasing Office	Purchasing Office
P.O. Box 1088	Two Commodore Plaza
Austin, Texas 78767-8845	206 E. 9th St. 15th floor, Suite 15.120
	Austin, Texas 78701
	Phone: (512) 499-2500

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

- iii. Unless authorized in the Solicitation, telegraphic or facsimile Proposals will not be accepted.
- C. **Addendum:** Receipt of an Addendum must be acknowledged by signing and returning the Addendum with the Proposal or under separate cover prior to the Due Date. The Addendum must be returned in a sealed envelope marked on the outside with the Proposer's name, address, the Solicitation number, and the Due Date and time.
- D. **Late Proposals:** Proposals must be received in the Purchasing Office prior to the Due Date. All Proposals received after the Due Date are considered late and will be returned to the Proposer unopened. The time stamp clock on the receptionist's desk in the Purchasing Office is the time of record and is verified daily with the local time service (KEYE-TV at 973-3555). It is the sole responsibility of the Proposer to ensure timely delivery of the Proposal. The City will not be responsible for failure of service on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Proposer.

9. **MODIFICATION OR WITHDRAWAL OF PROPOSALS**

- A. **Modification of Proposals:** Proposals may be modified in writing at any time prior to the Due Date.
- B. **Withdrawal of Proposals:** Proposals may be withdrawn in writing, telegraphically, or by facsimile (provided that the facsimile is signed by the Proposer) at any time prior to the Due Date. A Proposer may also withdraw a Proposal in person, provided the withdrawal is made prior to the Due

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Date. A receipt of withdrawal must be signed by the Proposer. Withdrawn Proposals may be resubmitted, with or without modifications, up to the Due Date.

10. OPENING OF PROPOSALS

As authorized by Tex. Local Government Code Section 252.049(b), Proposals will be opened in a manner that avoids disclosure of the contents to competing Proposers and keeps the contents confidential during negotiations. Until the negotiations are completed, only the number and identity of the Proposers submitting Proposals will be made available to the public.

11. RESERVATIONS

The City expressly reserves the right to:

- A. specify approximate quantities in the Solicitation;
- B. extend the Solicitation closing date and time;
- C. waive as an informality, minor deviations from specifications provided they do not affect competition or result in functionally unacceptable Goods or Services;
- D. waive any minor informality in any Proposal or Solicitation procedure (a minor informality is one that does not affect the competitiveness of the Proposer);
- E. add additional terms or modify existing terms in the Solicitation;
- F. reject or cancel any or all Proposals;
- G. reissue a Solicitation; and/or
- H. procure any item by other means.

12. NEGOTIATIONS

The City reserves the right to negotiate all elements which comprise the Proposer's proposal to ensure that the best possible consideration be afforded to all concerned.

13. RELEASE OF INFORMATION

Under Texas law, information relating to Requests for Proposals may be kept confidential until a contract has been awarded. Information relative to this RFP shall not be released by the City during the proposal evaluation process or prior to contract award.

14. CONTRACT INCORPORATION

Proposer should be aware that the contents of the successful proposal will become a part of the subsequent contractual documents. Failure of the successful Proposer to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Proposer's failure to contract may be recovered from the successful Proposer.

15. OPPORTUNITY TO PROTEST

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

- A. **Prior to proposal closing date:** If you are a prospective Proposer and you become aware of the facts regarding what you believe is a deficiency in the solicitation process before the closing date for receipt of proposals, you must notify the City in writing of the alleged deficiency before that date, giving the City an opportunity to resolve the situation prior to the Proposal closing date.

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B. After proposal closing date: If you submit a Proposal to the City and you believe that there has been a deficiency in the solicitation process or the award, you have the opportunity to protest the solicitation process or the recommended award as follows:

- i. You must file written notice of your intent to protest within three (3) calendar days of the date that you know or should have known of the facts relating to the protest. If you do not file a written notice of intent within this time, you have waived all rights to protest the solicitation process or the award.
- ii. You must file your written protest within fourteen (14) calendar days of the date that you know or should have known of the facts relating to the protest unless you know of the facts before the Proposal has been closed. If you know of the facts before those dates, you must notify the City as stated above.
- iii. You must submit your protest in writing and must include the following information:
 - (1) your name, address, telephone, and fax number;
 - (2) the solicitation number and the CIP number, if applicable;
 - (3) a detailed statement of the factual grounds for the protest, including copies of any relevant documents.
- iv. Your protest must be concise and presented logically and factually to help with the City's review.
- v. When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
- vi. The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
- vii. A decision will usually be made within fifteen (15) calendar days after the hearing.
- viii. The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- ix. When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that:
 - (1) the City urgently requires the supplies or services to be purchased, or
 - (2) failure to make an award promptly will unduly delay delivery or performance.

In those instances, the City will notify you and make every effort to resolve your protest before the award.

16. POST PROPOSAL DOCUMENTS REQUIRED FROM SUCCESSFUL PROPOSER

- A. **Letters of Intent:** When a MBE/WBE Compliance Plan is required, the successful Proposer must submit to the Contract Awarding Authority the Letters of Intent to subcontract required by the Compliance Plan within three (3) business days after notification. Failure to submit the required letters will be grounds for rejection of the Proposal.
- B. **Certificates of Insurance:** When insurance is required, the Proposer must provide Certificates of Insurance in the amounts and for the coverages required to the Purchasing Office within 14 calendar days after notification of award, or as otherwise required by the Solicitation.

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- C. **Payment and/or Performance Bonds:** When Payment and/or Performance Bonds are required, the Proposer must provide the bonds, in the amounts and on the conditions required, within 14 calendar days after notification of award, or as otherwise required by the Solicitation.

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

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner. 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

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any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

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 use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on the City's property, 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 SAFETY REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local safety and health 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. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. 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. Invoices shall be mailed to the City of Austin at P.O. Box 1088, Austin, Texas 78767. Any invoices sent to the City's Electric Utility Department shall be mailed to P.O. Box 3546, Austin, Texas 78764-3546. 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.

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- 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.

13. PAYMENT:

- A. All proper invoices received by the City will be paid within 30 days of the City's receipt of the deliverables or of the invoice, whichever is later. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one percent per month 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 days after the grounds for withholding payment have been resolved.
- B. 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.
- C. 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.
- D. 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 §5-1-2 of the Austin City Code of 1992, as amended, concerning the right of the City to offset indebtedness owed the City.
- E. The City's payment obligations are payable only and solely from funds Appropriated and available for the purpose of this purchase. 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.

14. **TRAVEL EXPENSES:** All travel and lodging 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 and the Current Runzheimer Meal-Lodging Index (the "Index"). No amounts in excess of the Travel Policy or Index shall be paid. All invoices must be accompanied by copies of 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 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

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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 an MBE/WBE Program Compliance Plan is required by the Solicitation and the Contractor has identified Subcontractors, the Contractor shall comply with the provisions of Chapter 5-7 of the Austin City Code of 1992, as amended, and the terms of the Compliance 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 Chapter 5-7. 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 project manager or contract manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

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- 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 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.
- 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.

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- 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) 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.

Year 2000. The Contractor further represents and warrants that the occurrence in or use by the deliverables containing computer code of dates on or after January 1, 2000 (which shall be inputted and stored in four digit format) ("Millennial Dates"), will not adversely affect the performance of such deliverables with respect to date-dependent data, computations, output, or other functions, (including, without limitation, calculating, comparing, translating, interfacing, inquiry, leap year recognition, and sequencing) and that such deliverables will create, store, process, translate, and output information related to or including Millennial Dates, pre-Millennial Dates, or combinations of Millennial Dates and pre-Millennial Dates (whether such pre-Millennial Dates are stored in two digit or four digit format) without error, omissions, the need for human intervention, or experiencing delays and at no additional cost to the City. At the City's request, the Contractor shall provide sufficient and credible evidence satisfactory to the City to demonstrate that such deliverables meet the foregoing warranty. In addition, the Contractor hereby agrees that the City may (in its sole discretion) withhold, as a reserve or retainage, up to five percent (5%) of each Contractor invoiced amount under the Contract. The cumulative amount of such reserve or retainage shall be held by the City and shall become due and payable to the Contractor once the City is reasonably convinced by sufficient and credible evidence that the computer code (whether or not developed, provided in a software package or as part of any hardware or firmware) provided by the Contractor complies with the warranty in this section.

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 acceptance of the services. 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

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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) 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 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, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
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) 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. 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. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. 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) 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.

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29. **FRAUD:** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:** The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, 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) 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.
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 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 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:** (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).
- A. **General Requirements.**
- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract and during any warranty period.
 - ii. The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage within 14 calendar days after notification of award, unless otherwise specified.
 - iii. The Contractor shall not commence work until the required insurance is obtained and has been reviewed by 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.

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- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

Attn: (Add Buyer's Name)

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767
- vii. 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.
- viii. If insurance policies are not written for amounts specified below, 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.
- ix. The City shall be entitled, upon request and without expense, to receive 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.
- x. 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.
- xi. 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.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall provide the City thirty (30) days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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B. Specific Requirements: (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to the City facilities by the Contractor personnel). (Revised 3/31/98)

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
- (b) Thirty (30) days Notice of Cancellation, Form WC 420601

ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A and B.

(1) The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- (b) Independent Contractor's Coverage.
- (c) Products/Completed Operations Liability for the duration of the warranty period.
- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).

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

- (a) Waiver of Subrogation, Endorsement CG 2404
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010

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
- (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A
- (c) The City of Austin listed as an additional insured, Endorsement TE 9901B

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 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 Norwood Tower, 114 West 7th Street, 5th 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 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt

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Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records 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,

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and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

- B. **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City 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.

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43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

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

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

52. **HOLIDAYS:** The following holidays are observed by the City:

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

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Christmas Eve is observed only if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.

MARCH 19, 2004

EXECUTIVE SUMMARY

By

Kinser Ranch, LLC

Albert Winston Kinser, Jr.

and

Lee Hawley Kinser

Golf Course Manager

Butler Park Pitch and Putt

201 Lee Barton Dr.

Austin, TX 78704

Proposal No. LT04300034

EXECUTIVE SUMMARY

By

Albert Winston Kinser, Jr. and Lee Hawley Kinser

In Response to Request for Proposal No. LT03300174

GOLF COURSE MANAGER BUTLER PARK PITCH AND PUTT GOLF COURSE

Albert Winston Kinser, Jr. and Lee Hawley Kinser are seeking a long-term contract to manage the Butler Park Pitch and Putt Golf Course. They are native Austinites having been born here in Austin, attended school here in Austin and lived here their entire lives.

The Kinser Family has operated the Butler Park Pitch and Putt Golf Course, an Austin landmark, since 1949. In 1951 Albert Kinser, Sr. became the full time manager after the death of his brother. In 1970, his son, Albert Kinser, Jr. became his full time assistant. In 2000 Albert Winston Kinser, Sr. died and Albert W. Kinser, Jr. took over his dad's position. After Kit Kinser, the mother and wife could no longer help work the golf course Lee Kinser; Albert Kinser, Jr.'s wife took over her job. Since the time of the elder Mr. Kinser's death Albert and Lee Kinser have solely managed, maintained, operated, and nurtured the Butler Park Pitch and Putt Golf Course. Together they have 40 plus years experience. Butler Park is more than a landmark to many people and their families here in Austin. It is the place that they learned to play golf with their dad or their grandpa or when they were at UT 40 something years ago. Everyday people come and look back, often times with nostalgia, on a time of their lives that mean something to them. They all remember the "old man" who was always here, Mr. Kinser, Sr., and comment on how glad they are that there are still a few things left in Austin like it used to be in the old days. Many of the regular customers are dad's and their kids and young people who enjoy the casualness of Butler Park. They give Dottie, the Dalmatian a pat, Missy the cat a stroke, and go out the door happily to play golf at the Butler Park Pitch and Putt. In short the Kinser's consider all their customers family and love being a part of old Austin and running the Pitch and Putt. Butler Park is more than a job to them; it's their family history.

The Offeror is committed to the sound ecological practices for which Austin is renowned. In furthering to continue servicing the golf course to the maximum benefit the Offeror is in a never-ending search for the newest and best technology. Its tried and tested ground maintenance schedule provides maximum protection for the course's vegetation while utilizing a minimum amount of chemical treatments. In fact the only pesticide used by the Offeror is a biodegradable process employed solely for the eradication of fire ants. In addition, during its management tenure, Offeror has planted numerous trees and shrubs to both beautify the landscape and protect bystanders from errant golf balls. The Offeror will continue its aggressive recycling program by discouraging the use of breakable glass bottles and transporting collected cans and other recyclable materials to appropriate centers.

The Offeror has previously provided discounts for diverse segments of the Austin golf public. The Offeror has greatly expanded the practice. The Offeror has increased publicity of the two-for-one senior citizen discount. The Offeror offers discounts to all the public schools for their school programs. The Offeror encourage all the high school golf programs to play at Butler Park. This includes ACC, UT, The School for the Deaf, St. Edwards and the YMCA summer programs. In addition the Offeror gives green fees and club rentals to Big Brother and Big Sisters. Also the Offeror gives green fees to many of the local schools, public or private, for silent auctions which helps increase public awareness of the golf course. The Offeror also gives green fees to the animal trustee's for the silent auctions. The Offeror also offers discounts to other groups, including visitors to Austin.

The Offeror proposes three alternative financial arrangements to manage the golf course. (1) A five-year contract with an automatic extension of five years for a total of 10 years. (2) A five-year contract with two automatic five-year extensions for a total contract of 15 years. For the first five years the Offeror proposes \$1100.00 per month or \$13,200.00 per year. For the second five years the Offeror proposes \$1200.00 per month or \$14,400.00 per year. For the third five-year segment the Offeror proposes \$1300.00 per month or \$15,600.00 per

Year. (3) The same amount of time in the contract mentioned above the offeror proposes to pay a percent of gross revenue of 1% of total gross revenue for the first \$80,000.00. 1.5% of total gross revenue after the first \$80,000.00 for the remaining gross revenue. With all the work and positive changes the offeror has made and is continuing to make the offeror believes this number will increase each year. The Offeror has the unique experience of successfully managing the Butler Park Course for more than five decades. Combined with their ecologically innovative approach to grounds maintenance and the plan to expand the diversity and number of the golf course's golfing patrons, make Al and Lee Kinser the proper choice to be awarded this management contract. Butler Park is currently listed on 270 web sites.

A. Part I-Business Organization: Our name is Kinser Ranch, LLC. We are located at 11902 Fitzhugh Rd. Austin, Texas, 78736. We are a limited liability company.

B. Part II-System Concept and Solution: The objective of this contract is two-fold: 1) to provide to the Austin community an inexpensive, yet challenging opportunity to taste the flavor of golfing in a well manicured short course, eliminating the unavoidable inconveniences and costs that discourage many persons from regularly playing on a traditional course. 2) To generate a predictable and reasonable amount of income for the City of Austin.

Albert Winston Kinser has been the manager-operator of the Butler Park Pitch and Putt nine hole golf course since 1992. Along with his wife Lee Kinser who has assisted for the past 15 years, the Kissers have a combined 40 plus years of experience managing the Butler Park Pitch and Putt Golf Course.

The Butler Pitch and Putt Golf course has been an Austin landmark for 52 years. During that time the Kinser family has been solely responsible for the maintenance, landscaping and total operation of the golf course. Improvements include the planting of more than 50 trees of all varieties and an untold number of shrubs. The senior Albert Kinser planted many of the very large pecan trees on the golf course from pecans. He also experimented with the grafting of trees, which has worked quite well. He grafted a native pecan with a hybrid to make a tree with strong roots but big pecans. He also planted a lot of banana trees and the Kinser's actually get bananas off the trees.

They encourage their customers to help themselves to these treats. The tee boxes have been totally redone, the greens greatly improved. During the winter months the tee boxes are leveled using sand. They are over seeded with perennial rye. The greens are over seeded as well aerated and top-dressed with sand. The fairways are also over seeded. The clubhouse has undertaken a major renovation. Painting, cleaning, organizing, redecorated, an over all face-lift. A new greens mower was purchased and also a tractor to use for moving compost and sand, spreading the compost and sand, putting out the grass seed and fertilizing on the golf course. This past summer an old power pole was replaced that is the power source for the well. Additionally underground wiring from the pole to the well had to be replaced.

As a result of the length of time that the Kinsers have managed and operated the Butler Park, they have been able to institute a refined, year-round integrated pest management and conservation program which is as follows:

LITTER PICKUP:

Litter is picked up every morning and again in the afternoon. The morning trash is picked up before 8:30 a.m. The afternoon is done at 2:00. The Kinser's pick up all the trash on the golf course in addition to the street and especially in the area of the creek. The wall between the creek and the Kentucky fried chicken, which is not on the golf course, is cleaned up to improve the appearance of the area.

INSPECTION AND PICKING UP THE FLAGS

Every morning and again in the evening the Kinser's take out the flags and pick them back up while at the same time inspecting the area. This prevents the flags from being used after dark to cause destruction to the golf course or from someone getting hurt. At the same time it's another possibility to keep a close eye on the grounds.

MOWING OF THE GREENS

The greens are mowed three times per week, on Monday, Wednesday and Friday this permits maintaining the greens in excellent condition so that they are healthy and require a minimum of chemical intervention.

MOWING OF THE FAIRWAYS

The fairways are mowed twice per week. As with the greens, this insures optimum healthy, attractive and playable conditions.

EDGING

Edging of the area around trees, shrubs, curbs, tables and benches, and the clubhouses performed at least two times per month. And once a week during the warmer weather. This adds to the overall appearance of the course while allowing plants sustained growth.

TREE TRIMMING

The trees are trimmed during the winter. Once every five years they are trimmed professionally to get to the very tops of the many very large pecan trees as well as all the big trees. This limits the infestation of diseases by preserving the strength of the tree while maintaining a well-kept appearance. This professional tree trimming was preformed in the year 2003.

TRIMMING OF SHRUBS

The shrubs are trimmed two times per year, in the spring and the fall. As with the trees this insures the basic health of the plants and enhances the beauty of the golf course. Additionally tee trimming of the Oleanders along Lee Barton and Riverside Dr. makes the roadway clear for the traffic.

FERTILIZATION

The greens receive a minimum dosage of fertilizer to protect the grass from the wear of increased traffic and the harshness of the summer weather. The same procedure is used on the fairways and tee boxes.

TURF IRRIGATION

The turf irrigation comes from well water. Self imposed conservation methods; irrigation is conducted in the evening after closing for 8 hours in the summer and for 3 to 4 hours in the winter.

MAINTENANCE

As part of the general conservation practices employed at the golf course to eliminate the unnecessary loss of water, the irrigation system is checked every evening and repaired as needed. Additionally each station on the golf course is routinely checked for leaks, timing problems, and rotating of the sprinkler heads plus the angle of the sprinkler head.

AERATION AND TOPDRESSING OF TURF AREAS

The greens are aerated two times per year while at the same time they are top dressed with green sand. This is sand that is rich in minerals naturally. This is done in the fall and the spring. During the summer the greens are top dressed with compost. This is a rich source of naturally occurring vitamins and minerals. These procedures even further reduce the amount of chemical fertilizers that are needed to keep the golf course in a healthy condition.

ECOLOGY

In response to the ecological goals of the city of Austin, Al and Lee Kinser have instituted a program of conservation. The only pesticide used is Amdro, which is biodegradable and an environmentally safe method of controlling fire ants. The concave design of the golf course guarantees that water will remain in the golf course and will not be lost to the street nor appear as runoff in town lake. A separate container for cans and bottles is located on the golf course and patrons are discouraged from bringing glass bottles which may break and injure other players. At the close of each day all recyclable items, which have been improperly discarded in the non-recyclable container, are removed and placed with the other glass containers and bottles in a bin which is subsequently delivered to a recycling center. The Kinser's have researched the needs of the birds in the Austin area. We currently provide the birds including the wild parrots with excellent bird food as well as a refuge to nest. We have a birdbath, which the birds enjoy. We have many people who come to the golf course solely to watch the wild parrots who spend a large part of the year here. Lee has done a lot of research and watching of these parrots in other parts of town and loves to share what she's learned to encourage other people to take an interest in the bird population of Austin. The golf course attracts many wild birds besides the parrots which include doves, robins, blue birds, cardinals, pigeons, grackles, hawks, owls, an occasionally duck and even one time a chicken. There are a lot of people in Austin that love to come down here just to watch the birds. We also provide water and corn to the squirrels. We also provide water for the dogs and encourage their owners to bring them out with only two rules. The dog must be on a leash and clean up after them. We encourage people to eat their lunch while enjoying the scenery of the golf course. Many people sit in their cars in the parking lot while others chose to use the picnic tables. The Kinser's welcome everyone.

K. Part III-Program:

ITEMIZED PRICE LIST OF SERVICES

Green fees

First round \$6.00

Second round \$5.00

Third round \$4.00

All day \$18.00

Memberships

30 days consecutively five days a week \$50.00

30 days consecutively seven days a week \$70.00

School program is \$4.00 a player

Club rentals \$.69

Golf balls \$.69 and \$.92

Gatorade \$1.39

Water \$.92

Soda \$.69

Candy and snacks \$.69

TOTAL REVENUE TO THE CITY OF AUSTIN

First 5 years of the contract equals \$13,200.00 per year or \$1100.00 per month. Second 5 years of the contract equals \$14,400.00 per year or \$1200.00 per month. Third 5 years of the contract equals \$15,600.00 per year or \$1300.00 per month. A percentage of 1% of the first \$80,000.00 and 1.5% of all revenue after \$80,000.00 will be paid to the City during each year of the lease.

DETAILED BUSINESS PLAN

Al and Lee Kinser will manage all aspects of the golf course, Butler Park. Al Kinser will act as superintendent for Butler Park Pitch and Putt. He will over see all the maintenance, scheduling of repairs, applications of fertilizer, over seeding, topdressing, pruning, all details due to the machinery, all aspects of the well and sprinkler system, repairs to the clubhouse or tool shed or picnic tables or benches, parking lot maintenance, trashcan emptying and recycling stored, picked up or delivered. Day labor may be needed occasionally.

FIVE-YEAR EXPENSE PROFORMA

	2003	2004
GROSS RECEIPTS	\$107557.00	\$108632.00
UTILITIES	17494.00	18018.00
WAGES	16514.00	17009.00
PAYROLL TAXES	3711.00	3722.00
RENT	12900.00	13200.00
LIABILITY INSURANCE	7289.00	7311.00
OFFICE EXPENSE	349.00	359.00
POSTAGE	105.00	105.00
SCORECARDS	300.00	309.00
SECURITY	322.00	332.00
TELEPHONE	1176.00	1211.00
YELLOW PAGES	945.00	973.00
REAL ESTATE TAXES	437.00	450.00
TWC	72.00	74.00
TOOLS, MOWERS	4000.00	4120.00
GAS	742.00	764.00
TREE MAINTANCE	2500.00	2575.00
SEED, SAND, WELL		
FERTILIZER	3600.00	3708.00
IRRIGATION		
MAINTANCE	1200.00	1236.00
SUPPLIES		
T'S S		
SNACKS, BALLS	4089.00	4211.00

2005	2006	2007
\$109718.00	\$110815.00	\$111923.00
18559.00	19116.00	19689.00
17519.00	18044.00	18585.00
3733.00	3744.00	3756.00
13200.00	13200.00	13200.00
7333.00	7355.00	7377.00
369.00	379.00	389.00
105.00	106.00	106.00
318.00	327.00	336.00
342.00	352.00	362.00
1247.00	1284.00	1322.00
1002.00	1032.00	1063.00
464.00	479.00	495.00
76.00	78.00	80.00
4243.00	4370.00	4501.00
787.00	811.00	836.00
2652.00	2731.00	2812.00
3819.00	3933.00	4050.00
1273.00	1311.00	1350.00
4337.00	4601.00	4739.00

ORGANIZATIONAL CHART

GREENS MOWED	MONDAY	WEDNESDAY	FRIDAY
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GREENS FERTILIZED NEEDED.	ONE TIME PER MONTH OR AS
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ORGANIC SOIL STIMULATOR ONE TIME PER MONTH

FAIRWAYS MOWED	MONDAY	FRIDAY
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FAIRWAYS FERTILIZED	IN THE FALL
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CUPS CHANGED	MONDAY
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TRASH EMPTIED	EVERYDAY
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WEEDEAT AND ROUGH TRIM NEEDED.	DONE ONCE WEEKLY OR AS
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FERTILIZE MONTH.	SUMMER MONTHS 1 TIME PER
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WATER	AS NEEDED
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OVERSEEDING WITH TOP DRESS OF SAND IN THE FALL

TREE TRIMMING	YEARLY
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BUSH TRIMMING	YEARLY
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T BOXED REBUILT	YEARLY
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TABLES AND BENCHES	REPAINTED YEARLY
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CLUBHOUSE DUSTED, SWEEPED AND MOPPED
DAILY. THE BATHROOMS ARE CLEANED DAILY. THE TRASH IS
EMPITED DAILY

Lee Kinser will act as manger of the clubhouse. She will schedule all employees, be responsible for all aspects of running a business from paying the bills, insurance, payroll, working the counter, banking, paying the rent along with the monthly report, answering the phone, cleaning of the clubhouse, making sure the birds are taken care of, keeping the customers happy, ect.

Al and Lee Kinser will resume junior tournaments at the Butler Park Pitch and Putt. These tournaments were very popular in the 50's, 60's, and 70's. The tournaments are for kids 12 and under. For the younger kids Butler Park is the only course in town for them to play and compete. The tournaments will encourage competition and fair play. Trophies will be awarded to first, second, and third place. The parents and kids will determine the number of tournaments for the summer to be played.

All costs associated with the golf course are the responsibility of Al and Lee Kinser. There are no expected costs to the city associated with the operation of the golf course by Al and Lee Kinser. Our current fee price, which was approved by the city, will remain the same for at least one more year at which time we may ask approval for a slight increase due to the increased cost of operation.

STAFFING PLAN

Butler Parks hours of operation are 8:30 a.m. to dark seven days a week, 365 days a year. Everyday the entire golf course and the street and parking lot is picked up of trash including the areas that are not technically ours but make the golf course a lot cleaner. A close inspection of all the grounds for water leaks, sprinkler problems, areas to be repaired due to introvert abuse from the golfers, flags put out and taken up, inventory of ant or other problems due to pest, notice given to the out lying area due to trash pick up or trimming that needs to be done, pencils checked and replaced as needed. In the clubhouse

everyday all displays are dusted. The counter is windexed. In the bathrooms the toilets are scrubbed, the sink scrubbed, the mirrors windexed the walls washed giving special care around the door and light switch. The walls and ceilings are wiped down once a week. The toilet paper, soap, and towels replaced as necessary. All necessary displays of candy, balls ect filled and dusted. The floors are swept two times per day and moped each night. The ball washer is changed two times per week. The water to wash the clubs with in the clubhouse and out on the golf course is changed two times a week. The birdbath is changed two times per week.

GENERAL POLICIES AND PROCEDURES FOR COMPLAINTS

As there have been very few complaints dealing with the operation of the golf course in the past two years we consider each complaint on a one by one basis and take each complaint very seriously. We resolved to keep everyone happy and in the past two years have done so. Most of our customers are regulars who we consider to be friends so we don't have any problems keeping everyone happy. In the past any complaints to the parks and recreation department have always been solved amicably.

D. Part IV-Project Management Structure:

Al and Lee Kinser have primary management responsibilities. Al will act as superintendent for the outside area of the golf course and Lee will act as manager and for all responsibilities with running the clubhouse and the business end of the golf course.

E. Part V-Prior Experience: Al Kinser has been working at the golf course since he was 10 years old. This gives him 44 years at the golf course. He has been the principal manger for the past 10 years. Lee Kinser has been a replacement person in the clubhouse for the past 15 years and the principal manager for the past 2.



Amendment No. 3
to
Contract No. SA-471-93
for
Concession: Butler Pitch & Putt
between
Kinser Ranch L L C
and the
City of Austin

- 1.0 The City hereby exercises an interim provision for the above-referenced contract. Effective June 30, 2003 to August 30, 2004.
- 2.0 The interim total contract amount shall not exceed \$50,000.
- 3.0 All other terms and conditions remain the same.

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

Signed:

Lydia Rodriguez-Torres
Lydia Rodriguez-Torres, Buyer II
City of Austin
Purchasing Office

Signature:

Lee Kinser
Printed Name: Lee Kinser
Authorized Representative
Kinser Ranch L L C
Lee ~~Winston~~ & Albert Kinser
201 Lee Barton Drive
Austin, TX 78704

Date:

6/29/04

Date:

6-28-04



TO: Margaret Castillo
Department of Small and Minority Business Resources

VIA FAX: 499-7601

FROM: Lydia Rodriguez-Torres, Buyer II, Purchasing Office

Lydia Rodriguez-Torres

DATE: March 10, 2004

SUBJECT: Approval to use Zero Goals for Solicitation No. **LT04300034**
Project Name: **GOLF COURSE MANAGEMENT AT BUTLER PITCH AND PUTT GOLF COURSE**
Commodity Code(s): **96115**
Estimated Amount: **\$ 80,000 (REVENUE)**

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

☒ No Goals (Goal of 0%)

This determination is based on the following reasons:

There are sufficient MBEs and WBEs listed under this commodity code; however, no subcontracting opportunities are available as vendors will be providing their own workforce.

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 499-2028.

☒ Approval is hereby granted to use the above Goals.

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

a. Goals: ☐ % MBE ☐ % WBE

b. Subgoals: ☐ % African American ☐ % Hispanic

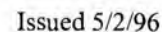
☐ % Native/Asian American ☐ % WBE

This determination is based on the following reasons:

*NO SUBCONTRACTING OPPORTUNITIES AVAILABLE
BUT LYDIA WILL NOTIFY ALL VENDOR FIRMS SO THAT THEY
WILL BID AS A PREREQ DATE 5/20/04*

Elaine Carter
SMBR Director

Date: *May 21, 2004*



References:

Barbara Puett 3401 Misty Glen Circle Austin, TX 78746 (512) 328-1498

Chester M. Garrett, Jr. P.O. Box 9142 Austin, TX 78766 (512) 452-9897

Scott Sayer, Jr. 1800 Nueces St. Austin, TX 78701 (512) 478-3483

F. Part VI-Personnel: The Kinser's have one part time employee. His name is Matt Ryan. 1714-A Cinnamon Path Austin, Texas 78704 512 445-4590. He works 20 to 30 hours a week, depending on the time of the year. His main duties are waiting on customers in the clubhouse and assisting people as necessary on the golf course. He is a long time patron at Butler Park. He has been working at Butler Park since the time of Mr. Kinser, Sr.'s death. He is well liked by Al and Lee as well as the other patrons. He is honest, reliable, and hard working. He is the only employee the Kinser's plan on hiring.

H. Part VIII-Proposal Acceptance Period: This statement is valid for a minimum period of one hundred and twenty (120) days subsequent to the RFP closing date.

J. Part X-Authorized Negotiator: Albert Winston Kinser, Jr., 11902 Fitzhugh Rd., Austin, Texas 78736. 512-288-7289 (home) 512-477-9025 (work)

K. Part XI-Fee Proposal: \$1100.00 per month for a total amount for the year of \$13,200.00, due without demand at the Office of the Director of the Parks and Recreation Department of the City of Austin by the 10th of each month for the first 5 year period. For the second five-year period the Kinser's propose \$1200.00 per month for a total of \$14,400.00 for the year and for the third five-year period the proposal is \$1300.00 per month for total revenue for the city of Austin of \$15,600.00.

Year. (3) The same amount of time in the contract mentioned above the offeror proposes to pay a percent of gross revenue of 1% of total gross revenue for the first \$80,000.00. 1.5% of total gross revenue after the first \$80,000.00 for the remaining gross revenue. With all the work and positive changes the offeror has made and is continuing to make the offeror believes this number will increase each year. The Offeror has the unique experience of successfully managing the Butler Park Course for more than five decades. Combined with their ecologically innovative approach to grounds maintenance and the plan to expand the diversity and number of the golf course's golfing patrons, make Al and Lee Kinser the proper choice to be awarded this management contract. Butler Park is currently listed on 270 web sites.

**City of Austin, Texas
Human Rights Commission
NON-DISCRIMINATION CERTIFICATION (RFP)**

TO: CITY OF AUSTIN, TEXAS

I hereby certify that our firm conforms to the 1992 City of Austin Code; Chapters 7-4 as reiterated below:

ARTICLE VII, Chapter 7-4: Discrimination in Employment by City Contractors. Sec. 7-4-2 Requirements of contractors:

- B (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to insure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training or any other terms, conditions, or privileges of employment.
- (3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Austin Human Rights Commission setting forth the provision of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which such union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement the policies and provisions of this chapter.
- (6) To cooperate fully with the City and the Austin Human Rights Commission in connection with any investigation or conciliation effort of the Austin Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practice is being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they not engage in any discriminatory employment practice as defined in this chapter.

Dated this 31 day of March, 2004

Vendor Lee Hawley Kinser

Signature Lee Hawley Ki-

Title Manager

CITY OF AUSTIN
PROPOSER'S AFFIDAVIT OF NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

RFP NO. LT04300034
FOR

GOLF COURSE MANAGEMENT AT BUTLER PITCH AND PUTT GOLF COURSE

State of Texas
County of Travis

I, Lee Hawley Kinser being first duly sworn, depose and say:

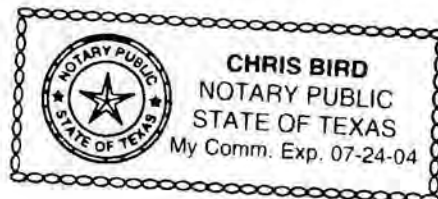
- (1) Neither I nor any of my officers, partners, owners, agents, representatives, employees, or parties in interest, have in any way colluded, conspired, or agreed, directly or indirectly, with any person, firm, corporation or other proposer or potential proposer in regard to the amount of this proposal or the terms or conditions of this proposal. I have not paid or agreed to pay, directly or indirectly any person, firm, corporation or other proposer or potential proposer, any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for fixing the prices in the attached proposal or the proposal of any other proposer. I will not pay any money or anything of value in the future for those purposes.
- (2) None of the deciding factors set forth in the request for proposal or in the subsequent agreement were my idea or the idea of anyone representing my company, unless the suggestion was made at a meeting open to all proposers, which all proposers had notice of.
- (3) Neither I nor any of my officers, partners, owners, agents, representatives, employees, or parties in interest have had any involvement in the development, preparation, evaluation, or other decision making process for this solicitation, and that should I receive a contract award in response to my proposal, no agent, representative, consultant or subconsultant affiliated with my company, who may have been involved in the development, preparation or evaluation or other decision making process for this solicitation, will have any financial interest, direct or indirect, in said contract.
- (4) There are no other potential or actual conflicts of interest regarding this solicitation.
- (5) No officer or stockholder of my company is an employee of the City of Austin, or an employee of any elected official of the City, or is related to any employee or elected official of the City of Austin.
- (6) None of my agents, representatives, subconsultants or I have undertaken or will undertake any activities or actions to promote or advertise my proposal to any member of any City Commission reviewing the proposals, member of the Austin City Council or City staff except in the course of City-sponsored inquiries, briefings, interviews or presentations between the date that the Request for Proposal was issued and the date of award by City Council.

Signature/Title: Lee Hawley Kinser

Subscribed and sworn to before me this 31 day of March 2004

Chris Bird
Notary Public

My Commission Expires 7/24/04



**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE)
PROCUREMENT PROGRAM (RFP)**

SOLICITATION NUMBER: LT04300034

PROJECT NAME: **GOLF COURSE MANAGEMENT AT BUTLER PITCH AND
PUTT GOLF COURSE**

DATE ISSUED: MARCH 15, 2004

The 1992 City Code, Chapter 5-7, as amended, establishes a Minority- and Women-Owned Business Enterprise (M/WBE) Procurement Program. The aim of this program is to promote M/WBE participation in all areas of the City's procurement, through its prime contract awards and subcontracts, and to afford M/WBEs an equal opportunity to compete for all City contracts. In particular, this program encourages contractors to provide opportunities to certified M/WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form as any person or business enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with the 1992 City Code, Chapter 5-7, as amended, goals for M/WBE participation differ from contract to contract, based on the type of contract, the availability of M/WBEs to perform the functions of the contract, and other factors.

The City of Austin has determined that no goals will be established for this project.

Even though no goals have been established, the bidder is required to comply with the City's M/WBE Procurement Program if areas of subcontracting are identified. If certain services are needed to perform the contract and the bidder does not perform those services with its own workforce or if certain supplies or materials are required and the bidder does not have those supplies or materials in its inventory, the bidder shall:

- A. contact the Department of Small and Minority Business Resources (SMBR), 4100 Ed Bluestein Blvd, Austin, Texas 78721 ((512) 499-7600) to obtain a list of available MBE/WBE firms to perform the services or provide the supplies or materials. Make a good faith effort to use MBE/WBEs to provide the needed services, supplies or materials.
- B. obtain an M/WBE Procurement Program Package from the buyer in the Purchasing Office, complete the Compliance Plan to document all subcontracting activity, and return it to the Buyer in the Purchasing Office.
- C. report all initial subcontract awards to the Contract Manager for this project within ten (10) calendar days after execution of an Agreement with a subcontractor.

I understand and agree that this MBE/WBE Form shall become a part of my contract with the City of Austin.

Lee Hawley Kinser
Name and Title of Authorized Representative (Print or Type)

Lee Hawley K-
Signature

3-31-04
Date

CITY OF AUSTIN, TEXAS

Purchasing Office REQUEST FOR PROPOSAL (RFP) Offer and Award Sheet

SOLICITATION NO: LT04300034

COMMODITY/SERVICE DESCRIPTION: GOLF COURSE
MANAGEMENT AT BUTLER PITCH AND PUTT GOLF COURSE

DATE ISSUED: MARCH 15, 2004

REQUISITION NO.: RX 860JJ002596

PRE-PROPOSAL CONFERENCE TIME AND DATE: N/A

LOCATION:

FOR CONTRACTUAL ISSUES CONTACT:

PROPOSAL DUE PRIOR TO: 11:00 A.M., APRIL 15, 2004

Lydia Rodriguez-Torres
Lydia Rodriguez-Torres, Buyer II
(512) 530-7615

COMPLIANCE PLAN DUE PRIOR TO:

PROPOSAL CLOSING TIME AND DATE: 11:00 A.M., APRIL 15, 2004

FOR TECHNICAL ISSUES CONTACT:

Jay Stone, PARD
(512) 974-6712

LOCATION: 206 E. 9th STREET, TWO COMMODORE PLAZA
SUITE 15.120, AUSTIN, TEXAS 78701

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

SOLICITATION TO:

Signature of Person Authorized to Sign Proposal

FEDERAL TAX ID NO. _____

Phone No. () _____

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

Fax No. () _____

Date: _____

AWARD DOCUMENT

(This section for City of Austin only)

Date of Award: _____

Contract No.: _____

The above Proposal is accepted as to: _____

Dollar Value: _____

By: _____

PURCHASING OFFICE FOR CITY MANAGER

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SECTION NO.	TITLE	PAGES
0100, 0200, 0300	See http://www.ci.austin.tx.us/purchase/standard.htm	N/A
0400	SUPPLEMENTAL PURCHASE PROVISIONS	2
0500	SCOPE OF WORK / SPECIFICATION	4
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	4
0700	NON-DISCRIMINATION CERTIFICATION	1
0800	AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI LOBBYING	1
0900	M/WBE PROGRAM PACKAGE (with Availability List and Compliance Plan or No Goals Form)	1
1000	NO OFFER RESPONSE FORM	1

RETURN FOLLOWING DOCUMENTS WITH PROPOSAL*

- Cover Page Offer and Award Sheet (IFB)
- Section 0700, Non-Discrimination Certification (HRC 0001)
- Section 0800, Proposer's Signed Affidavit of Non-Collusion, Non-Conflict Of Interest, And Anti-Lobbying
- Section 0900, MBE/WBE Procurement Program Package (IFB), or No Goals Form
- Proposal Guarantee (if required)

* See also Section 0400, Supplemental Purchase Provisions, Section 0500, Scope of Work/Specification, and Section 0600, Proposal Preparation Instructions & Evaluation Factors, for additional documents that must be submitted with the Proposal.

NOTES:

INCORPORATION OF DOCUMENTS. As of March 22, 2000, three (3) Sections of the solicitation documents have been made available via the Internet. These three sections: Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address:

<http://www.ci.austin.tx.us/purchase/standard.htm>. Please select the appropriate set of documents for the type solicitation – i.e. Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Quotations (RFQ).

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the below address. Please have the solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed or faxed to you.

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

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin
Purchasing Office	Purchasing Office
P.O. Box 1088	Two Commodore Plaza
Austin, Texas 78767-8845	206 E. 9th St. 15th floor, Suite 15.120
	Austin, Texas 78701
	Reception Phone: (512) 499-2500

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

Unless authorized in the solicitation, telegraphic or facsimile Proposals will not be accepted.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS (RFP)
RFP No.: LT04300035**

The following Supplemental Purchasing Provisions apply to this solicitation;

1. **GENERAL INFORMATION:**

a. **Explanations Or Clarifications**

- i. All requests for explanations or clarifications must be submitted in writing to the Purchasing Office no later than ***April 10, 2004 at 3:00 p.m. CST, to the attention of Lydia Rodriguez-Torres, fax (512) 530-6630.***
- ii. Any material information given to one Proposer concerning a Solicitation will be furnished as an Addendum to all Proposers who have been issued a Solicitation. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Proposers shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding. Requests for explanations, clarifications or interpretations may be faxed to the City. The fax must clearly identify the buyer's name and solicitation number.

2. **Insurance** (reference paragraph 32 in Section 0300).

- A. The insurance certificate shall be mailed before the contract can take effect, to the following address:

City of Austin Purchasing Office
Attn: **Lydia Rodriguez-Torres**
P. O. Box 1088
Austin, Texas 78767

3. **Term of Contract:**

- A. The Contract shall be in effect for a period of ***one (1) five (5) year*** period and may be extended thereafter for up to ***two (2) additional five (5) year*** periods, subject to the approval of the Contractor and the City Manager 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).

4. **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 **\$9.00** per hour as of March 25, 2001. This minimum wage is required for any Contractor employee assigned to this City Contract. 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 provide health insurance with optional family coverage for all Contractor employees assigned to this contract.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS (RFP)
RFP No.: LT04300035**

- C. The City requires Contractors bidding on this Contract to provide the following information about wages and benefits currently provided to their employees:

Status Full-time (F) Part-time(P)	Job Title	Hourly Wage	List type of Company Health Insurance (e.g. medical, dental)	Workers' Compensation Insurance Coverage (yes, no)

- i. Proof of the health care plan shall be provided by the Contractor prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- ii. Upon request by the City's Contract Manager, the Contractor shall verify salaries by providing copies of weekly payroll documents.

5. **Contract Manager:**

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

Jay Stone (512) 974-6712

Parks & Recreation Department

200 S. Lamar Blvd

Austin, TX 78704

CITY OF AUSTIN
PURCHASING OFFICE
Request for Proposal
Austin Parks and Recreation Department

**GOLF COURSE MANAGEMENT
AT
BUTLER PITCH AND PUTT GOLF COURSE**

SCOPE OF WORK

1. **PURPOSE**

The City of Austin, hereinafter referred to as the City, seeks proposals, for an annual service contract, in response to this Request for Proposal (RFP) from an individual or company qualified and experienced in golf operations to manage and provide landscape maintenance of the Butler Pitch and Putt nine hole golf course.

2. **BACKGROUND**

The Concessionaire must provide details of the experience and qualifications he/she possesses which demonstrates an ability to effectively provide golf course management and maintenance.

Butler Pitch and Putt offers a par-three short irons golf course to participants of all ages. Opened in 1950, Butler Pitch and Putt is one of the City's oldest concessions. The current contract for the concession was signed in 1993. Over the last four years of the contract, gross revenue has increased steadily from \$37,790 in fiscal year 1998-1999 to \$105,677 in fiscal year 2001-2002. Participation at Butler Pitch and Putt, like any other golf course, is dependent on the weather conditions.

3. **SCOPE OF WORK**

A. **Title of Program**

The Butler Pitch and Putt Golf Course located at 201 Lee Barton Drive, Austin, Texas 78704. Butler Pitch and Putt is a nine hole, par three, short irons golf course located on the Town Lake Corridor.

B. **Objective**

The City's objective is to enter into a contract with a qualified and experienced individual/company to provide, in the designated location, a quality golf course management operation, including landscape maintenance, with an emphasis on service to the public. In addition, the City seeks proposals which include related merchandise sales, such as balls, tees, soft drinks, snacks and other items appropriate to the recreational use of the course, and programming designed to increase participation such as lessons and tournaments. All proposals should include plans for minimizing damage to persons and property from errant golf balls. Minimum days of operation will be seven (7) days per week, 8:30 a.m. until dusk. The contract term for this concession will be **one (1) five (5) year contract period with two (2) five (5) year extension options**. Contract will begin thirty (30) days after award of contract.

C. **Implementation**

1. City of Austin invites proposals from Concessionaires with a minimum of five (5) years experience in golf services.
2. The Concessionaire shall operate and maintain the golf course including staffing, management and any other functions consistent with a golf operation.
3. The Concessionaire shall hire at his own cost and expense, train and supervise staff whose appearance, manner and character will reflect credit on the City and will be acceptable to the patrons of the concession, to assist him/her in the performance of this contract.
4. The Concessionaire shall provide a plan for barriers, such as fencing, shrubbery, trees or other means for minimizing damage from errant golf balls. The aesthetic appearance of the proposed protective measures will be a significant evaluation consideration.
5. The Concessionaire shall provide all equipment necessary to the operation of a golf course concession at the contract premises, including separate containers for any recyclable materials.
6. The Concessionaire shall provide an itemized price list, including but not limited to, of services to be provided and the following items:
 - Golf rounds
 - Rental clubs
 - Golf merchandise
 - Soft drinks and snacks

Prices submitted with the RFP shall not be changed for a minimum of ninety (90) days after opening day. After the ninety (90) days, the Concessionaire shall notify Contract Manager of any proposed changes in prices or items sold. All changes in prices or items sold must have prior written approval from the Contract Manager.

7. The Concessionaire shall provide and keep in full force and effect insurance outlined Section 0300, the Standard Purchase Terms and Conditions, Paragraph 32.
8. The Concessionaire shall not make any structural alterations, repairs, or improvements of the premises, without written permission from the Contract Manager. Any such alterations made without permission shall be done at the expense of the Concessionaire and shall become the property of the City at the termination of this Agreement. The City shall have the right to require the Concessionaire to restore the property to its original condition at the Concessionaire's expense. The Concessionaire shall submit a written report to the Contract Manager of any needed repairs or suggested alterations or improvements. Concessionaire shall allow no liens to be filed against City property.
9. The following conditions shall be in effect as to the concession rights:
 - a. Concessionaire shall conduct his business in a manner that is efficient and orderly and which will reflect credit upon both himself and the City. The Concessionaire shall perform as follows:
 - i. Concessionaire shall not permit any defacing of the building or buildings where his physical facilities are located.
 - ii. Permit no undue loitering.
 - iii. Permit no objectionable language.

- b. The Concessionaire shall comply with all city, county, state and federal regulations and laws pertaining to the operation of the concession and particularly sanitary and health regulations pertaining to the preparation and service of food. All health cards and permits shall be mounted in a conspicuous location.
- c. The golf course shall be kept free and clear from rubbish, filth, and refuse. The Concessionaire must employ the necessary number of personnel to place garbage in large containers that must be closed with securely fitting lids and place by Concessionaire at a location to be designated by the Contract Manager. Also, Concessionaire shall establish and consistently enforce such regulations in regards to cleanliness and disposal to prevent the inception and spread of infectious or contagious diseases and nuisance.
- d. Custodial Duty Schedule
 - Daily Requirements
 - Entire area shall be kept neat and clean
 - Clean all counter tops and tables
 - Empty and clean trash receptacles and install new liners
 - Remove all waste from site to container
- f. All items shall be performed as scheduled and repeated at more frequent intervals should such items as weather, use or litter make such repetition necessary to keep a clean appearance.

D. Acceptance of Work

- 1. The Concessionaire shall establish and maintain during the term of this agreement separate records and accounts, including a separate bank account, relating to Butler Pitch and Putt. Records and accounts shall be subject to the examination and audit by the City at any time.
- 2. The Concessionaire shall pay to the City without demand, at the Office of the Director of the Parks and Recreation Department of the City of Austin a minimum of \$12,000 per year (to be paid to the City in monthly installments of \$1,000 by the 10th of each month). In addition to the monthly installments Concessionaire shall propose to pay:

___ percentage of gross sales up to \$80,000
and
___ percentage of gross sales exceeding \$80,000.

4. PROGRESS REPORTS

- 1. The Concessionaire shall submit to Contract Manager, by the 10th of each month the Monthly Concession Revenue Report and the cash register tapes (Z tapes) from the previous month. Contractor's copies of the cash register tapes shall be retained for three (3) years after the contract expires.
- 2. The Concessionaire shall provide to Contract Manager a copy of Internal Revenue Service Form 1040, Schedule C (Statement of Operations) pertaining specifically to concession income. This form shall be submitted to Contract Manager annually within seven (7) calendar days of filing with the IRS.
- 3. The Concessionaire shall submit to Contract Manager a copy of their monthly sales tax report within fifteen (15) calendar days of filing the report.

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: LT04300034**

1. PROPOSAL FORMAT

Proposer shall submit one (1) original and six (6) copies of the proposal.

Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. The proposal itself shall be organized in the following format and informational sequence:

- A. **Part I - Business Organization**: State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- B. **Part II - System Concept and Solution**: Define in detail your understanding of the requirement presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
- C. **Part III - Program**: Describe your technical plan for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Statement of Work and your plan for accomplishment. Specifically indicate:
 - i. Provide an itemized price list of services.
 - ii. Include the Total Revenue to the City of Austin, including a 5-year expense proforma.
 - iii. Provide a detailed business plan and capital improvement plan.
 - iv. Provide a staffing plan including hours of operation, janitorial procedures and equipment list.
 - v. Provide general policies and procedures, including a complaint resolution.
 - vi. A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal.
 - vii. A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal.
- D. **Part IV – Project Management Structure**: Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- E. **Part V - Prior Experience**: Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 1995. Supply the project title, year, and reference name, title, present address, and phone number of principal person for whom prior projects were accomplished.

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: LT04300034**

- F. **Part VI - Personnel:** Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide all resumes.
- G. **Part VII - Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:**
- i. Proposers, including their officers, owners, agents, representatives, subconsultants, employees, or parties in interest :
 - ii. shall not in any way collude, conspire or agree, directly or indirectly, with any person, firm, corporation or other Proposer or potential Proposer in regard to the amount of their proposal or the terms or conditions of their proposal.
 - iii. shall not pay, or agree to pay, directly or indirectly any person, firm, corporation or other Proposer or potential Proposer, any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for fixing the prices in the proposal or the proposal of any other Proposer. Proposers shall not pay money or anything of value in the future for these purposes.
 - iv. shall certify that none of the deciding factors set forth in the request for proposal or in the subsequent agreement were their idea or the idea of anyone representing their company, unless the suggestion was made at a meeting open to all Proposers, which all Proposers had notice of.
 - v. must attest that they had no involvement in the development, preparation, evaluation, or other decision making process for this solicitation, and that should the Proposer receive a contract award in response to their proposal, no agent, representative, consultant or subconsultant affiliated with the Proposer, who may have been involved in the development, preparation or evaluation or other decision making process for this solicitation, will have any financial interest, direct or indirect, in said contract.
 - vi. must state that there are no other potential or actual conflicts of interest regarding this solicitation.
 - vii. shall certify that no officer or stockholder of their company is an employee of the City of Austin, or an employee of any elected official of the City, or is related to any employee or elected official of the City of Austin.
 - viii. shall not have undertaken or will not undertake any activities or actions to promote or advertise their proposal to any member of any City Commission reviewing the proposals, member of the Austin City Council or City staff except in the course of City-sponsored inquiries, briefings, interviews or presentations between the date that the Request for Proposal was issued and the date of award by City Council.
 - ix. Proposers shall sign and return with their proposal, the affidavit of Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying located in section 0805 herein.
- H. **Part VIII - Proposal Acceptance Period:** All proposals must include a statement that they are valid for a minimal period of one hundred and twenty (120) days subsequent to the RFP closing date.
- I. **Part IX - Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information

CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: LT04300034

from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

- J. **Part X - Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate contract terms and render binding decisions on contract matters.
- K. **Part XI - Fee Proposal:** The Concessionaire shall pay to the City without demand, at the Office of the Director of the Parks and Recreation Department of the City of Austin a minimum of \$12,000 per year (to be paid to the City in monthly installments of \$1,000 by the 10th of each month). In addition to the monthly installments Concessionaire shall pay:

___ percentage of gross sales up to \$80,000
and
___ percentage of gross sales exceeding \$80,000.

2. **EXCEPTIONS:**

If any exceptions are taken to any portion of the Solicitation, the Proposer must clearly indicate the exceptions taken and include a full explanation as a separate attachment to the Proposal. The failure to identify exceptions or proposed changes with a full explanation will constitute acceptance by the Proposer of the Solicitation as proposed by the City. The City reserves the right to reject a proposal containing exceptions, additions, qualifications or conditions not called for in the solicitation.

3. **PROPOSAL PREPARATION COSTS:**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

4. **EVALUATION FACTORS AND AWARD**

- A. **Competitive Selection:** This procurement will comply with applicable City of Austin Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph b below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful Proposer. Award of a contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

- i. 100 points.

- (1). System Concept and Solutions Proposed (Grasp of the requirement and its solution(s), responsiveness to terms and conditions, completeness and thoroughness of the technical data and documentation.) **30 points**
- Operation of golf course
 - Proposer's business plan
 - Services being provided including staffing, equipment, pricing, etc.
 - Concession's policies and procedures
 - Concession – hours of availability
 - Staffing Plans

**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: LT04300034**

- Services and price list
- (2). Demonstrated Applicable Experience **20 points**
 - Experience in golf management and landscape maintenance operations
 - Minimum five (5) years in operating a golf course
 - Experience of owner/manager/employees
 - Number of employee(s)
 - Resumes
- (3). Organizational and Management Practices **20 points**
 - Organizational chart
 - Policies and procedures
 - Complaint resolution – Detailed procedures to include but not limited to City intervention and/or mediation
- (4). Total Revenue to General Fund **30 points**
 - \$12,000 minimum guarantee to City (monthly payments) plus a percent of gross sales
_____ % of gross sales of the first \$80,000 (*Proposer must complete*) and
_____ % of gross sales exceeding \$80,000 (*Proposer must complete*)
 - Five (5) year expense proforma
- ii. Interviews, Optional. Interviews may be conducted at the discretion of the City. Maximum **25 points**.

City of Austin, Texas
Human Rights Commission
NON-DISCRIMINATION CERTIFICATION (RFP)

TO: CITY OF AUSTIN, TEXAS

I hereby certify that our firm conforms to the 1992 City of Austin Code; Chapters 7-4 as reiterated below:

ARTICLE VII, Chapter 7-4: Discrimination in Employment by City Contractors. Sec. 7-4-2 Requirements of contractors:

- B (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to insure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training or any other terms, conditions, or privileges of employment.
- (3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Austin Human Rights Commission setting forth the provision of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which such union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement the policies and provisions of this chapter.
- (6) To cooperate fully with the City and the Austin Human Rights Commission in connection with any investigation or conciliation effort of the Austin Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practice is being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they not engage in any discriminatory employment practice as defined in this chapter.

Dated this _____ day of _____, 20____

Vendor_____

Signature_____

Title_____

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

**RFP NO. LT04300034
FOR**

GOLF COURSE MANAGEMENT AT BUTLER PITCH AND PUTT GOLF COURSE

State of Texas
County of Travis

I, _____, being first duly sworn, depose and say:

- (1) Neither I nor any of my officers, partners, owners, agents, representatives, employees, or parties in interest, have in any way colluded, conspired, or agreed, directly or indirectly, with any person, firm, corporation or other proposer or potential proposer in regard to the amount of this proposal or the terms or conditions of this proposal. I have not paid or agreed to pay, directly or indirectly any person, firm, corporation or other proposer or potential proposer, any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for fixing the prices in the attached proposal or the proposal of any other proposer. I will not pay any money or anything of value in the future for those purposes.
- (2) None of the deciding factors set forth in the request for proposal or in the subsequent agreement were my idea or the idea of anyone representing my company, unless the suggestion was made at a meeting open to all proposers, which all proposers had notice of.
- (3) Neither I nor any of my officers, partners, owners, agents, representatives, employees, or parties in interest have had any involvement in the development, preparation, evaluation, or other decision making process for this solicitation, and that should I receive a contract award in response to my proposal, no agent, representative, consultant or subconsultant affiliated with my company, who may have been involved in the development, preparation or evaluation or other decision making process for this solicitation, will have any financial interest, direct or indirect, in said contract.
- (4) There are no other potential or actual conflicts of interest regarding this solicitation.
- (5) No officer or stockholder of my company is an employee of the City of Austin, or an employee of any elected official of the City, or is related to any employee or elected official of the City of Austin.
- (6) None of my agents, representatives, subconsultants or I have undertaken or will undertake any activities or actions to promote or advertise my proposal to any member of any City Commission reviewing the proposals, member of the Austin City Council or City staff except in the course of City-sponsored inquiries, briefings, interviews or presentations between the date that the Request for Proposal was issued and the date of award by City Council.

Signature/Title: _____

Subscribed and sworn to before me this _____ day of _____ 20__.

Notary Public

My Commission Expires _____

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE)
PROCUREMENT PROGRAM (RFP)**

SOLICITATION NUMBER:	LT04300034
PROJECT NAME:	GOLF COURSE MANAGEMENT AT BUTLER PITCH AND PUTT GOLF COURSE
DATE ISSUED:	MARCH 15, 2004

The 1992 City Code, Chapter 5-7, as amended, establishes a Minority- and Women-Owned Business Enterprise (M/WBE) Procurement Program. The aim of this program is to promote M/WBE participation in all areas of the City's procurement, through its prime contract awards and subcontracts, and to afford M/WBEs an equal opportunity to compete for all City contracts. In particular, this program encourages contractors to provide opportunities to certified M/WBEs for subcontracts or related contracts. A "Subcontractor" is defined by the Ordinance and for the purposes of this form as any person or business enterprise providing goods, labor, or services to a contractor if such goods, labor, or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City. In accordance with the 1992 City Code, Chapter 5-7, as amended, goals for M/WBE participation differ from contract to contract, based on the type of contract, the availability of M/WBEs to perform the functions of the contract, and other factors.

The City of Austin has determined that no goals will be established for this project.

Even though no goals have been established, the bidder is required to comply with the City's M/WBE Procurement Program if areas of subcontracting are identified. If certain services are needed to perform the contract and the bidder does not perform those services with its own workforce or if certain supplies or materials are required and the bidder does not have those supplies or materials in its inventory, the bidder shall:

- A. contact the Department of Small and Minority Business Resources (SMBR), 4100 Ed Bluestein Blvd, Austin, Texas 78721 ((512) 499-7600) to obtain a list of available MBE/WBE firms to perform the services or provide the supplies or materials. Make a good faith effort to use MBE/WBEs to provide the needed services, supplies or materials.
- B. obtain an M/WBE Procurement Program Package from the buyer in the Purchasing Office, complete the Compliance Plan to document all subcontracting activity, and return it to the Buyer in the Purchasing Office.
- C. report all initial subcontract awards to the Contract Manager for this project within ten (10) calendar days after execution of an Agreement with a subcontractor.

I understand and agree that this MBE/WBE Form shall become a part of my contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature

Date

CITY OF AUSTIN
PURCHASING OFFICE
"NO OFFER" RESPONSE FORM (RFP)

SOLICITATION NUMBER: LT04300034

Please Complete and Return This Form to the following address to Indicate A "No Offer" Response

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

(DO NOT RETURN ALONG WITH OFFER)

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

- ☐ Unable to supply. Remove my company from the source list for the COMMODITY / SERVICE GROUP:

96115 – GOLF COURSE MANAGEMENT AT BUTLER PITCH AND PUTT GOLF COURSE

- ☐ Unable to supply item (s) specified. Retain my company on the vendor list for this commodity / service.

- ☐ Other (please specify):

Authorized Signature

Company

Title

Address

Date