



Amendment No. 9
to
Contract No. PA100000018
for
ROCIP V Administration
between
Aon Risk Services Southwest, Inc.
and the
City of Austin

- 1.0 The City hereby amends the above referenced contract to update the holdover term to February 22, 2017 to May 1, 2022. Additionally, the allocation of the contract amount between Aon Risk Services Southwest, Inc. and the insurance carriers is updated.
- 2.0 The total Contract amount is unchanged for the holdover period. The total Contract amount is recapped below:

Term	Contract Amount for the Term	Total Contract Amount
Initial Term: 12/31/2009 – 12/30/2010	\$1,600,000.00/ \$13,700,000.00	\$1,600,000.00/ \$13,700,000.00
Amendment No. 1: Corrected Contract Price 1/19/2010	\$0.00	\$1,600,000.00/ \$13,700,000.00
Amendment No. 2: Moved \$1,038,361 of funding to Broker 9/10/2010	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 3: Name Clarification 9/10/2010	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 4: Name Reassignment 8/23/2010	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 5: Term Change 1/14/2011	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 6: Holdover 7/11/2013	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 7: Holdover 11/23/2015	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 8: Holdover and Added Special Provisions 2/21/2017	\$0.00	\$2,638,361.00/ \$12,661,639.00
Amendment No. 9: Holdover Date and Reallocation of Contract Amount 3/3/2017	\$0.00	\$2,796,677.00/ \$12,503,323.00

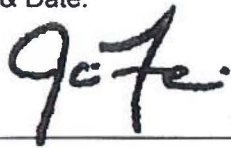
- 3.0 MBE/WBE goals were not established for this contract.

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.

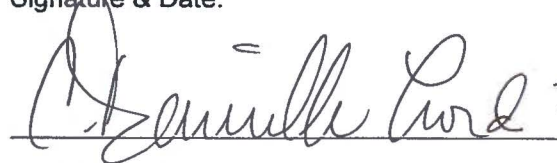
Signature & Date:

 3.3.17

Printed Name: Jairo "Jerry" Ferreira
Authorized Representative

Aon Risk Services Southwest, Inc.
75 Remittance Drive
Suite 1943
Chicago, IL 60675-1943

Signature & Date:

 3/6/17

Danielle Lord
Corporate Contract Compliance Manager
City of Austin Purchasing Office



Amendment No. 8
to
Contract No. PA100000018
for
ROCIP V Administration
between
Aon Risk Services Southwest, Inc.
and the
City of Austin

1.0 The City hereby amends the above referenced contract to exercise a holdover for the term of February 23, 2017 to May 1, 2022 to allow sufficient time for receipt and processing of deductible invoices, final reporting and other closeout activities. Additionally, the following language is incorporated into Section 0500, Scope of Work, Paragraph 6, Special Provisions:

1.1 There will be no continuing Contractor obligations under Section 0500, Scope of Work beyond May 1, 2017 unless mutually agreed between both parties with the exception of:

- 1.1.1 Contractor to provide final close out report of ROCIP V as of July 1, 2017.
- 1.1.2 Contractor to request loss run annually and follow open claims status after close out.
- 1.1.3 Contractor to request collateral reduction as of May 1, 2019, and negotiate annually thereafter until collateral is released.
- 1.1.4 Contractor to obtain quotations from carriers to buy out the balance of the Completed Operations exposure at May 1, 2019.

2.0 The total Contract amount is unchanged for the holdover period. The total Contract amount is recapped below:

Term	Contract Amount for the Term	Total Contract Amount
Initial Term: 12/31/2009 – 12/30/2010	\$1,600,000.00/ \$13,700,000.00	\$1,600,000.00/ \$13,700,000.00
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- 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.

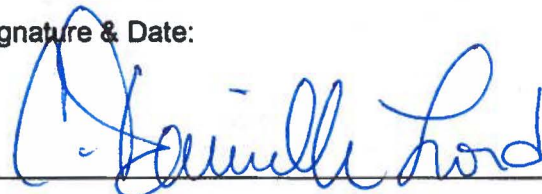
Signature & Date:

 2/22/17

Printed Name: Jerry Gairo Ferreira
Authorized Representative

Aon Risk Services Southwest, Inc.
75 Remittance Drive
Suite 1943
Chicago, IL 60675-1943

Signature & Date:

 2/24/17

Danielle Lord
Corporate Contract Compliance Manager
City of Austin Purchasing Office



Amendment No. 7
to
Contract No. PA100000018
for
ROCIP V Administration
between
AON Risk Services Southwest, Inc.
and the
City of Austin

- 1.0 The City hereby wishes to exercise a holdover provision of the above referenced contract. The term for the holdover will be January 1, 2016 to February 22, 2017.
- 2.0 Delete Paragraph a) in Section 5. Introduction, 5. Reports & Records and replace with the following:
- a) Quarterly report to be provided at the quarterly service meeting. This report shall at a minimum include:
- i. Number of projects enrolled in the program, percentage complete for each project, number of completed projects, number of active projects.
 - ii. Number of contractors enrolled in the program; number of enrolled contractors with no off site insurance, percentage of contractors identified as minority contractors by ethnic group (African American, Asian American, Hispanic, Native American, Women owned).
 - iii. Claims summary to include all claims. This spreadsheet highlights all new claims, provides a breakdown between GL and WC claims, identifies project, GC, contractor and claimant, DOL and description of loss. Sorting capability is critical.
 - iv. Premium recap providing projected values and payroll; completed project values, completed project payroll, losses for completed projects, losses to date for all projects
- 3.0 The total Contract amount is unchanged for the holdover period. The total Contract authorization is recapped below:

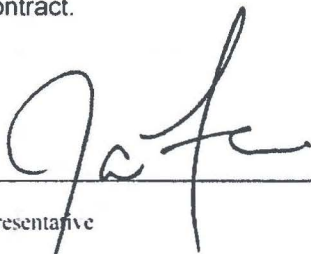
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4.0 MBE/WBE goals were not established for this contract.

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.

Signature:

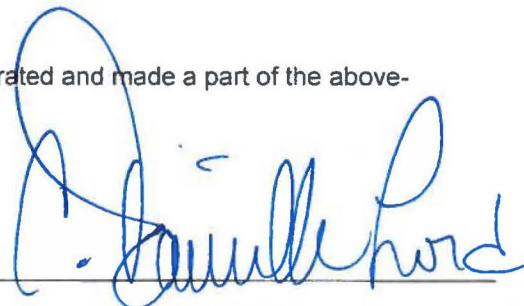


Printed Name:

Authorized Representative

AON Risk Services Southwest, Inc.
2711 N. Haskell Avenue, Suite 500
Dallas, TX 75204

Signature:



Danielle Lord, Corporate Contract Compliance Manager
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
ALLIED NORTH AMERICA INSURANCE
BROKERAGE OF TEXAS, LLC ("Contractor")
for
Rolling Owner Controlled Insurance Program (ROCIP)
Administrator
Contract Number: PA100000018**

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

This Contract is between Allied North America Insurance Brokerage of Texas, LLC having offices at 12770 Coit Road, Suite 750, Dallas, TX 75251 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number MRH1037.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Request for Proposal (RFP), MRH1037 including all documents incorporated by reference
- 1.1.3 Allied North America Insurance Brokerage of Texas, LLC Offer, dated August 11, 2009, including subsequent clarifications

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

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

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

1.4 Term of Contract. The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to four (4) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$1,004,267 for Contract term as indicated in the Cost Proposal. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

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

**ALLIED NORTH AMERICA INSURANCE
BROKERAGE OF TEXAS, LLC**

CITY OF AUSTIN

Lloyd Ray Pitts, Jr

Printed Name of Authorized Person



Signature

President

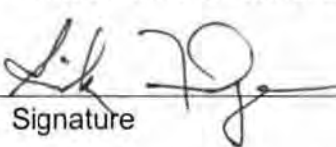
Title:

December 30, 2009

Date:

Rick Fudge

Printed Name of Authorized Person



Signature

Deputy Purchasing Officer

Title:

12/31/2009

Date:

Attachments:

Item Numbers	Description	Page Numbers
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ADD1	Addendum One (1)	1-9
0800	Non-Discrimination Certification	1
0805	Non-Suspension or Debarment Certification	1
0810	Non-Collusion, Non-Conflict of Interest and Anti-Lobbying Affidavit	2
0815	Living Wages and Benefits Contractor Certification	1
0820	Living Wages and Benefits Employee Certification	6
0900	No Goals Form	2

CITY OF AUSTIN, TEXAS

Purchasing Office
REQUEST FOR PROPOSAL (RFP)
Offer Sheet

SOLICITATION NO: MRH1037

COMMODITY/SERVICE DESCRIPTION: Rolling Owner Controlled Insurance Program (ROCIP) Administrator

DATE ISSUED: July 6, 2009

PRE-PROPOSAL CONFERENCE TIME AND DATE: July 16, 2009 at 1:00 p.m. C.D.T.

REQUISITION NO: 5800 09062900625

COMMODITY CODE: 91869

LOCATION: 124 W. 8th Str., 3rd Floor Conference Room, Austin, TX

FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:

PROPOSAL DUE PRIOR TO: August 13, 2009 at 2:00 p.m. C.D.T.

COMPLIANCE PLAN DUE PRIOR TO: N/A

Malinda Horitski

PROPOSAL CLOSING TIME AND DATE: August 13, 2009 at 2:00 p.m. C.D.T.

Buyer II

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

Phone: (512) 974-2651

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

All Contractors and Subcontractors must be registered to do business with the City prior to submitting a response to a City Solicitation. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto <https://www.cityofaustin.org/purchase> and follow the directions.

SUBMIT 1 ORIGINAL AND SIX (6) SIGNED COPIES OF RESPONSE

SOLICITATION TO: City of Austin – Purchasing Department

Signature of Person Authorized to Sign Offer

Lloyd Ray Pitts, President

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

FEDERAL TAX ID NO. [REDACTED]

[REDACTED] 11, 2009

Company Name: Allied North America Insurance Brokerage of Texas, LLC

Address: 12770 Coit Road, Suite 750

City, State, Zip Code Dallas, TX 75251

Phone No. (972) 455-1400

Fax No. (972) 3[REDACTED]-8837

BELOW INFO MUST MATCH THE NAME AND ADDRESS ON INVOICE AND COMPANY PROFILE WITH CITY

Company "Remit To" Name: Allied North America Insurance Brokerage of Texas, LLC

Remit to Address: 12770 Coit Road, Suite 750

City, State, Zip Code Dallas, TX 75251

Email Address sbratton@alliedna.com

Table of Contents

SECTION NO.	TITLE	PAGES
0100, 0200, 0300	See http://www.ci.austin.tx.us/purchase/standard.htm *	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	4
0500	SCOPE OF WORK	7
0600	PROPOSAL PREP INSTRUCTIONS / EVALUATION FACTORS	6
ATTA	ATTACHMENT 'A' CURRENT ROCIP IV PROJECTS	3
ATTB	ATTACHMENT 'B' ROCIP V PROJECT IDENTIFICATION	2
ATTC	ATTACHMENT 'C' NET COST SAVINGS CALCULATION	1
ATTD	ATTACHMENT 'D' OPEN MARKET PREMIUM CALCULATION	1
ATTE	ATTACHMENT 'E' COMMERCIAL MARKETS & REFERENCES	1
ATTF	ATTACHMENT 'F' PERSONNEL QUALIFICATION QUESTIONNAIRE	1
ATTG	ATTACHMENT 'G' ROCIP IV WC PAYROLLS BY CODE	10
0800	NON-DISCRIMINATION CERTIFICATION	1
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	1
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT	2
0815	LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION	1
0820	LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION	1
0825	WORK PLACE CONDITIONS AFFIDAVIT	N/A
0830	BUY AMERICAN ACT CERTIFICATE	N/A
0835	NONRESIDENT BIDDER PROVISIONS	N/A
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE or NO GOALS UTILIZATION PLAN	2
1000	"NO OFFER" RESPONSE FORM	1

All other Sections may be viewed at: <http://www.ci.austin.tx.us/purchase> by clicking the link to "Search for Solicitations", sign in if registered, register, or use public access to follow the links to "Business Opportunities" and "Search for Solicitation."

RETURN FOLLOWING DOCUMENTS WITH BID/PROPOSAL/QUOTE/RESPONSE/SUBMITTAL**

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

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

NOTES:

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

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

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the 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 Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office

Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Notes: Offers (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 Offers will not be accepted.

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

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

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

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

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 while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a non duplicated invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. 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.

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

- 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 thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of 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 (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
- i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not

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actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If 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 Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code 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 Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager

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

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable

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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.
- C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
- E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from 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 performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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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) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. 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) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process.

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specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all 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: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (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 in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously

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identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The 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 in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 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.

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- 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 endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City 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

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makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
- A. **Patents**. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights**. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or 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

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registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
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.

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47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the 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:

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

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

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

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

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

A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means –
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-

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- (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
 - C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
 - D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by **4:00 PM C.D.T. on July 23, 2009**. Questions may be submitted via fax to 512-974-2388 or via email to malinda.horitski@ci.austin.tx.us.

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

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

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Malinda Horitski
Solicitation No. MRH1037
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$250,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$250,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

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- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).

- (1) The policy shall contain the following provisions:
- (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Independent Contractor's Coverage.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

- iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

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

- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

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

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

3. **PERFORMANCE BOND (Must also include a Bid/Proposal/Response Guaranty/Bond – see paragraph 5 above)**

- A. The Contractor shall provide a Performance Bond in an amount equal to 100% of the Contract amount within fourteen (14) calendar days after notification of award. The Performance Bond serves as security for the faithful performance of all of the Contractor's obligations under the Contract. The Performance Bond shall be issued by a

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solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

- B. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

4. **TERM OF CONTRACT**

- A. The Contract shall be in effect for an initial term of twelve (12) months and may be extended thereafter for up to four (4) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or her designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

5. **QUANTITIES**

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

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

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

Invoices shall be mailed to the below address:

	City of Austin
Department	Risk Management
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

- B. The Contractor agrees to accept payment by either credit card or bank draft for all goods and/or services provided under the Contract. The Contractor shall factor the cost of

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processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

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

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- D. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:
 - i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
 - ii. time and date of week when employee's workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee's wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee's wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
 - i. the employee's name and job title;

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- ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
- iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

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

- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

8. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

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

9. CONTRACT MANAGER

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

Carol Vance

512-974-3264

carol.vance@ci.austin.tx.us

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

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Rolling Owner Controlled Insurance Program (ROCIP) Administrator

1. **PURPOSE**

The City of Austin, hereinafter referred to as the City, seeks proposals in response to this Request for Proposal (RFP) from an agent/broker (Administrator) for a Rolling Owner Controlled Insurance Program. The agent/broker (Administrator) will assist the City by providing consultation, implementation, and administration of a Rolling Owner Controlled Insurance Program (ROCIP V) for certain City of Austin Capital Improvement Projects (CIP). One broker will be selected to provide the services, including marketing of the insurance, as outlined in this Request for Proposal (RFP).

The ROCIP shall serve three distinct purposes for the City:

- 1) Generate savings from reduced insurance premiums
- 2) Remove the insurance barrier for small and minority contractors
- 3) Promote safety for all contractors working on City ROCIP construction projects

2. **BACKGROUND**

Over the past 18 years The City has issued numerous solicitations for insurance administration, bonding and technical assistance, marketing and outreach, and safety services for several Owner Controlled and Rolling Owner Controlled Insurance Programs. An outline of these programs has been provided below:

Convention Center OCIP (1990-1993)

\$42 Million construction project with services requested under 1 solicitation:

- Outreach
- Bonding and Technical Assistance
- Administration and Safety

ROCIP I (1992 – 1996)

\$47 Million in construction values; \$9 Million in payroll; this program was comprised of 41 projects with services requested under 3 separate solicitations:

- Marketing and Outreach
- Bonding and Technical Assistance
- Administration and Safety

Austin-Bergstrom International Airport OCIP (1994 – 1998)

\$392 Million construction project with services requested under 4 separate solicitations:

- Marketing and Outreach
- Bonding and Technical Assistance
- Administration and Safety
- Construction Management and Safety

ROCIP II (1997 – 2001)

\$235 Million in construction values; estimated \$41 Million in payroll; this program was comprised of 90 projects with services requested under 1 solicitation

- Administration and Safety

All CIP projects meeting defined parameters were included in the program:

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- Construction projects valued at \$300,000 or more
- Labor Intensive
- Site specific
- Construction start and end dates between November 1, 1997 and November 1, 2001
- Construction projects with these characteristics were not included in the program:
 - Hazardous waste abatement or remediation

ROCIP III (2001-2007)

\$201 Million in construction values; estimated \$45 million in payroll; this program was comprised of 20 projects with services requested under 2 solicitations.

- Administration
- Construction Safety Management

All CIP projects meeting defined parameters were included in the program:

- Construction projects valued at \$2,000,000 or more
- Labor Intensive
- Site specific
- Construction start date after June 1, 2002
- Project final acceptance date before June 1, 2006
- Construction projects with these characteristics were not included in the program:
 - Hazardous waste abatement or remediation
 - Electric utility substations
 - Sidewalk or street overlay as primary scope of work

ROCIP IV (2006-2010)

\$250 Million in construction values; estimated \$58 Million in payroll; this program is currently comprised of 45 projects with services requested under 2 solicitations.

- Administration
- Construction Safety Management

All CIP projects meeting defined parameters were included in the program:

- Construction projects valued at \$2,000,000 or more
- Labor Intensive
- Site specific
- Construction start date after March 1, 2006
- Project final acceptance date before November 1, 2010
- Construction projects with these characteristics were NOT included in the program:
 - Hazardous waste abatement or remediation
 - Electric utility substations
 - Sidewalk or street overlay as primary scope of work

3. CURRENT STATUS OF ROCIP IV PROGRAM

The City plans to implement phase V of a ROCIP program by January 1, 2010. The ROCIP V program will be implemented before ROCIP IV has expired.

A thorough review of *Attachment A* will provide details about the projects included in the current ROCIP IV program. It offers some general information with regard to the size and types of projects commonly found in the City CIP construction budget.

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4. ROCIP V PROGRAM INFORMATION

One of the City's primary goals in proceeding with this type of program is to generate savings. If this goal cannot be achieved, the program will not be implemented. Several variables can impact overall net cost savings such as insufficient broker or carrier interest, inadequate construction values, lack of voter authorization for the issuance and sale of bonds, and internal and consultant operating costs. If the City determines that savings are insufficient to warrant a viable program, then the City shall exercise its right to cancel this proposal.

The City has decided to procure Construction Safety Management services separately from the ROCIP administrative services in order to promote competition for the services and to assure better control over the delivery of the components of the ROCIP program. It is anticipated that both the Construction Safety Management services selection process and the Administrator services selection process will be completed by October 2009. The Administrator is responsible for estimating insurance costs for the program to be included as apart of this RFP. It is our goal to have the insurance coverage bound by January 1, 2010.

Project Information/Parameters

The City has conducted an analysis of construction projects anticipated over the next five years. Refer to **Attachment B** for a list of future anticipated projects identified as ROCIP V candidates. This list is not all inclusive but will provide (basic) project foundation information for the new program. The schedule of projects is subject to change; whether a project moves forward into construction or not depends upon many factors; i.e. obtaining of easements, market capacity and interest from the construction industry, costs of materials, etc. It is likely that some of these projects will not be included in the program but others will be included.

Currently there are approximately 41 projects totaling \$375 million in construction values, and a separate construction project for Water Treatment Plant #4 at a value of approximately \$359 million with a Grand Total of \$734 million in construction values.

The parameters for projects to be included in ROCIP V are as follows:

- Construction projects valued at \$2,000,000 or more
- Labor Intensive
- Site specific
- Construction start date after January 1, 2010
- Project final acceptance date before January 1, 2015
- Construction projects with these characteristics will NOT be included in the program:
 - Hazardous waste abatement or remediation
 - Electric utility substations
 - Sidewalk or street overlay as primary scope of work

5. INTRODUCTION

Coverage to be provided by the ROCIP includes general liability (GL), workers' compensation and employers' liability (WC), and excess liability. Due to the large project shown as WTP #4 the Administrator has the option of recommending two (2) separate programs or combining all projects shown into one program. Coverage should be broad and the City's ability to participate in the

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selection of coverages, limits, deductibles and conditions is mandatory. The City will entertain incurred loss and paid loss program options.

The City requests an estimate of the insurance cost for the program(s) without contact or negotiation with the carriers.

- The City does not have, nor does it plan on implementing any drug testing program for contractors.
- The City does not, nor does it plan on requiring contractors to implement a return to work program.
- Due to the potential number and types of projects the City will not include builders risk insurance in this solicitation.

The City desires that the services provided by the Administrator utilize the concepts of Total Quality Management and partnering. Services are expected to commence immediately upon award of the contract. Failure to meet the proposed service schedule may result in penalties to the Administrator.

MINIMUM REQUIREMENTS FOR ADMINISTRATOR SERVICES

1. Design, Marketing and Implementation of Insurance Program

- a) Analyze project hazards and recommend appropriate level of risk retention and transfer and design an insurance program that protects the City from loss.
- b) Develop the underwriting submission/"scope of work section" for presentation and identify insurance carriers who can provide the coverage and program desired.
- c) Provide a thorough written analysis of quotations from insurance carriers, including the electronic and sorting capabilities of their claims data system.
- d) Create a selection criteria matrix for the evaluation team and participate in the carrier selection and interview process.
- e) Facilitate negotiations with selected insurance carrier.
- f) Bind coverage and maintain insurance policies and coverage without lapses.
- g) Review policies to verify conformance with specifications; request, implement and monitor all required coverage changes; participate in the negotiation of policy renewals, premium pay-ins, audit returns and buy-out provisions.
- h) Coordinate ongoing insurer services between all parties.
- i) Assist the City in developing and implementing a fair and equitable method of charging contractors for the contractor's general liability property damage deductible.
- j) Review City construction contract documents and provide analysis and recommendations with regard to changes in authority, wording, and forms. This document can be viewed on line at www.ci.austin.tx.us/aeservices/toc.htm (Standard Construction Documents. The insurance requirements are found in Section 00810).

CITY OF AUSTIN
PURCHASING OFFICE
ROCIP ADMINISTRATOR
SOLICITATION NUMBER: MRH1037

- k) Ensure all endorsements and coverage forms are correctly indicated in the City contract documents and other applicable forms where appropriate.

2. Policyholder Services Provided By the Administrator

- a) Be available during regular business hours to answer phone calls and field questions; coordinate ongoing insurer services between all parties, including but not limited to:
 - Providing assistance to contractor inquiries regarding elimination of insurance costs from bids,
 - Providing enrollment support to contractors who need assistance at time of award, and
 - Handling of all claims
- b) Aid in the coordination of all data gathering functions and processes between all parties by attending meetings as required and documenting final decisions.
- c) Communicate with and secure all data required for tracking purposes by following processes and procedures agreed to by all parties.
- d) Develop detailed Procedures Manuals for the Project Managers and the Contractors with written procedures and flowcharts for all functions and activities.
- e) Issue insurance binders, certificates, and policies to all contractors.
- f) Secure and maintain evidence of auto liability from all non-enrolled and enrolled contractors working on ROCIP projects.
- g) Secure and track WC and GL insurance coverage information for all enrolled contractors.
- h) Give ROCIP presentation at all pre-bid and pre-construction meetings.
- i) Organize program status meetings every month during initial and peak program phases, and as required during program phase-out and provide meeting minutes to the Contract Manager within one (1) week.
- j) Provide a monthly status report to the contract manager, which includes detailed information concerning Contractor, Administration and Claims.
- k) Set up, coordinate and manage Insurer audit procedures and time lines, and collect and report payroll data from all enrolled contractors on a monthly basis.
- l) Verify the accuracy of any bills, audits, and other premium adjustments.
- m) Provide presentations and written information to Associated General Contractors and other professional organizations, Project Managers, Inspectors and other professionals to disseminate general information about the program.
- n) Notify all enrolled contractors and project managers when ROCIP coverage no longer exists.
- o) Coordinate a quarterly working lunch or other workshop for enrolled contractors in order to provide additional information related to the construction industry and ROCIP V claims activity.

CITY OF AUSTIN
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3. Claims Management

The City expects the Administrator to pro-actively manage the losses experienced under ROCIP V. This includes close oversight of reserve handling procedures of the carrier and frequent communication with the adjusters during the claims handling process.

- a) Coordinate claims handling activities and processes between the carrier, City personnel, and the Administrator.
- b) Facilitate education and training of the contractors regarding claims reporting procedures.
- c) Provide on site claims services, when necessary, by interviewing witnesses and facilitating coordination of information required by the carrier.
- d) Report all claims incidents to carrier, monitor claims activity and provide this information in the form of a status report for the monthly meetings.
- e) Provide recommendations for medical cost containment and other methods for reducing claims costs; perform analysis of reserves and negotiate claims issues with the carrier. Coordinate quarterly claim review meetings between City and carrier.
- f) Assist City with all necessary support for the management of the contractors General Liability Insurance Property Damage deductible.

4. Risk Management Information System (RMIS)

The Administrator is responsible for providing a risk management information system (RMIS) that is fully capable of reporting all relevant information necessary for the successful management of the program and completion of the reports as indicated in *Attachments C (Net Cost Savings Calculation) & D (Open Market Premium Calculation)* of this RFP.

5. Reports & Records

The City of Austin is tracking the performance of the ROCIP as a city program. The selected Administrator must have the capability to capture and provide essential data used to evaluate the success of the program. The Monthly Report, Net Cost Savings Calculation and Open Market Premium spreadsheets, as indicated below, contain information that is used as formal documentation for the results measure reported to the Budget Office.

- a) Monthly report to be provided at the monthly service meeting. This report shall at a minimum include:
 - ❖ Number of projects enrolled in the program, percentage complete for each project, number of completed projects, number of active projects.
 - ❖ Number of contractors enrolled in the program; number of enrolled contractors with no off site insurance, percentage of contractors identified as minority contractors by ethnic group (African American, Asian American, Hispanic, Native American, Women owned).
 - ❖ Claims summary to include all claims. This spreadsheet highlights all new claims, provides a breakdown between GL and WC claims, identifies project, GC, contractor and claimant, DOL and description of loss. Sorting capability is critical.

CITY OF AUSTIN
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SOLICITATION NUMBER: MRH1037

- ❖ Premium recap providing projected values and payroll; completed project values, completed project payroll, losses for completed projects, losses to date for all projects
- b) The Net Cost Savings Calculation Spreadsheet (*Attachment C*) is to be provided monthly. This spreadsheet contains data on completed projects only.
- c) The Open Market Premium Calculation Spreadsheet (*Attachment D*) is to be provided monthly as backup for the Net Cost Savings Calculation. This spreadsheet contains the specific rate and payroll information for every contractor of every tier.
- d) Subcontractor Report, due the 10th of each month. This report is for the verification of the small & minority contractor participation for the Administrators contract, if applicable.
- e) Prepare Annual Reports and a Final Report for the City's Risk Manager. Reports are to be Executive Reports and are due annually.
- f) Make all contractor files available to the City for audit purposes.

Administrator shall be responsible for storing and maintaining all paper records and documents associated with the ROCIP program for a period of five (5) years after the completion of the last construction project. The Administrator shall also back-up all data contained on any proprietary database and make these records available to the Owner upon contract completion.

Additional reports may be requested as deemed necessary by the City. All program information will be available upon request.

Legislation mandates municipalities comply with the Records Retention Act. The Administrator will assist the City by maintaining records as outlined above.

6. Special Provisions

Commit that the named principal and other key personnel responsible for the project will not be removed by the Administrator from the account without prior approval of the City. Replacement of key personnel is subject to approval by the City's Risk Manager.

If selected to provide services, work performed in the marketing of the insurance shall be conducted without charge to the City if the City determines that the insurance quotations or provisions received through the marketing process are not viable.

Provide appropriate broker services until the insurance program provided by the carrier to the City is considered closed and final by the carrier, the City, and the Administrator.

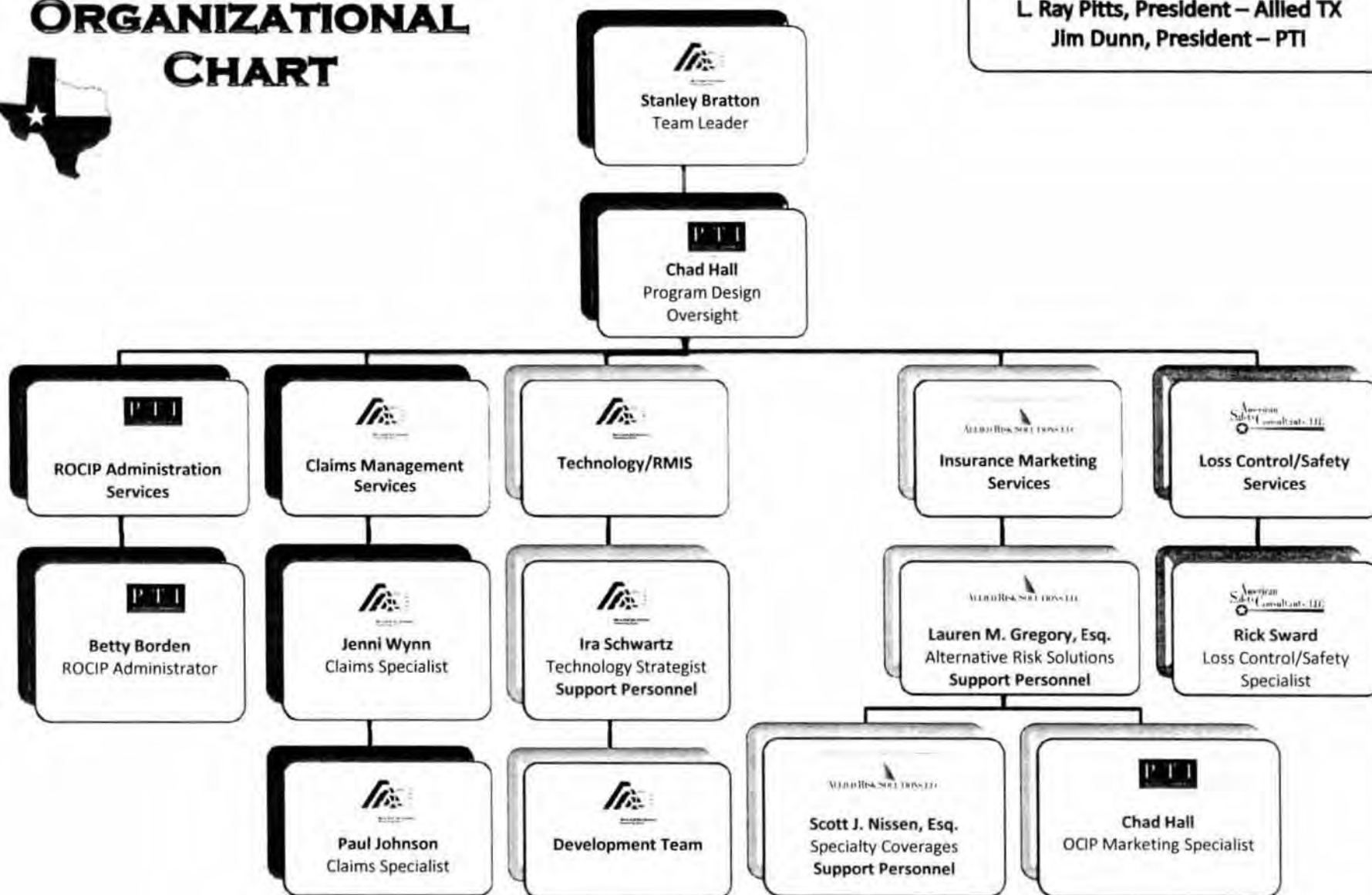
Administrator shall be asked to perform as an agent of the City including issues related to confidentiality.

A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities is required.

CITY OF AUSTIN ROCIP ORGANIZATIONAL CHART



Executive Advisory Board
William A. Marino, Chairman & CEO
Henry C. Lombardi, President & COO
L. Ray Pitts, President – Allied TX
Jim Dunn, President – PTI



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
ALLIED NORTH AMERICA INSURANCE
BROKERAGE OF TEXAS, LLC ("Contractor")
for
Rolling Owner Controlled Insurance Program (ROCIP)
Administrator
Contract Number: PA100000018**

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

This Contract is between Allied North America Insurance Brokerage of Texas, LLC having offices at 12770 Coit Road, Suite 750, Dallas, TX 75251 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number MRH1037.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Request for Proposal (RFP), MRH1037 including all documents incorporated by reference
- 1.1.3 Allied North America Insurance Brokerage of Texas, LLC Offer, dated August 11, 2009, including subsequent clarifications

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

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

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

1.4 Term of Contract. The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to four (4) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$1,004,267 for Contract term as indicated in the Cost Proposal. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

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

**ALLIED NORTH AMERICA INSURANCE
BROKERAGE OF TEXAS, LLC**

CITY OF AUSTIN

Lloyd Ray Pitts, Jr

Printed Name of Authorized Person



Signature

President

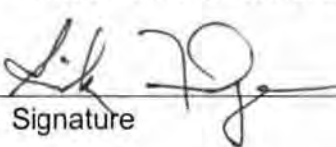
Title:

December 30, 2009

Date:

Rick Fudge

Printed Name of Authorized Person



Signature

Deputy Purchasing Officer

Title:

12/31/2009

Date:

Attachments:

Item Numbers	Description	Page Numbers
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Section 0300	Standard Purchase Terms and Conditions	1-15
Section 0400	Supplemental Terms and Conditions	1-5
Section 0500	Scope of Work	1-7
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2	Organizational Background	1-2
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4	Conceptual Strategy for Premium & Coverage Provisions	1-16
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6	Cost Proposal	1-2
ADD1	Addendum One (1)	1-9
0800	Non-Discrimination Certification	1
0805	Non-Suspension or Debarment Certification	1
0810	Non-Collusion, Non-Conflict of Interest and Anti-Lobbying Affidavit	2
0815	Living Wages and Benefits Contractor Certification	1
0820	Living Wages and Benefits Employee Certification	6
0900	No Goals Form	2

CITY OF AUSTIN, TEXAS

Purchasing Office
REQUEST FOR PROPOSAL (RFP)
Offer Sheet

SOLICITATION NO: MRH1037

COMMODITY/SERVICE DESCRIPTION: Rolling Owner Controlled Insurance Program (ROCIP) Administrator

DATE ISSUED: July 6, 2009

PRE-PROPOSAL CONFERENCE TIME AND DATE: July 16, 2009 at 1:00 p.m. C.D.T.

REQUISITION NO: 5800 09062900625

COMMODITY CODE: 91869

LOCATION: 124 W. 8th Str., 3rd Floor Conference Room, Austin, TX

FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:

PROPOSAL DUE PRIOR TO: August 13, 2009 at 2:00 p.m. C.D.T.

COMPLIANCE PLAN DUE PRIOR TO: N/A

Malinda Horitski

PROPOSAL CLOSING TIME AND DATE: August 13, 2009 at 2:00 p.m. C.D.T.

Buyer II

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

Phone: (512) 974-2651

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

All Contractors and Subcontractors must be registered to do business with the City prior to submitting a response to a City Solicitation. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto <https://www.cityofaustin.org/purchase> and follow the directions.

SUBMIT 1 ORIGINAL AND SIX (6) SIGNED COPIES OF RESPONSE

SOLICITATION TO: City of Austin – Purchasing Department

Signature of Person Authorized to Sign Offer

Lloyd Ray Pitts, President

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

FEDERAL TAX ID NO. [REDACTED]

[REDACTED] 11, 2009

Company Name: Allied North America Insurance Brokerage of Texas, LLC

Address: 12770 Coit Road, Suite 750

City, State, Zip Code Dallas, TX 75251

Phone No. (972) 455-1400

Fax No. (972) 344-8837

214 989-1000

BELOW INFO MUST MATCH THE NAME AND ADDRESS ON INVOICE AND COMPANY PROFILE WITH CITY

Company "Remit To" Name: Allied North America Insurance Brokerage of Texas, LLC

Remit to Address: 12770 Coit Road, Suite 750

City, State, Zip Code Dallas, TX 75251

Email Address sbratton@alliedna.com

Table of Contents

SECTION NO.	TITLE	PAGES
0100, 0200, 0300	See http://www.ci.austin.tx.us/purchase/standard.htm *	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	4
0500	SCOPE OF WORK	7
0600	PROPOSAL PREP INSTRUCTIONS / EVALUATION FACTORS	6
ATTA	ATTACHMENT 'A' CURRENT ROCIP IV PROJECTS	3
ATTB	ATTACHMENT 'B' ROCIP V PROJECT IDENTIFICATION	2
ATTC	ATTACHMENT 'C' NET COST SAVINGS CALCULATION	1
ATTD	ATTACHMENT 'D' OPEN MARKET PREMIUM CALCULATION	1
ATTE	ATTACHMENT 'E' COMMERCIAL MARKETS & REFERENCES	1
ATTF	ATTACHMENT 'F' PERSONNEL QUALIFICATION QUESTIONNAIRE	1
ATTG	ATTACHMENT 'G' ROCIP IV WC PAYROLLS BY CODE	10
0800	NON-DISCRIMINATION CERTIFICATION	1
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	1
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT	2
0815	LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION	1
0820	LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION	1
0825	WORK PLACE CONDITIONS AFFIDAVIT	N/A
0830	BUY AMERICAN ACT CERTIFICATE	N/A
0835	NONRESIDENT BIDDER PROVISIONS	N/A
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE or NO GOALS UTILIZATION PLAN	2
1000	"NO OFFER" RESPONSE FORM	1

All other Sections may be viewed at: <http://www.ci.austin.tx.us/purchase> by clicking the link to "Search for Solicitations", sign in if registered, register, or use public access to follow the links to "Business Opportunities" and "Search for Solicitation."

RETURN FOLLOWING DOCUMENTS WITH BID/PROPOSAL/QUOTE/RESPONSE/SUBMITTAL**

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

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

NOTES:

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

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

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the 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 Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office

Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Notes: Offers (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 Offers will not be accepted.

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

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

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

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

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 while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a non duplicated invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. 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 thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of 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 (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
- i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not

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actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If 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 Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code 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 Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager

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

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable

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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.
- C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
- E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from 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 performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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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) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. 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) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process.

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specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all 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: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (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 in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously

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identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The 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 in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 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.

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- 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 endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City 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

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makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.
- A. **Patents**. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights**. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or 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

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registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
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.

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47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the 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:

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

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

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

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

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

A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-

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- (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
 - C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
 - D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by **4:00 PM C.D.T. on July 23, 2009**. Questions may be submitted via fax to 512-974-2388 or via email to malinda.horitski@ci.austin.tx.us.

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

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

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall contain the solicitation number and the Buyer's name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Malinda Horitski
Solicitation No. MRH1037
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$250,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$250,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

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- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries).

- (1) The policy shall contain the following provisions:
- (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Independent Contractor's Coverage.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

- iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

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

- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

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

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

3. **PERFORMANCE BOND (Must also include a Bid/Proposal/Response Guaranty/Bond – see paragraph 5 above)**

- A. The Contractor shall provide a Performance Bond in an amount equal to 100% of the Contract amount within fourteen (14) calendar days after notification of award. The Performance Bond serves as security for the faithful performance of all of the Contractor's obligations under the Contract. The Performance Bond shall be issued by a

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solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

- B. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

4. **TERM OF CONTRACT**

- A. The Contract shall be in effect for an initial term of twelve (12) months and may be extended thereafter for up to four (4) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or her designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

5. **QUANTITIES**

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

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

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

Invoices shall be mailed to the below address:

	City of Austin
Department	Risk Management
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

- B. The Contractor agrees to accept payment by either credit card or bank draft for all goods and/or services provided under the Contract. The Contractor shall factor the cost of

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processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

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

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- D. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:
 - i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
 - ii. time and date of week when employee's workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee's wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee's wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
 - i. the employee's name and job title;

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- ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
- iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

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

- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

8. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

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

9. CONTRACT MANAGER

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

Carol Vance

512-974-3264

carol.vance@ci.austin.tx.us

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

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Rolling Owner Controlled Insurance Program (ROCIP) Administrator

1. **PURPOSE**

The City of Austin, hereinafter referred to as the City, seeks proposals in response to this Request for Proposal (RFP) from an agent/broker (Administrator) for a Rolling Owner Controlled Insurance Program. The agent/broker (Administrator) will assist the City by providing consultation, implementation, and administration of a Rolling Owner Controlled Insurance Program (ROCIP V) for certain City of Austin Capital Improvement Projects (CIP). One broker will be selected to provide the services, including marketing of the insurance, as outlined in this Request for Proposal (RFP).

The ROCIP shall serve three distinct purposes for the City:

- 1) Generate savings from reduced insurance premiums
- 2) Remove the insurance barrier for small and minority contractors
- 3) Promote safety for all contractors working on City ROCIP construction projects

2. **BACKGROUND**

Over the past 18 years The City has issued numerous solicitations for insurance administration, bonding and technical assistance, marketing and outreach, and safety services for several Owner Controlled and Rolling Owner Controlled Insurance Programs. An outline of these programs has been provided below:

Convention Center OCIP (1990-1993)

\$42 Million construction project with services requested under 1 solicitation:

- Outreach
- Bonding and Technical Assistance
- Administration and Safety

ROCIP I (1992 – 1996)

\$47 Million in construction values; \$9 Million in payroll; this program was comprised of 41 projects with services requested under 3 separate solicitations:

- Marketing and Outreach
- Bonding and Technical Assistance
- Administration and Safety

Austin-Bergstrom International Airport OCIP (1994 – 1998)

\$392 Million construction project with services requested under 4 separate solicitations:

- Marketing and Outreach
- Bonding and Technical Assistance
- Administration and Safety
- Construction Management and Safety

ROCIP II (1997 – 2001)

\$235 Million in construction values; estimated \$41 Million in payroll; this program was comprised of 90 projects with services requested under 1 solicitation

- Administration and Safety

All CIP projects meeting defined parameters were included in the program:

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- Construction projects valued at \$300,000 or more
- Labor Intensive
- Site specific
- Construction start and end dates between November 1, 1997 and November 1, 2001
- Construction projects with these characteristics were not included in the program:
 - Hazardous waste abatement or remediation

ROCIP III (2001-2007)

\$201 Million in construction values; estimated \$45 million in payroll; this program was comprised of 20 projects with services requested under 2 solicitations.

- Administration
- Construction Safety Management

All CIP projects meeting defined parameters were included in the program:

- Construction projects valued at \$2,000,000 or more
- Labor Intensive
- Site specific
- Construction start date after June 1, 2002
- Project final acceptance date before June 1, 2006
- Construction projects with these characteristics were not included in the program:
 - Hazardous waste abatement or remediation
 - Electric utility substations
 - Sidewalk or street overlay as primary scope of work

ROCIP IV (2006-2010)

\$250 Million in construction values; estimated \$58 Million in payroll; this program is currently comprised of 45 projects with services requested under 2 solicitations.

- Administration
- Construction Safety Management

All CIP projects meeting defined parameters were included in the program:

- Construction projects valued at \$2,000,000 or more
- Labor Intensive
- Site specific
- Construction start date after March 1, 2006
- Project final acceptance date before November 1, 2010
- Construction projects with these characteristics were NOT included in the program:
 - Hazardous waste abatement or remediation
 - Electric utility substations
 - Sidewalk or street overlay as primary scope of work

3. CURRENT STATUS OF ROCIP IV PROGRAM

The City plans to implement phase V of a ROCIP program by January 1, 2010. The ROCIP V program will be implemented before ROCIP IV has expired.

A thorough review of *Attachment A* will provide details about the projects included in the current ROCIP IV program. It offers some general information with regard to the size and types of projects commonly found in the City CIP construction budget.

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4. ROCIP V PROGRAM INFORMATION

One of the City's primary goals in proceeding with this type of program is to generate savings. If this goal cannot be achieved, the program will not be implemented. Several variables can impact overall net cost savings such as insufficient broker or carrier interest, inadequate construction values, lack of voter authorization for the issuance and sale of bonds, and internal and consultant operating costs. If the City determines that savings are insufficient to warrant a viable program, then the City shall exercise its right to cancel this proposal.

The City has decided to procure Construction Safety Management services separately from the ROCIP administrative services in order to promote competition for the services and to assure better control over the delivery of the components of the ROCIP program. It is anticipated that both the Construction Safety Management services selection process and the Administrator services selection process will be completed by October 2009. The Administrator is responsible for estimating insurance costs for the program to be included as apart of this RFP. It is our goal to have the insurance coverage bound by January 1, 2010.

Project Information/Parameters

The City has conducted an analysis of construction projects anticipated over the next five years. Refer to **Attachment B** for a list of future anticipated projects identified as ROCIP V candidates. This list is not all inclusive but will provide (basic) project foundation information for the new program. The schedule of projects is subject to change; whether a project moves forward into construction or not depends upon many factors; i.e. obtaining of easements, market capacity and interest from the construction industry, costs of materials, etc. It is likely that some of these projects will not be included in the program but others will be included.

Currently there are approximately 41 projects totaling \$375 million in construction values, and a separate construction project for Water Treatment Plant #4 at a value of approximately \$359 million with a Grand Total of \$734 million in construction values.

The parameters for projects to be included in ROCIP V are as follows:

- Construction projects valued at \$2,000,000 or more
- Labor Intensive
- Site specific
- Construction start date after January 1, 2010
- Project final acceptance date before January 1, 2015
- Construction projects with these characteristics will NOT be included in the program:
 - Hazardous waste abatement or remediation
 - Electric utility substations
 - Sidewalk or street overlay as primary scope of work

5. INTRODUCTION

Coverage to be provided by the ROCIP includes general liability (GL), workers' compensation and employers' liability (WC), and excess liability. Due to the large project shown as WTP #4 the Administrator has the option of recommending two (2) separate programs or combining all projects shown into one program. Coverage should be broad and the City's ability to participate in the

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selection of coverages, limits, deductibles and conditions is mandatory. The City will entertain incurred loss and paid loss program options.

The City requests an estimate of the insurance cost for the program(s) without contact or negotiation with the carriers.

- The City does not have, nor does it plan on implementing any drug testing program for contractors.
- The City does not, nor does it plan on requiring contractors to implement a return to work program.
- Due to the potential number and types of projects the City will not include builders risk insurance in this solicitation.

The City desires that the services provided by the Administrator utilize the concepts of Total Quality Management and partnering. Services are expected to commence immediately upon award of the contract. Failure to meet the proposed service schedule may result in penalties to the Administrator.

MINIMUM REQUIREMENTS FOR ADMINISTRATOR SERVICES

1. Design, Marketing and Implementation of Insurance Program

- a) Analyze project hazards and recommend appropriate level of risk retention and transfer and design an insurance program that protects the City from loss.
- b) Develop the underwriting submission/"scope of work section" for presentation and identify insurance carriers who can provide the coverage and program desired.
- c) Provide a thorough written analysis of quotations from insurance carriers, including the electronic and sorting capabilities of their claims data system.
- d) Create a selection criteria matrix for the evaluation team and participate in the carrier selection and interview process.
- e) Facilitate negotiations with selected insurance carrier.
- f) Bind coverage and maintain insurance policies and coverage without lapses.
- g) Review policies to verify conformance with specifications; request, implement and monitor all required coverage changes; participate in the negotiation of policy renewals, premium pay-ins, audit returns and buy-out provisions.
- h) Coordinate ongoing insurer services between all parties.
- i) Assist the City in developing and implementing a fair and equitable method of charging contractors for the contractor's general liability property damage deductible.
- j) Review City construction contract documents and provide analysis and recommendations with regard to changes in authority, wording, and forms. This document can be viewed on line at www.ci.austin.tx.us/aeservices/toc.htm (Standard Construction Documents. The insurance requirements are found in Section 00810).

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- k) Ensure all endorsements and coverage forms are correctly indicated in the City contract documents and other applicable forms where appropriate.

2. Policyholder Services Provided By the Administrator

- a) Be available during regular business hours to answer phone calls and field questions; coordinate ongoing insurer services between all parties, including but not limited to:
 - Providing assistance to contractor inquiries regarding elimination of insurance costs from bids,
 - Providing enrollment support to contractors who need assistance at time of award, and
 - Handling of all claims
- b) Aid in the coordination of all data gathering functions and processes between all parties by attending meetings as required and documenting final decisions.
- c) Communicate with and secure all data required for tracking purposes by following processes and procedures agreed to by all parties.
- d) Develop detailed Procedures Manuals for the Project Managers and the Contractors with written procedures and flowcharts for all functions and activities.
- e) Issue insurance binders, certificates, and policies to all contractors.
- f) Secure and maintain evidence of auto liability from all non-enrolled and enrolled contractors working on ROCIP projects.
- g) Secure and track WC and GL insurance coverage information for all enrolled contractors.
- h) Give ROCIP presentation at all pre-bid and pre-construction meetings.
- i) Organize program status meetings every month during initial and peak program phases, and as required during program phase-out and provide meeting minutes to the Contract Manager within one (1) week.
- j) Provide a monthly status report to the contract manager, which includes detailed information concerning Contractor, Administration and Claims.
- k) Set up, coordinate and manage Insurer audit procedures and time lines, and collect and report payroll data from all enrolled contractors on a monthly basis.
- l) Verify the accuracy of any bills, audits, and other premium adjustments.
- m) Provide presentations and written information to Associated General Contractors and other professional organizations, Project Managers, Inspectors and other professionals to disseminate general information about the program.
- n) Notify all enrolled contractors and project managers when ROCIP coverage no longer exists.
- o) Coordinate a quarterly working lunch or other workshop for enrolled contractors in order to provide additional information related to the construction industry and ROCIP V claims activity.

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3. Claims Management

The City expects the Administrator to pro-actively manage the losses experienced under ROCIP V. This includes close oversight of reserve handling procedures of the carrier and frequent communication with the adjusters during the claims handling process.

- a) Coordinate claims handling activities and processes between the carrier, City personnel, and the Administrator.
- b) Facilitate education and training of the contractors regarding claims reporting procedures.
- c) Provide on site claims services, when necessary, by interviewing witnesses and facilitating coordination of information required by the carrier.
- d) Report all claims incidents to carrier, monitor claims activity and provide this information in the form of a status report for the monthly meetings.
- e) Provide recommendations for medical cost containment and other methods for reducing claims costs; perform analysis of reserves and negotiate claims issues with the carrier. Coordinate quarterly claim review meetings between City and carrier.
- f) Assist City with all necessary support for the management of the contractors General Liability Insurance Property Damage deductible.

4. Risk Management Information System (RMIS)

The Administrator is responsible for providing a risk management information system (RMIS) that is fully capable of reporting all relevant information necessary for the successful management of the program and completion of the reports as indicated in *Attachments C (Net Cost Savings Calculation) & D (Open Market Premium Calculation)* of this RFP.

5. Reports & Records

The City of Austin is tracking the performance of the ROCIP as a city program. The selected Administrator must have the capability to capture and provide essential data used to evaluate the success of the program. The Monthly Report, Net Cost Savings Calculation and Open Market Premium spreadsheets, as indicated below, contain information that is used as formal documentation for the results measure reported to the Budget Office.

- a) Monthly report to be provided at the monthly service meeting. This report shall at a minimum include:
 - ❖ Number of projects enrolled in the program, percentage complete for each project, number of completed projects, number of active projects.
 - ❖ Number of contractors enrolled in the program; number of enrolled contractors with no off site insurance, percentage of contractors identified as minority contractors by ethnic group (African American, Asian American, Hispanic, Native American, Women owned).
 - ❖ Claims summary to include all claims. This spreadsheet highlights all new claims, provides a breakdown between GL and WC claims, identifies project, GC, contractor and claimant, DOL and description of loss. Sorting capability is critical.

CITY OF AUSTIN
PURCHASING OFFICE
ROCIP ADMINISTRATOR
SOLICITATION NUMBER: MRH1037

- ❖ Premium recap providing projected values and payroll; completed project values, completed project payroll, losses for completed projects, losses to date for all projects
- b) The Net Cost Savings Calculation Spreadsheet (*Attachment C*) is to be provided monthly. This spreadsheet contains data on completed projects only.
- c) The Open Market Premium Calculation Spreadsheet (*Attachment D*) is to be provided monthly as backup for the Net Cost Savings Calculation. This spreadsheet contains the specific rate and payroll information for every contractor of every tier.
- d) Subcontractor Report, due the 10th of each month. This report is for the verification of the small & minority contractor participation for the Administrators contract, if applicable.
- e) Prepare Annual Reports and a Final Report for the City's Risk Manager. Reports are to be Executive Reports and are due annually.
- f) Make all contractor files available to the City for audit purposes.

Administrator shall be responsible for storing and maintaining all paper records and documents associated with the ROCIP program for a period of five (5) years after the completion of the last construction project. The Administrator shall also back-up all data contained on any proprietary database and make these records available to the Owner upon contract completion.

Additional reports may be requested as deemed necessary by the City. All program information will be available upon request.

Legislation mandates municipalities comply with the Records Retention Act. The Administrator will assist the City by maintaining records as outlined above.

6. Special Provisions

Commit that the named principal and other key personnel responsible for the project will not be removed by the Administrator from the account without prior approval of the City. Replacement of key personnel is subject to approval by the City's Risk Manager.

If selected to provide services, work performed in the marketing of the insurance shall be conducted without charge to the City if the City determines that the insurance quotations or provisions received through the marketing process are not viable.

Provide appropriate broker services until the insurance program provided by the carrier to the City is considered closed and final by the carrier, the City, and the Administrator.

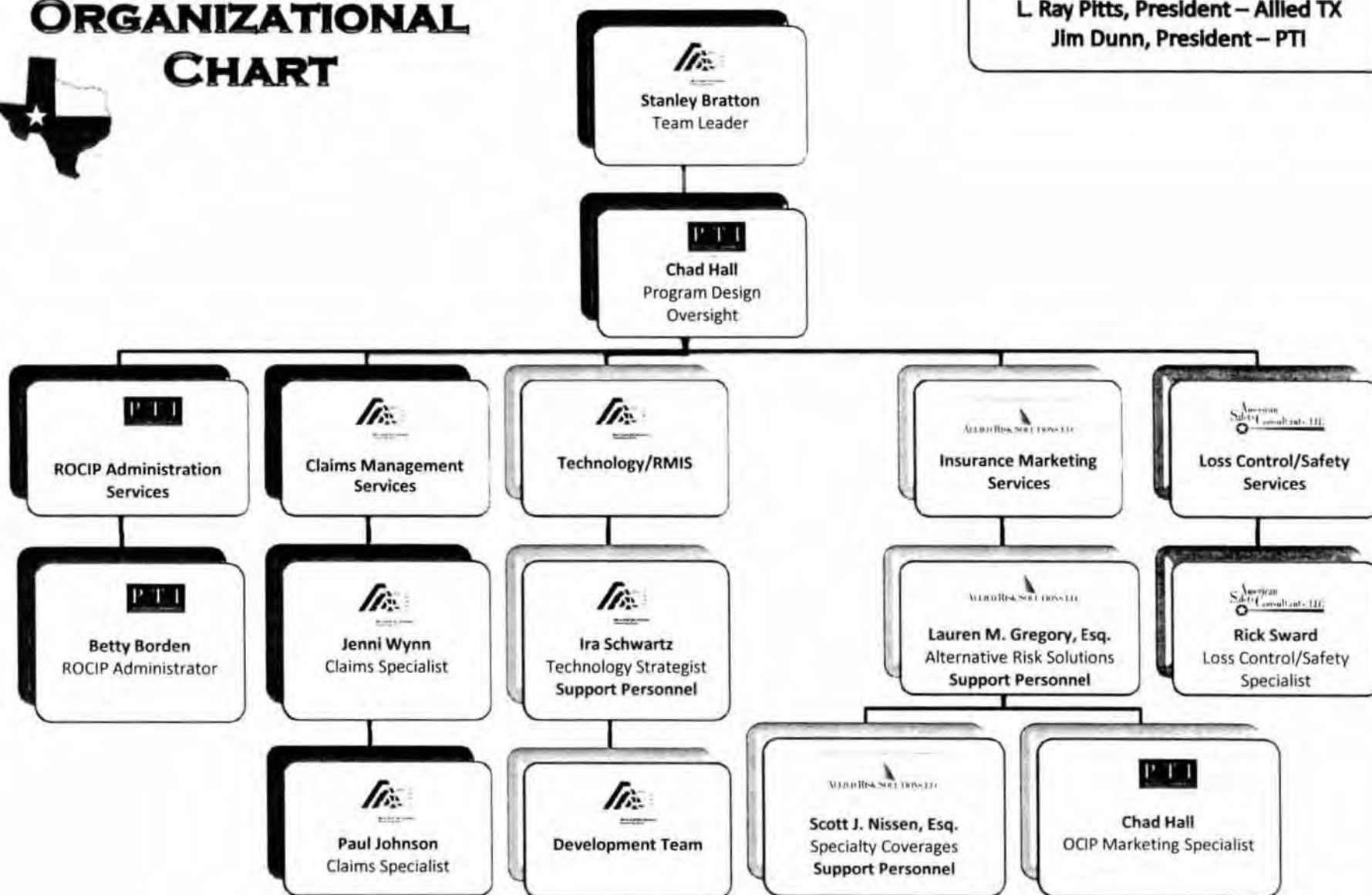
Administrator shall be asked to perform as an agent of the City including issues related to confidentiality.

A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities is required.

CITY OF AUSTIN ROCIP ORGANIZATIONAL CHART



Executive Advisory Board
William A. Marino, Chairman & CEO
Henry C. Lombardi, President & COO
L. Ray Pitts, President – Allied TX
Jim Dunn, President – PTI





REQUEST FOR PROPOSAL ADDENDUM

RFP NO. MRH1037 ADDENDUM NO. ONE (1)

DATE OF ADDENDUM: July 24, 2009

ROLLING OWNER CONTROLLED INSURANCE PROGRAM (ROCIP) ADMINISTRATOR

This Request for Proposal is hereby clarified/amended as follows:

1. Section 0400, Item 3A, has been amended as follows:
The following sentence has been added. The performance bond amount should be provided annually for the amount of the brokerage fees only.
2. All other terms and conditions remain the same.

Questions and Answers:

1. Was a pre-proposal bond required?
No there was no requirement for a pre-proposal bond.
2. Are there alternatives to performance bonds that the City would consider?
Yes, a letter of credit is one.
3. The cost of the proposal must include brokerage fees as well as the cost of the insurance. In order to take the request to council we must have your best estimate. What is the limitation on contract increase before it must go back to council?
Currently that number is \$53,000.
4. Is the amount of the Request for Council action to be represented by the gross dollar amount?
Yes it is
5. If we ask for prior loss experience and a copy of the net cost savings exhibits for ROCIP III and IV, will those be made available?
ROCIP III Net Cost Savings is attached (Attachment H). We have included the ROCIP IV Program Cost sheet (Attachment I); this will provide you with the figures used for administration costs for the previous program. We have also provided a claims summary for ROCIP IV (Attachment J). Since ROCIP IV is not complete the net cost savings report for that program will not provide you with complete information.

6. Who will be the decision making group as far as establishing the recommendation for award?
It will be a qualified group of individuals; we do not disclose the individual participates names.
7. Can you say which department they represent?
No we cannot, but they are familiar with and understand the program.
8. Can the cost savings report be part of the addendum and can the administrative costs be provided as well?
See #5 above
9. In regards to the meetings that we are required to attend here, the proposal talks about attending the pre-bid and pre-construction does this list give a fair representation of the number of projects?
Yes, as much as can be identified at this time. Keep in mind the projects are subject to change and additional meetings could be called to resolve various issues as they arise.
10. What is the background in having the Safety Manager contract separate from this contract?
The City wanted more than just site inspection services. We identified the need for actual management responsibilities related to safety. In most OCIP programs where safety is successful a firm is hired (subcontracted) to provide those services. This structure allows the City to deal directly with the Safety Firm.
11. When did this process start?
With ROCIP III
12. Who is the current construction safety manager?
It is Safety Solutions
13. Have you had the same administrator for all these projects or has it changed?
See Question 39.
14. What are you looking for on the limits for excess liability?
*The City of Austin currently writes a primary with a \$2M occurrence \$4M aggregate and an excess of \$8M on the current ROCIP. We would like to see estimates for at total of \$10M, \$15 M, \$25M, \$50M and \$100. As was indicated, to be a viable program for the City, all limits must show a net cost savings to be considered; not just cost avoidance. On a standard City contract, the contractor is required to bring \$500K for limits of liability. Please review the construction documents.
The administrator shall indicate whether one program (containing all of the potential projects as indicated on the spreadsheet) or two programs, (one solely for WTP #4) would be most beneficial for the City and explain why. This administrator will provide services for all projects shown regardless of the structure of the program(s). If two programs are recommended please indicate the limit of liability recommended for each program.*

15. When will ROCIP IV end?
ROCIP IV and ROCIP V will overlap. ROCIP IV will end 11/2010. It is the City's desire to have the insurance for ROCIP V in place no later than January 1, 2010.
16. Were there any MBE/WBE goals established for ROCIP IV?
No
17. When you referred to the cost maximum per unit, how would you figure the cost, would you calculate the large projects in that?
That will be up to the proposer.
18. Do you fund to the maximum?
Yes
19. Would the City provide the current funding agreement in the addendum?
The Incurred Deductible Agreement (Attachment K) is included.
20. Did the former administrator do anything to close the past programs?
Each program administrator is responsible for the final negotiations for their own program. Yes, negotiations have been on going for both II and III.
21. Will the attendance sheet be available?
Yes with the addendum
22. Was this a mandatory pre-proposal?
No it was not.
23. Who are the prior WC, GL, and Excess Liability carriers for ROCIP's III and IV?
Zurich Insurance
24. Please provide the Net Cost Savings Exhibits for ROCIP's III and IV.
See Attachment H.
25. Will there be Oral Interviews, and if so, what week do you expect them to be?
At this time they are tentatively planned for the week of Aug 24th.
26. What were/are the average annual administrator/broker fees for ROCIP's III and IV?

	<i>Year</i>	<i>Amount</i>
<i>ROCIP III</i>	<i>2002</i>	<i>\$107,278</i>
	<i>2003</i>	<i>\$113,294</i>
	<i>2004</i>	<i>\$101,028</i>
	<i>2005</i>	<i>\$101,088</i>
	<i>2006</i>	<i>\$93,624</i>
<i>ROCIP IV</i>	<i>2005</i>	<i>\$107,237</i>
	<i>2006</i>	<i>\$125,217</i>
	<i>2007</i>	<i>\$113,631</i>
	<i>2008</i>	<i>\$112,328</i>
	<i>2009</i>	<i>\$114,150</i>

27. In the past have you required full disclosure of broker/administrator compensation including any contingent or profit sharing income paid to the broker by the insurers? If so, what were the dollar amounts disclosed or how was the question answered?

The only compensation received by the administrator are the fees for this contract. Under Local Government Code, Chapter 252.024 states as follows: "The broker may be retained only on a fee basis and may not receive any other remuneration from any other source."

28. There is a requirement in the Supplemental Provisions, item 3, for the broker to post a Performance Bond. While a common requirement for contractors, this is highly unusual in a brokerage arrangement. Can you please clarify that this requirement is not applicable or expand and detail further this requirement.

A performance bond is required for the services for this contract, see Item 1 of this addendum for clarification.

29. The ROCIP administrator is to assist the City in developing and implementing a fair and equitable method of charging contractors for the contractor's general liability property damage deductible. Does this include the ROCIP administrator actually invoicing the contractors?

No. This is a means and methods question.

30. The ROCIP administrator is to report all claims incidents to carrier, monitor claims activity and provide this information in the form of a status report for the monthly meetings. The reporting of claims is typically done by the general contractor safety person or the employer (contractor) since they are on-site and the first to learn of a new claim. Are you open to altering the responsibility of reporting claims from the ROCIP administrator to the GC safety person on-site? How is this being addressed under the current ROCIP?

No we are not open to shifting this responsibility to the contractors. We require the broker to work with the carrier and provide an updated loss run at every monthly meeting. The broker is expected to track the losses and ensure that all claims reported are actually ROCIP claims. Often times claims reported on these projects are found to be in error and actually belong to non-ROCIP construction projects. This occurs when contractors have multiple construction projects underway at the same time.

31. Please explain your preferred method of handling contractor insurance deductions. Do the contractors bid net or gross with a line item reduction for ROCIP provided insurance or some other method?

Please refer to form 00425 located at <http://www.ci.austin.tx.us/clmd/biddocs.htm>

There are no adjustments made to this number unless the project is removed from the program.

32. Do you want the ROCIP administrator to track off-site certificates of insurance on all project contractors including sub-tier contractors or just the GC and their prime subcontractors?

We have no requirement to track off-site coverage. However, the administrator will be responsible for collecting and approving the other coverages for this contract, i.e. auto, builders risk, etc. Once the correct evidence of insurance is obtained it shall be forwarded to City of Austin Contract Compliance.

33. How many pre-bid and pre-construction meeting do you anticipate per year?
Please refer to the list of projects. There will be at least 2 meetings for each project. We also require the Administrator to be available for assistance in claims and other meeting requirements depending upon the situation with the contractor.
34. Can you further detail the broker responsibility as respects to coordinating the quarterly working lunch or other workshop? Is the broker responsible for sending the notices and arranging speakers? Are the costs of the workshops borne by the City? Broker?
The cost is merely a small lunch. The broker has had this responsibility. There are usually around a total of 15 people. City facilities are used so there is no rental or reservation cost. The speakers have been the broker, CSM and City Staff. This is informal and used to provide information on current issues and the status of the safety on our projects.
35. Please clarify the intent of the following special provision: "Administrator shall be asked to perform as an agent of the City including issues related to confidentiality".
The broker will be expected to adhere to the City's confidentiality requirements, please refer to Standard Terms and Conditions, Section 0300, Item 37. For example, if the City and the contractor become involved in a lawsuit the broker will be expected to follow all of the appropriate guidelines with regards to confidentiality in the process.
36. In reference to Attachments A & G, please confirm the current payroll rate to contract value experienced in the R-OCIP IV (most current available). The information provided shows a current payroll to contract value rate of 13.7% for completed work of approximately \$203M.
The Net Cost Savings spreadsheet is attached to this addendum for the completed projects of ROCIP IV. This spreadsheet contains the % of payroll to construction as a part of the report. The information is provided by project and total. This is your best reference for this information.
37. Follow-up to Question #1 - Is there an expectation that this percentage would be higher at final audit or factors that would drive it higher or lower in ROCIP V?
Several of the projects have been audited. There have been very few missing payrolls identified as a result of the audits. We have no factors identified outside of an audit that may change this number.
38. We registered on the City's Advantage Vendor's Self Service; however, we were unable to locate the posting of the "minutes" from the pre-proposal meeting. Have these been posted or e-mailed to the participants at the pre-proposal?
There are no "minutes" of the pre-proposal meeting. The questions from the pre-proposal meeting are incorporated into this addendum. The pre-proposal agenda and sign-in sheet are uploaded and available with the posting of this addendum as well.

39. Who are the primary insurers and administrators that were on Programs I - IV?

<i>Program</i>	<i>Broker</i>	<i>Carrier</i>
<i>Convention Center</i>	<i>Hobbs Group</i>	<i>St Paul</i>
<i>ROCIP I</i>	<i>Hobbs Group</i>	<i>St Paul</i>
<i>ROCIP II</i>	<i>Hobbs Group/HRH</i>	<i>St Paul</i>
<i>Austin Bergstrom Int'l Airport</i>	<i>Marsh Mc</i>	<i>St Paul</i>
<i>ROCIP III</i>	<i>John L Wortham</i>	<i>Zurich</i>
<i>ROCIP IV</i>	<i>John L Wortham</i>	<i>Zurich</i>

40. Are there any Insurers that the City would not use for ROCIP V?

No, as long as the carrier is financially stable and will negotiate a loss fund management program that is beneficial to the City.

41. On Page 5 of 0500, #2 states that the Administrator will be responsible for the "Handling of All Claims". Does the City contemplate unbundling the claim services from the proposed underwriters and have the Administrator actually adjust the claims or do you anticipate that the Administrator will provide Claim Advocacy services only as stated in 3.a on the following page?

We are not proposing unbundling the claims services. However, there are serious claims management concerns due to the number of City contracts and poor claims reporting habits of the contractors. The Administrator will be required to assist in the management of claims reporting.

42. In #5a on page 6 of 0500, there is a requirement that the Administrator track the contractors by ethnic group. Is this information provided by each contractor as part of their bid?

Yes

43. Section 0400 #3 requires a Performance Bond. Does this requirement pertain to this RFP?

Yes, it does. Please see Item 1 of the Addendum as well as the first question of this addendum for further clarification.

44. Will the City consider a 5-year contract as opposed to a series of one year contracts?

No, the terms will not be changed and will remain as set forth in Section 0400, Item 4.

45. Were the prior ROCIP contract terms handled in the same manner at one year intervals?

Yes

46. What are the criteria used in determining whether or not a one year contract will be extended?
Available funding, performance of the contractor, outside influences that may cause the program to be cancelled, etc.
47. The RFP states that the CV for ROCIP IV is \$250 Million and the payroll is \$58 Million. On page 2 of 6 of Section 0600 of the RFP it states that Attachment G provides payrolls for ROCIP IV by class code. The total of payroll on G is only \$27,914,844 at April, 2009. Are these partial project payrolls or is there another reason for the discrepancy?
The carrier insisted on using an estimated 23.5% payroll figure for the development of the minimum premium. Therefore this factor is used in baseline calculations. You will note on the Net Cost Savings Spreadsheet for ROCIP IV the actual payroll figures reported are substantially less. The project managers were asked to include projects where their estimated payroll figures were 20% or greater of the estimated construction cost. Keep in mind, the decision to include the project is made before the bidding process begins and the ROCIP contract language is included in the bid documents. In some cases, it may be the estimated payroll amount was inaccurate.
48. Is the City able to provide similar payroll breakdowns, as in Attachment G, for the prior phases?
No. This exercise was done to identify the actual work being done on the projects and help identify the types of projects with higher payrolls.
49. In reference to Attachments A & G, please confirm the current payroll rate to contract value experienced in the R-OCIP IV (most current available). The information provided shows a current payroll to contract value rate of 13.7% for completed work of approximately \$203M.
The Net Cost Savings spreadsheet is attached to this addendum for the completed projects of ROCIP IV. This spreadsheet contains the % of payroll to construction as a part of the report. The information is provided by project and total. This is your best reference for this information.
50. Follow-up to Question #1 - Is there an expectation that this percentage would be higher at final audit or factors that would drive it higher or lower in ROCIP V?
Several of the projects have been audited. There have been very few missing payrolls identified as a result of the audits. We have no factors identified outside of an audit that may change this number.
51. How many projects were enrolled in ROCIP 4 program?
We currently have 44 and another 3 or 4 are will be added.
52. How many total contracts were enrolled in ROCIP 4 program?
One contract per project.
53. How many contractors were enrolled in ROCIP 4 program?
271 to date, total 500 enrollments

54. Can we get a loss summary for ROCIPs 3 & 4?
Please refer to Attachment H and J which includes loss informatin.
55. What insurance credit process will the City use for the next program: Bid Net or Bid Gross? If some other method is planned, please advise.
Please refer to form 00425 located at <http://www.ci.austin.tx.us/clmd/biddocs.htm>
56. If Bid Gross what kind of insurance change order deduction tracking is expected for the next program?
Not Applicable
57. What carriers covered the first City program; second, third, and fourth programs?
See Question 39.
58. Has the City ever had a carrier decline to quote a wrap-up program?
Yes. In the past it was necessary to go to most markets that had ever been interested in these programs. We have approached markets that had changed and the carriers were getting out of the OCIP/ROCIP business.
59. How was the last program rated; payroll, contract values, or other? How will the City prefer to have the program rated for the next program?
All programs have used payroll as the premium basis. We are open to all options.
60. Was the last program managed with on-site (Austin-based administration)?
Some of the administration services, pre-bid, pre con, claims assistance and monthly meetings are handled by an Austin based person. The collection and data entry of the payroll information and enrollment is not Austin based.
61. Does the City have any preference regarding on-site (Austin-based) administration for the next program?
The City has had situations when the Administrator was able to participate in resolving problems with the contractors due to their on-site management. We have had situations when the notification of a pre-bid slipped through the cracks and we found out the day before. We have also had losses occur and the administrator was available immediately to access the situation. I believe this was beneficial to the success of the program.

Additional Documents Available for Download:

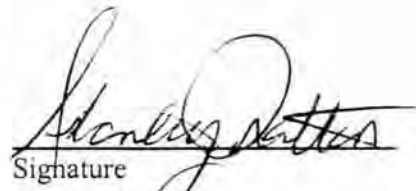
MRH1037ATTH	Attachment H Net Cost Savings
MRH1037ATTI	Attachment I ROCIP IV Program Cost
MRH1037ATTJ	Attachment J ROCIV IV Claims
MRH1037ATTK	Attachment K Incurred Deductible Agreement
MRH1037	Pre-Proposal Sign In Sheet
MRH1037	Pre-Proposal Agenda

Approved: signed copy available in the Purchasing Office

Malinda Horitski, Buyer II, (512) 974-2651
Finance and Administrative Services Dept.
Purchasing Division
P.O. Box 1088
Austin, Texas 78767-8845

Acknowledged:

Gilfed North America
Proposer/Firm


Signature

8/11/09
Date

**RETURN THIS DOCUMENT SIGNED PRIOR TO RFP CLOSING DATE AND
TIME OR WITH YOUR PROPOSAL. FAILURE TO DO SO MAY RESULT IN
YOUR PROPOSAL NOT BEING CONSIDERED.**

Approved: signed copy available in the Purchasing Office

Malinda Horitski, Buyer II, (512) 974-2651
Finance and Administrative Services Dept.
Purchasing Division
P.O. Box 1088
Austin, Texas 78767-8845

Acknowledged:

Allied North America
Proposer/Firm
Stanley Bratton

Stanley Bratton
Signature

07/29/09
Date

RETURN THIS DOCUMENT SIGNED PRIOR TO RFP CLOSING DATE AND
TIME OR WITH YOUR PROPOSAL. FAILURE TO DO SO MAY RESULT IN
YOUR PROPOSAL NOT BEING CONSIDERED.

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION
SOLICITATION NO. MRH1037ROCIP Administrator

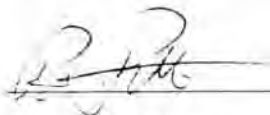
I hereby certify that our firm conforms to the City Code, TITLE 5, Chapter 5-4: Discrimination in Employment by City Contractors, § 5-4-2, Discriminatory Employment Practices Prohibited as reiterated below:

The Contractor has agreed:

- (1) Not to engage in any discriminatory employment practice defined in Chapter 5-4;
- (2) To take affirmative action to ensure that applicants are employed and that employees are treated during employment, without discrimination being practiced against them as defined in Chapter 5-4. Such affirmative action shall include, but not be limited to, employment, promotion, 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 Equal Employment/Fair Housing Office setting forth the provision of Chapter 5-4;
- (4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, 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 Chapter 5-4 and to take affirmative action to implement the policies and provisions of that Chapter;
- (6) To cooperate fully with the City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practice is being carried out; and
- (7) To require that 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 Chapter 5-4.

Contractor's Name: Allied North America Insurance Brokerage of Texas, LLC

Signature of Officer
or Authorized
Representative:



Date: August 11, 2009

Printed Name: Lloyd Ray Pitts

Title: President

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION
SOLICITATION NO. MRH1037
ROCIP Administrator

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

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

Contractor's Name: Allied North America Insurance Brokerage of Texas, LLC

Signature of Officer
or Authorized
Representative:



Date: August 11, 2009

Printed Name: Lloyd Ray Pitts

Title: President

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

SOLICITATION NO. MRH1037

FOR
Rolling Owner Controlled Insurance Program Administrator

State of Texas

County of Travis

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

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

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

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

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

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

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

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

OFFEROR'S EXPLANATION N/A

Contractor's Name: Allied North America Insurance Brokerage of Texas, LLC

Printed
Name: Lloyd Ray Pitts

Title: President

Signature of Officer or Authorized Representative

Lloyd Ray Pitts

Subscribed and sworn to before me this 1st day of August, 2009



Connie Kregel
Notary Public

My Commission Expires 2-15-2010

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

SOLICITATION NO. MRH1037 ROCIP Administrator

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

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

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

Employee Name	Employee Job Title
Stanley Bratton	Senior Account Executive
Chad Hall	Vice President
Betty Borden	Client Manager
Jenni Wynn	Senior Claims Representative
Paul Johnson	Senior VP - Claims
Rick Sward	VP\Loss Control Director

- (3) All future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.

- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

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

Contractor's Name: Allied North America Insurance Brokerage of Texas, LLC

Signature of
Officer or
Authorized
Representative:



Date: August 11, 2009

Printed Name: Lloyd Ray Pitts

Title: President

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION

Contract Number: MRH1037

Description of Services: ROCIP Administrator

Contractor Name: Allied North America Insurance Brokerage of Texas, LLC

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

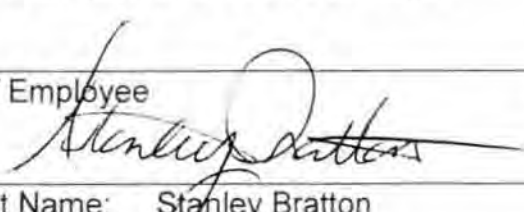
I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

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

Employee's Title: Senior Account Executive

Signature of Employee

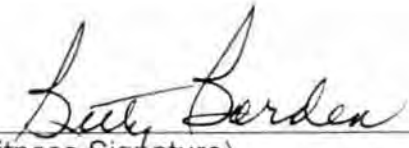
Date



8/11/09

Type or Print Name: Stanley Bratton

(Witness Signature)



(Printed Name)

Betty Borden


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

Contract Number: MRH1037	Description of Services: ROCIP Administrator
Contractor Name: Allied North America Insurance Brokerage of Texas, LLC	

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

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

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

Employee's Title: Vice President	
Signature of Employee: 	Date: 8-11-2009
Type or Print Name: Chad M. Hall	


(Witness Signature)


(Printed Name)

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION

Contract Number: MRH1037

Description of Services: ROCIP Administrator

Contractor Name: Allied North America Insurance Brokerage of Texas, LLC

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

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

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

Employee's Title: Client Manager

Signature of Employee

Date

Betty Borden

August 11, 2009

Type or Print Name: Betty Borden

Beverly Trimble
(Witness Signature)

Beverly Trimble
(Printed Name)

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION

Contract Number: MRH1037

Description of Services: ROCIP Administrator

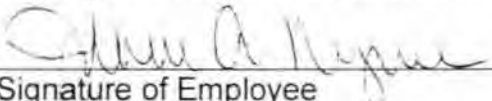
Contractor Name: Allied North America Insurance Brokerage of Texas, LLC

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

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

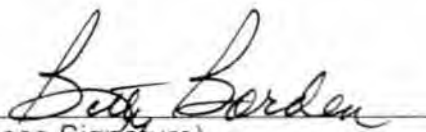
- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title: Senior Claims Representative


Signature of Employee

8-11-09
Date

Type or Print Name: Jenni Wynn


(Witness Signature)

Betty Borden
(Printed Name)

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION

Contract Number: MRH1037

Description of Services: ROCIP Administrator

Contractor Name: Allied North America Insurance Brokerage of Texas, LLC

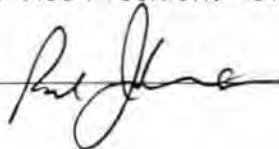
Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees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

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

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

Employee's Title: Senior Vice President - Claims

Signature of Employee



Date

8/16/09

Type or Print Name: Paul Johnson


(Witness Signature)

Betty Borden
(Printed Name)

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION

Contract Number: MRH1037

Description of Services: ROCIP Administrator

Contractor Name: Allied North America Insurance Brokerage of Texas, LLC

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

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

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

Employee's Title: Vice President\Loss Control Director

Rick Sward

Signature of Employee

Date

Type or Print Name: Richard (Rick) Sward

Beverly Trimble
(Witness Signature)

Beverly Trimble
(Printed Name)

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

SOLICITATION NUMBER: MRH1037

PROJECT NAME: Rolling Owner Controlled Insurance Program Administrator

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

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

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

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

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

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

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

Allied North America Insurance Brokerage of Texas, LLC
Company Name

Lloyd Ray Pitts, President
Name and Title of Authorized Representative (Print or Type)


Signature

August 11, 2009
Date

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

SOLICITATION NUMBER: MRH1037

PROJECT NAME: Rolling Owner Controlled Insurance Program Administrator

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	Allied North America Insurance Brokerage Of Texas, LLC		
Address	12770 Coit Road, Suite 750		
City, State Zip	Dallas, TX 75251		
Phone	972-455-1400	Fax Number	972-387-8837
Name of Contact Person	Stanley Bratton		
Is company City certified?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

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

Lloyd Ray Pitts, President

Name and Title of Authorized Representative (Print or Type)

August 11, 2009

Signature

Date

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

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

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

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

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

Reviewing Counselor

Date

Director/Deputy Director

Date



Amendment No. 6
to
Contract No. PA100000018 for
ROCIP V Administration
between
Aon Risk Services Southwest, Inc.
and the
City of Austin

- 1.0 The purpose of this amendment is to extend the term of this contract for 12 months. This amendment extends the contract to 12/31/2015.
- 2.0 The cumulative contract amount not to exceed to \$15,300,000.00 is unchanged.
- 3.0 The total Contract authorization is recapped below:

Term	Contract Amount for the term	Total Contract Amount
Basic Term: 12/31/2009 – 12/31/10	\$1,600,000/ \$13,700.00	\$1,600,000/ \$13,700,000
Amendment No. 1: 1/19/2010 Section 1.5 Amended	\$0	\$1,600,000/ \$13,700,000
Amendment No. 2: 9/10/2010 Section 1.5 Amended	\$0	\$2,638,361/ \$12,661,639
Amendment No. 3: 9/10/2010 Section 1.5.1 Amended	\$0	\$2,638,361/ \$12,661,639
Amendment No. 4: 8/23/2010 Change Contract Assignment to Aon Risk	\$0	\$2,638,361/ \$12,661,639
Amendment No. 5: Administrative changes to restructure contract	\$0	\$2,638,361/ \$12,661,639
Amendment No. 6: Administrative change to extend insurance policies and to extend the contract to 12/31/2015.	\$0	\$1,600,000/ \$13,700,000**

**this contract is comprised of two components: administrative service and the cost of insurance.

- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, Amendment No. 6 is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

Printed Name:

Authorized Representative

Signature & Date:

Jeff Dilbert, CPSM, CPSD, C.P.M., A.P.P.

Corporate Purchasing Manager

City of Austin

Purchasing Office

Aon Risk Services Southwest, Inc.
2711 N. Haskell Avenue, Suite 500
Dallas, TX 75204




Amendment No. 5
to
Contract No. PA100000018 for
ROCIP V Administration
between
Aon Risk Services Southwest, Inc.
and the
City of Austin

- 1.0 Eliminate the option periods and extend the base contract to include the entire 5 year period from 12/31/2009 through 12/30/2014.
- 2.0 Increase the cumulative contract amount not to exceed to \$14,609,758.00.
- 3.0 The total Contract authorization is recapped below:

Term	Contract Amount for the term	Total Contract Amount
Basic Term: 12/31/2009 – 12/31/10	\$1,004,267.00	\$1,004,267.00
Amendment No. 1: 1/19/2010 Section 1.5 Amended	\$595,733.00	\$1,600,000.00
Amendment No. 2: 9/10/2010 Section 1.5 Amended	\$1,036,361	\$2,638,361.00
Amendment No. 3: 9/10/2010 Section 1.5.1 Amended	\$0	\$2,638,361.00
Amendment No. 4: 8/23/2010 Change Contract Assignment to Aon Risk	\$0	\$2,638,361.00
Amendment No. 5: Administrative changes to restructure contract	\$0	\$14,609,758.00

- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, Amendment No. 5 is hereby incorporated into and made a part of the above-referenced contract.

Signed: 

Jeff Dilbert, CPSM, CPSD, C.P.M., A.P.P.
Buyer II
City of Austin
Purchasing Office

1-14-11

Date



**Amendment No. 4
to
Contract No. PA100000018
For
Administrative & Insurance Procurement Services
associated with the
Rolling Owner Controlled Insurance Program (V)
Between
Allied North America Insurance Brokerage of Texas LLC
and the
City of Austin**

- 1.0 In accordance with Section 0300, Paragraph 45, Assignment-Delegation, this Contract is hereby assigned as follows:

Contract Assigned From:

Allied North America Insurance Brokerage of
Texas LLC
2711 N Haskell Ave, Ste 800
Dallas, TX 75204
VS0000019815

Phone: (214) 989-2395

Fax: (214) 989-2350

Contract Assigned To:

Aon Risk Services Southwest, Inc
dba: Aon
2711 N Haskell Ave
Dallas, TX 75204
VS0000024599

Phone: (303) 478-8773

Fax: (303) 758-9458

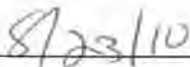
- 2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 4 is hereby incorporated into and made a part of the Contract.



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

Date



8/23/10

EXECUTION COPY

LLC INTEREST PURCHASE AGREEMENT

LLC INTEREST PURCHASE AGREEMENT (the "Agreement"), dated as of December 6, 2009, by and among William A. Marino, Henry C. Lombardi, W. Parker Hix, James Untiedt, David W. Marino, the Michael Marino Irrevocable Trust and the Mara Marino 2009 Trust (collectively, the "Selling Interestholders"), Allied Group Holdings, LLC, a Delaware limited liability company ("Allied"), and Aon Risk Services, Inc. of Maryland, a Maryland corporation ("Buyer").

PRELIMINARY STATEMENT:

WHEREAS, the Selling Interestholders together are the owners of 100% of the membership interests of Allied;

WHEREAS, the Selling Interestholders desire to sell, and Buyer desires to purchase, all of the membership interests of Allied owned by such Selling Interestholders as indicated on Annex A (the "Interests"); and

WHEREAS, concurrently upon the closing of the purchase and sale of such membership interests, Allied will purchase the membership interests of each of those entities set forth in Annex B (collectively, the "Subsidiaries") not then wholly owned by Allied and Allied shall be the owner of 100% of the membership interests of each of the Subsidiaries.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms.

"Administrative Authority" means any foreign, federal, state, local or other governmental authority or regulatory body or stock exchange or listing authority.

"Affiliate" means, with respect to any Person, any other Person which, at the time of determination, directly or indirectly through one or more intermediaries Controls, is Controlled by or is under Common Control with such Person.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Aon Risk Services, Inc of Maryland



By Richard E. Barry
Title Vice President

Allied Group Holdings, LLC

By _____

Title _____

William A. Marino

Henry C. Lombardi

W. Parker Hix

James Untiedt

B-1

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Aon Risk Services Companies, Inc.

By _____

Title _____

Allied Group Holdings, LLC

By _____

Title Chairman CEO

William A. Marino

Henry C. Lombardi

Parker Hix

James Untiedt

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

Aon Risk Services Companies, Inc.

By _____

Title _____

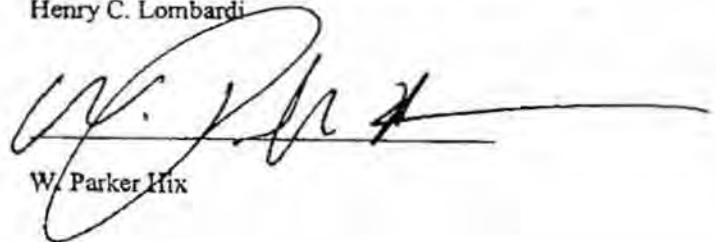
Allied Group Holdings, LLC

By _____

Title _____

William A. Marino

Henry C. Lombardi


W. Parker Hix

James Untiedt

~~IN WITNESS WHEREOF, the parties hereto have caused this Agreement~~
to be executed as of the day and year first above written.

Aon Risk Services Companies, Inc.

By _____

Title _____

Amet Group Holdings, LLC

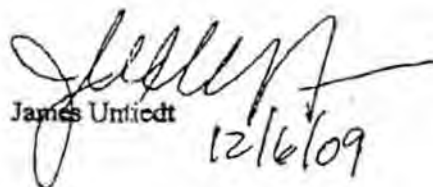
By _____

Title _____

William A. Marino

Henry C. Lombardi

Parker Hisc


James Untiedt 12/6/09



David W. Marino

The Michael Marino 2007 Trust

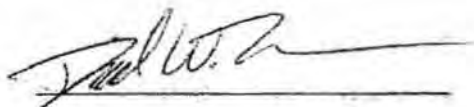
By _____

Trustee

The Mara Marino 2009 Trust

By _____

Trustee

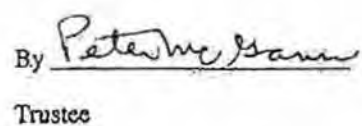


David W. Marino

The Michael Marino Irrevocable Trust

By 
Trustee

The Mara Marino 2009 Trust

By 
Trustee

**City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NONDISCRIMINATION CERTIFICATION**

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

Chapter 5-4 of the Code of the City of Austin (Discrimination in Employment by City Contractors) requires that at all times while acting as a Contractor (as defined under Chapter 5-4) a Contractor must agree:

- (1) Not to engage in any discriminatory employment practice defined in this chapter (including any later amendments or modifications).
- (2) To take affirmative action to ensure that applicants are employed and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rate of pay or other form 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 City setting forth the provisions of this chapter.
- (4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with the City's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to insure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter.

Please check one of the following:

- ☒ Our firm's nondiscrimination policy conforms to the requirements of City Code, Chapter 5-4-2-B, Items (1) through (7) and will be sent to the City upon request.
- ☐ Our firm does not have an established nondiscrimination policy and will adopt the City's minimum standard shown below. Our firm will send the adopted policy on company letterhead to the City upon request.

Minimum Standard Nondiscrimination in Employment Policy:

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

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

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

Sanctions:

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

Contractor's Name:

Aon Risk Services Southwest, Inc.

Signature of Officer or
Authorized
Representative:



Date:

8-2-10

Printed Name:

Peter McKenzie

Title

Managing Director

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION

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

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

Contractor's Name: Aon Risk Services Southwest, Inc.

Signature of Officer
or Authorized
Representative:



Date: 8-2-10

Printed Name: Peter McKenzie

Title: Managing Director

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

Insert Clear Description

State of Texas

County of Travis

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

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

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

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

more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.

- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:
<http://www.ci.austin.tx.us/cityclerk/coi.htm>

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

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

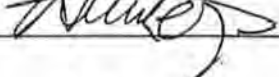
7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a member of the City Council, a member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

OFFEROR'S EXPLANATION:

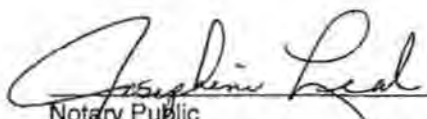
Contractor's Name: Am Risk Services Southwest, Inc

Printed Name: Peter McKenzie

Title: Managing Director

Signature of Officer or Authorized Representative: 

Subscribed and sworn to before me this 2 day of Aug, 2010.


Notary Public

My Commission Expires 05/22/2011



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

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

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

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

Employee Name	Employee Job Title
Stanley Bratton	Client Executive
Sandra Aikin	Program Manager
Betty Borden	Program Administrator
Paul Johnson	Claims Director
Jenni Wynn	Claims Manager

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

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

Contractor's Name:

Aon Risk Services Southwest, Inc.

Signature of Officer
or Authorized
Representative:



Date:

8-2-10

Printed Name:

Peter McKenzie

Title

Managing Director

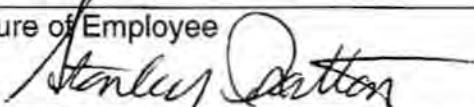
**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

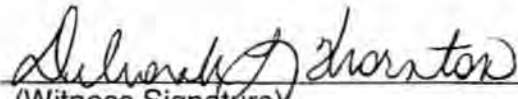
Contract Number: Insert Number PA100000018	Description of Services: Insert Description Broker Administration - ROCIP V
Contractor Name: Insert Contractor's Name Aon Risk Services Southwest, Inc.	

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

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

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

Employee's Title: Insert Employee's Title Client Executive	
Signature of Employee 	Date 7/30/10
Type or Print Name/Insert Employee's Name Stanley Bratton	


(Witness Signature)

Deborah N Thornton
(Printed Name)

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

Contract Number: Insert Number <i>PA100000018</i>	Description of Services: Insert Description <i>Broker Administration - ROCIA II</i>
Contractor Name: Insert Contractor's Name <i>Am Risk Services Southwest, Inc.</i>	

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

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

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

Employee's Title: Insert Employee's Title <i>Program Manager</i>	
Signature of Employee <i>Sandra Aikin</i>	Date <i>7-30-10</i>
Type or Print Name Insert Employee's Name <i>Sandra Aikin</i>	

Stanley Bratton

(Witness Signature)

Stanley Bratton

(Printed Name)

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

Contract Number: Insert Number <i>PA100000018</i>	Description of Services: Insert Description <i>Broker Administration - ROCIA II</i>
Contractor Name: Insert Contractor's Name <i>Am Risk Services Southwest, Inc.</i>	

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

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

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

Employee's Title: Insert Employee's Title <i>Program Administrator</i>	
Signature of Employee <i>Betty Borden</i>	Date <i>7-30-10</i>
Type or Print Name Insert Employee's Name <i>Betty Borden</i>	

Stanley Bratton
(Witness Signature)
Stanley Bratton
(Printed Name)

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

Contract Number: Insert Number <i>PA100000018</i>	Description of Services: Insert Description <i>Broker Administration - ROCIA II</i>
Contractor Name: Insert Contractor's Name <i>Am Risk Services Southwest, Inc.</i>	

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

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

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

Employee's Title: Insert Employee's Title <i>Claims Director</i>	
Signature of Employee <i>Paul Johnson</i>	Date <i>8/2/10</i>
Type or Print Name Insert Employee's Name <i>Paul Johnson</i>	

Stanley Bratten
(Witness Signature)
Stanley Bratten
(Printed Name)

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


Contract Number: Insert Number <i>PA100000018</i>	Description of Services: Insert Description <i>Broker Administration - ROCIA II</i>
Contractor Name: Insert Contractor's Name <i>Aon Risk Services Southwest, Inc.</i>	

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

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

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

Employee's Title: Insert Employee's Title <i>Claims Manager</i>	
Signature of Employee <i>Jenni Wynn</i>	Date <i>7-30-10</i>
Type or Print Name Insert Employee's Name <i>Jenni Wynn</i>	



(Witness Signature)
Stanley Bratton

(Printed Name)



Amendment No. 3

Contract No. PA100000018

between

Allied North America Insurance Brokerage of Texas, LLC

and the

City of Austin

for

Administrative & Insurance Procurement Services

associated with the

Rolling Owner Controlled Insurance Program (V)

1.0 In accordance with Amendment #2, allowing the City to make insurance premium and loss payments directly to the selected insurance carrier, Liberty Mutual Insurance Group, this amendment is executed to add Liberty Mutual Insurance Company, vendor code VS0000030139, as the payee for City of Austin payments associated with program losses. Insurance premium payments continue to be payable to Liberty Mutual Insurance Group while program losses shall be payable to Liberty Mutual Insurance Company.

2.0 Amend Contract to replace in its entirety previously added Section 1.5.1 from

Section 1.5.1 A Not-to-Exceed amount of \$12,661,639 shall be payable to Liberty Mutual Insurance Group for insurance premiums and loss payments to policies supporting ROCIP V. and replace with;

Section 1.5.1 A Not-to-Exceed amount of \$4,097,936 shall be payable to Liberty Mutual Insurance Group for insurance premiums and a Not-to-Exceed amount of \$ 8,563,703 shall be payable to Liberty Mutual Insurance Company for program loss payments.

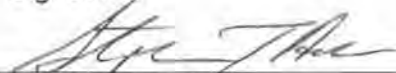
3.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement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

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

5.0 All other terms and conditions of the Contract remain in full force and effect.

BY THE SIGNATURES affixed below, Amendment No. 3 is hereby incorporated into and made a part of the above-referenced contract.

Signature:



Stephen T. Aden Sr.
Corporate Purchasing Manager
City of Austin Purchasing Office

Date

9/10/10

Signature:



Authorized Representative for
Allied North America Insurance Brokerage of
Texas, LLC

Date

9/7/2010



Amendment No. 3

Contract No. PA100000018

between

Allied North America Insurance Brokerage of Texas, LLC

and the

City of Austin

for

Administrative & Insurance Procurement Services

associated with the

Rolling Owner Controlled Insurance Program (V)

1.0 In accordance with Amendment #2, allowing the City to make insurance premium and loss payments directly to the selected insurance carrier, Liberty Mutual Insurance Group, this amendment is executed to add Liberty Mutual Insurance Company, vendor code VS0000030139, as the payee for City of Austin payments associated with program losses. Insurance premium payments continue to be payable to Liberty Mutual Insurance Group while program losses shall be payable to Liberty Mutual Insurance Company.

2.0 Amend Contract to replace in its entirety previously added Section 1.5.1 from

Section 1.5.1 A Not-to-Exceed amount of \$12,661,639 shall be payable to Liberty Mutual Insurance Group for insurance premiums and loss payments to policies supporting ROCIP V. and replace with:

Section 1.5.1 A Not-to-Exceed amount of \$4,097,936 shall be payable to Liberty Mutual Insurance Group for insurance premiums and a Not-to-Exceed amount of \$ 8,563,703 shall be payable to Liberty Mutual Insurance Company for program loss payments.

3.0 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.

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

5.0 All other terms and conditions of the Contract remain in full force and effect.

BY THE SIGNATURES affixed below, Amendment No. 3 is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Signature:

Stephen T. Aden Sr.
Corporate Purchasing Manager
City of Austin Purchasing Office

Date

Authorized Representative for
Allied North America Insurance Brokerage of
Texas, LLC

Date



Amendment No. 3

Contract No. PA100000018

between

Allied North America Insurance Brokerage of Texas, LLC

and the

City of Austin

for

Administrative & Insurance Procurement Services

associated with the

Rolling Owner Controlled Insurance Program (V)

- 1.0 In accordance with Amendment #2, allowing the City to make insurance premium and loss payments directly to the selected insurance carrier, Liberty Mutual Insurance Group, this amendment is executed to add Liberty Mutual Insurance Company, vendor code VS0000030139, as the payee for City of Austin payments associated with program losses. Insurance premium payments continue to be payable to Liberty Mutual Insurance Group while program losses shall be payable to Liberty Mutual Insurance Company.
- 2.0 Amend Contract to replace in its entirety previously added Section 1.5.1 from

Section 1.5.1 A Not-to-Exceed amount of \$12,661,639 shall be payable to Liberty Mutual Insurance Group for insurance premiums and loss payments to policies supporting ROCIP V. and replace with;

Section 1.5.1 A Not-to-Exceed amount of \$ _____ shall be payable to Liberty Mutual Insurance Group for insurance premiums and a Not-to-Exceed amount of \$ _____ shall be payable to Liberty Mutual Insurance Company for program loss payments.
- 3.0 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.
- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 All other terms and conditions of the Contract remain in full force and effect.

BY THE SIGNATURES affixed below, Amendment No. 3 is hereby incorporated into and made a part of the above-referenced contract.

Signature:

Signature:

Stephen T. Aden Sr.
Corporate Purchasing Manager
City of Austin Purchasing Office

Authorized Representative for
Allied North America Insurance Brokerage of
Texas, LLC

Date: _____

Date: _____



Amendment No. 2

**Contract No. PA100000018
between
Allied North America Insurance Brokerage of Texas, LLC
and the
City of Austin
for
Administrative & Insurance Procurement Services
associated with the
Rolling Owner Controlled Insurance Program (V)**

- 1.0 In accordance with Section 0300, Paragraph 47, Modifications, City and Contractor agree to amended to execute a zero-cost (\$0.00) amendment adding provision(s) allowing the City to make insurance premium and loss payments directly to the selected insurance carrier, Liberty Mutual Insurance Group and to authorize execution of appropriate formal insurance agreements including appropriate financial security documents the carrier requires to establish the City's ROCIP V program.
- 2.0 Amend Paragraph 1.5 of the Contract replacing current text in its entirety to read as follows:

The Contractor shall be paid a total Not-to-Exceed amount of \$2,638,361 for the Contract term (\$1,600,000 administrative services, \$1,038,361 Excess Liability). Payment shall be made upon successful completion of services and submission of proper invoices to the Risk Management Department.
- 3.0 Amend Contract to add Section 1.5.1.

3.1 Section 1.5.1 A Not-to-Exceed amount of \$12,661,639 shall be payable to Liberty Mutual Insurance Group for insurance premiums and loss payments to policies supporting ROCIP V.
- 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 MBE/WBE goals were not established for this contract.
- 6.0 All other terms and conditions of the Contract remain in full force and effect.

Agreement Recap:

Responsible Department:	Human Resources Department
Department Contact Person:	Carol Vance, Risk Analyst
Department Contact Email Address:	Carol.Vance@ci.austin.tx.us
Department Contact Telephone:	512-974-3264
Project Name:	ROCIP V, Administrative & Insurance Procurement Svcs.
Contract Number:	PA100000018
Contract Period:	12/31/09 - 12/30/10
Initial Contract Amount:	\$15,300,000
Action Amount, Amendment #1:	\$0.00
Contract Total:	\$15,300,000
Agenda Item Number:	38
Council Approval Date:	03/25/10

BY THE SIGNATURES affixed below, Amendment No. 2 is hereby incorporated into and made a part of the above-referenced contract.

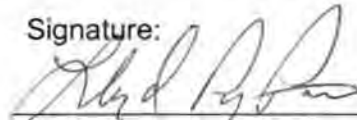
Signature:



Stephen T. Aden Sr.
Corporate Purchasing Manager
City of Austin Purchasing Office

Date: 9/10/10

Signature:



Authorized Representative for
Allied North America Insurance Brokerage of
Texas, LLC

Date: 9/7/2010



Amendment No. 2

Contract No. PA100000018

between

Allied North America Insurance Brokerage of Texas, LLC

and the

City of Austin

for

Administrative & Insurance Procurement Services

associated with the

Rolling Owner Controlled Insurance Program (V)

- 1.0 In accordance with Section 0300, Paragraph 47, Modifications, City and Contractor agree to amended to execute a zero-cost (\$0.00) amendment adding provision(s) allowing the City to make insurance premium and loss payments directly to the selected insurance carrier, Liberty Mutual Insurance Group and to authorize execution of appropriate formal insurance agreements including appropriate financial security documents the carrier requires to establish the City's ROCIP V program.
- 2.0 Amend Paragraph 1.5 of the Contract replacing current text in its entirety to read as follows:

The Contractor shall be paid a total Not-to-Exceed amount of \$2,638,361 for the Contract term (\$1,600,000 administrative services, \$1,038,361 Excess Liability). Payment shall be made upon successful completion of services and submission of proper invoices to the Risk Management Department.
- 3.0 Amend Contract to add Section 1.5.1.

3.1 Section 1.5.1 A Not-to-Exceed amount of \$12,661,639 shall be payable to Liberty Mutual Insurance Group for insurance premiums and loss payments to policies supporting ROCIP V.
- 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 MBE/WBE goals were not established for this contract.
- 6.0 All other terms and conditions of the Contract remain in full force and effect.

Agreement Recap:

Responsible Department:	Human Resources Department
Department Contact Person:	Carol Vance, Risk Analyst
Department Contact Email Address:	Carol.Vance@ci.austin.tx.us
Department Contact Telephone:	512-974-3264
Project Name:	ROCIP V, Administrative & Insurance Procurement Svcs.
Contract Number:	PA100000018
Contract Period:	12/31/09 - 12/30/10
Initial Contract Amount:	\$15,300,000
Action Amount, Amendment #1:	\$0.00
Contract Total:	\$15,300,000
Agenda Item Number:	38
Council Approval Date:	03/25/10

BY THE SIGNATURES affixed below, Amendment No. 2 is hereby incorporated into and made a part of the above-referenced contract.

Signature: _____

Stephen T. Aden Sr.
Corporate Purchasing Manager
City of Austin Purchasing Office

Date: _____

Signature: _____

Authorized Representative for
Allied North America Insurance Brokerage of
Texas, LLC

Date: _____



Amendment No. 2

Contract No. PA100000018

between

Allied North America Insurance Brokerage of Texas, LLC

and the

City of Austin

for

Administrative & Insurance Procurement Services

associated with the

Rolling Owner Controlled Insurance Program (V)

- 1.0 In accordance with Section 0300, Paragraph 47, Modifications, City and Contractor agree to amended to execute a zero-cost (\$0.00) amendment adding provision(s) allowing the City to make insurance premium and loss payments directly to the selected insurance carrier, Liberty Mutual Insurance Group and to authorize execution of appropriate formal insurance agreements including appropriate financial security documents the carrier requires to establish the City's ROCIP V program.
- 2.0 Amend Paragraph 1.5 of the Contract replacing current text in its entirety to read as follows:

The Contractor shall be paid a total Not-to-Exceed amount of \$2,638,361 for the Contract term (\$1,600,000 administrative services, \$1,038,361 Excess Liability). Payment shall be made upon successful completion of services and submission of proper invoices to the Risk Management Department.
- 3.0 Amend Contract to add Section 1.5.1.

3.1 Section 1.5.1 A Not-to-Exceed amount of \$12,661,639 shall be payable to Liberty Mutual Insurance Group for insurance premiums and loss payments to policies supporting ROCIP V.
- 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 MBE/WBE goals were not established for this contract.
- 6.0 All other terms and conditions of the Contract remain in full force and effect.

Agreement Recap:

Responsible Department:	Human Resources Department
Department Contact Person:	Carol.Vance, Risk Analyst
Department Contact Email Address:	Carol.Vance@ci.austin.tx.us
Department Contact Telephone:	512-974-3264
Project Name:	ROCIP V, Administrative & Insurance Procurement Svcs.
Contract Number:	PA100000018
Contract Period:	12/31/09 - 12/30/10
Initial Contract Amount:	\$15,300,000
Action Amount, Amendment #1:	\$0.00
Contract Total:	\$15,300,000
Agenda Item Number:	38
Council Approval Date:	03/25/10

BY THE SIGNATURES affixed below, Amendment No. 2 is hereby incorporated into and made a part of the above-referenced contract.

Signature: _____

Signature: _____

Stephen T. Aden Sr.
Corporate Purchasing Manager
City of Austin Purchasing Office

Authorized Representative for
Allied North America Insurance Brokerage of
Texas, LLC

Date: _____

Date: _____



Amendment No. 1
of
Contract No. PA100000018
for
Rolling Owner Controlled Insurance Program (ROCIP) Administrator
between
Allied North American Insurance Brokerage of Texas, LLC.
and the
City of Austin

This contract has been amended as follows:

1.0 Section 1.5 Compensation on the above listed contract has been amended as follows:

The Contractor shall be paid a total Not-to-Exceed amount of \$1,600,000 for administrative services, and a total Not-to-Exceed amount of \$13,700,000 for the purchase of insurance and payment into a loss fund. Payment shall be made upon submission of proper invoices to the Risk Management Department.

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

3.0 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.

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

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

Signature & Date:

Printed Name: Lloyd Ray Pitts Jr.
Authorized Representative PRESIDENT

Allied North America Insurance
Brokerage of Texas, LLC
12770 Coit Road, Suite 750
Dallas, TX 75251

Signature & Date:

Malinda Horitski, Buyer II
City of Austin
Purchasing Office

01-19-2010

Reviewed and Approved

Steven T. Aden

Date

1/19/10



TO: Joe Sanchez
CC: Amelie Gonzalecz-Flores
Department of Small and Minority Business Resources

FROM: Malinda Horitski, Buyer II, Purchasing Office
DATE: June 29, 2009

SUBJECT: Approval to use Zero Goals for Solicitation No. MRH1037
Project Name: Rolling Owner Controlled Insurance Program (ROCIP) Administrator
Commodity Code(s): 91869 Insurance Consulting
Estimated Value: Estimated annual amount for this service, excluding the cost of the insurance premium is approximately \$120,000 annually.

The Purchasing Office has determined that the following Goals are appropriate for this non-professional services purchase:

☒ No Goals (Goal of 0%)

This determination is based on the following reasons:

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

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 974-2651.

☒ 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: *The nature of the solicitation limits subcontracting opportunities because this is an insurance program. Recommend no goals.*

Stephen A. Elkins
Title: _____
cc: Art Alfaro, Treasurer

Date: *7/2/09*