



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

August 4, 2017

Zara Environmental LLC
Krista McDermid
Vice President
1707 West FM 1626
Manchaca, Texas 78652
admin@zaraenvironmental.com

Dear Ms. McDermid:

The City of Austin approved the execution of a contract with your company for Cave Atmosphere Monitoring and Karst Studies in Balcones Canyonlands Preserve Caves.

Responsible Department:	Austin Water
Department Contact Person:	Darrell Richmond
Department Contact Email Address:	Darrell.richmond@austintexas.gov
Department Contact Telephone:	512-972-0313
Project Name:	Atmosphere Monitoring and Karst Studies in Balcones Canyonlands Preserve Caves
Contractor Name:	Zara Environmental LLC
Contract Number:	NA170000211
Contract Period:	August 4, 2017 to August 3, 2018
Dollar Amount	\$44,938.31
Extension Options:	N/A
Requisition Number:	RQM 2200 17080100675
Solicitation Type & Number:	N/A
Agenda Item Number:	ADMIN
Council Approval Date:	N/A

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

Sincerely,

Irene Sanchez-Rocha
Procurement Specialist III
City of Austin
Purchasing Office

cc: Darrell Richmond, Austin Water

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
ZARA ENVIRONMENTAL
For
Cave Atmosphere Monitoring
And
Karst Studies in Balcones Canyonlands Preserve Caves**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Zara Environmental LLC ("Contractor"), having offices at 1707 West FM 1626 Manchaca, Texas 78652.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Brian D. Cowan, Phone: 512-291-4555, Email Address: kellie@zaraenvironmental.com. The City's Contract Manager for the engagement shall be Darrell Richmond, Phone: (512) 972-0313, Email Address: Darrell.richmond@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein 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.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:

- 2.2.1 Task 1 – Install air monitoring equipment
- 2.2.2 Task 2 – Assist with hydrogeological studies

2.3 Exhibit "C" Specification

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$44,938.31 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Wildland Conservation Division
Attn:	Monica Pauliuc
Address	3621 FM 620 South
City, State, Zip Code	Austin, Texas 78738

3.2.2 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.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 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.

3.3 **Payment.**

3.3.1 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.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 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;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 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;

3.3.3.5 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;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 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.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Retainage.** The City reserves the right to withhold a percent (%) (10% unless a different percentage is inserted) retainage until completion of all work required by the Contract. The Contractor's invoice shall indicate the amount due, less the retainage. Upon final acceptance of the work, the Contractor shall submit an invoice for the retainage to the City and payment will be made as specified in the Contract. Payment of the retainage by the City shall not constitute nor be deemed a waiver or release by the City of any of its rights and remedies against the Contractor for recovery of amounts improperly invoiced or for defective, incomplete or non-conforming work under the Contract.

3.5 **Non-Appropriation.** 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.

3.6 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.6.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.6.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.7 **Final Payment and Close-Out.**

3.7.1 The making and acceptance of final payment will constitute:

3.7.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from 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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect until the earliest of when the deliverables set forth in the Scope of Work are complete or the City terminates the Contract.

4.1.1 Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **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.

4.3 **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 the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **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.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 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 fourteen (14) calendar days after written request from the City.

5.1.1.3 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.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 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.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

5.1.1.8 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.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, 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.

5.1.1.10 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.

5.1.1.11 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.

5.1.1.12 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.

5.1.1.13 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.

5.1.1.14 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.

5.1.2 **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.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B

(Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

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

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.5 **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.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **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.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 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.

5.5 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **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.

5.5.2 **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 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.

5.5.3 **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 shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.6 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7 **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.

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 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.

6.1.2 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.

6.1.3 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.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to 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.

6.2.1 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.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the 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 of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 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.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby 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.

7.2 **Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Audits and Records.**

7.5.1 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.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **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.

7.7 **Indemnity.**

7.7.1 Definitions:

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

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

7.8 **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.

7.9 **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 City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Georgia Billela, Procurement Specialist III

P O Box 1088

Austin, TX 78767

To the Contractor:

Zara Environmental LLC

ATTN: Brian D. Cowan, P.G.

1707 West FM 1626

Manchaca, TX 78652

7.10 **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 Contract, 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.

7.11 **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.

7.12 **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.

7.13 **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 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.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the 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.

7.15 **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.

7.16 **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.

7.17 **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.

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

7.19 **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.

7.20 **Dispute Resolution.**

7.20.1 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.

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

will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) 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 Contractor 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.

7.22 Subcontractors.

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 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:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 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;

7.22.2.3 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;

7.22.2.4 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

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 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.

7.22.4 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.

7.23 **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.

7.24 **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.

7.25 **Holidays.** The following holidays are observed by the City:

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

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

7.26 **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.

7.27 **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.

7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ZARA Environmental LLC

By: 
Signature

Name: Krista McDermid
Printed Name

Title: Vice President

Date: 4 August 2017

CITY OF AUSTIN

By: 
Signature

Name: Irene Sanchez-Rocha
Printed Name

Title: Procurement Specialist III

Date: 8/4/17

List of Exhibits

Exhibit A	Agreement Zara Environmental LLC Proposal dated June 7, 2017
Exhibit B	Non Discrimination and Non-Retaliation Certification, Section 0800
Exhibit C	Scope of Work



**PROPOSAL FOR CAVE ATMOSPHERE MONITORING AND KARST STUDIES IN BALCONES
CANYONLANDS PRESERVE CAVES IN AUSTIN, TEXAS**

Prepared for:
Dr. Nico Hauwert
Balcones Canyonlands Preserve Manager
Austin Water Utility

Submitted via email to: Dr. Nico Hauwert <Nico.Hauwert@austintexas.gov>

7 June 2017

Greetings Dr. Hauwert,

In response to a recent phone conversation, I am submitting this proposal to monitor the concentration of carbon dioxide (CO₂) and ventilation of three Balcones Canyonlands Preserve (BCP) caves and assistance with karst studies in BCP caves in Austin, Texas. A brief description of this work is in the Description of Work section below, followed by an estimate of cost and timeline.

Zara Environmental LLC (Zara) project manager, Brian Cowan, has extensive experience with monitoring CO₂ in caves across Austin, including in BCP caves. He and Zara staff also have extensive experience deploying electronic instruments in harsh cave environments for the collection of scientific data and samples. Zara staff are highly proficient at entering and safely working within caves, and the company has done so for over 12 years. Because of our specialized cave expertise, Zara was previously provided sole source contracts by Watershed Protection for hydrogeological studies in cooperation with Austin Water Wildlands Conservation. In July 2013, Austin City Council approved another sole source contract with Zara to restore caves on the Blowing Sink Research Management Unit. Several Zara staff hold USFW 10(a)(1)(A) permits for working in federal permit caves and currently included on BCP access permits for hydrogeological studies. Zara staff are very familiar with many of our BCP permit caves, often from work predating the 1996 permit or City of Austin/Travis County acquisition. Zara Hydrogeologist, Brian Cowan, is co-author on published guidelines for conducting hydrogeological studies. Zara is a

registered as a Geoscience Firm by the Texas State Board of Professional Geoscientists and our staff includes two State of Texas Licensed Professional Geologists. Zara holds Texas Parks and Wildlife Department Scientific Research Permits covering work with state-listed freshwater mussels, amphibians, reptiles, and bats.

Description of Work

Task 1: Install CO₂ Loggers and Anemometers

Caves within the central Texas region are known to ventilate, typically on a daily basis, with significant volumes of cave air expelled and significant volumes of surface air flowing into them. The ventilation is caused by diurnal fluctuations of barometric pressure, also known as the “barometric tide”. Caves in central Texas often ventilate a greater amount of air when storms or pressure fronts move overhead causing a significant change in barometric pressure. Many caves in central Texas are also known to have high concentration of CO₂ that may cause discomfort to humans and may impact the cave ecosystem in positive and negative ways. The concentration of CO₂ in cave air is effected heavily by cave ventilation.

To better understand how caves ventilate and how cave air CO₂ fluctuates continuous monitoring of cave air CO₂ and wind speed and direction is needed. One logging Vaisala CO₂ meter and one NovaLynx anemometer and datalogger will be installed in three BCP caves. The meters will be placed in a location that will provide a representative measurement of CO₂ and air speed and direction for the cave. After installation, Zara will download data and service the meters on a recommended monthly basis through September 2017. All data will be delivered electronically to Dr. Nico Hauwert, and a backup copy of all data will be maintained on Zara’s servers for the duration of the study. All data will be delivered on CSV or Microsoft Excel native format. Zara will prepare a report detailing the methods and instruments used to obtain all data and discussion of the data.

Task 2: Assistance with Karst Studies

Zara will assist Dr. Nico Hauwert with hydrogeological studies of BCP caves, cave excavation, and karst feature surveys. Hydrogeological studies may include monitoring and sampling cave drips, assisting with tracer injection during rain events, excavating and potentially mapping caves and other karst features, conducting data analysis, and assisting with report preparation. The work may be highly dependent on rainfall events, the rate of progress of cave excavations, and other similar factors that are out of the control of Zara and the City of Austin; therefore, the scope of work will remain flexible so that Zara labor can be utilized where the greatest need and efficiencies exist as determined by Dr. Nico Hauwert. Work will continue until the project has been completed, the budgeted funds for Zara have been exhausted, or the end of the fiscal year is reached, with a final invoice submitted the end of September 2017.

Zara will provide all personal caving equipment for Zara Staff and tools for cave excavation and mapping. The City will be responsible for providing all tools and implements used for other activities such as water sampling and dye testing, dyes/tracers for injection, all drip monitoring equipment, and any equipment for other activities excluding personal caving equipment, cave excavation and mapping.

Estimate of Cost

All work is billed on a time and materials basis, and this estimate was calculated in an attempt to capture the maximum cost while at the same time assuming methodologies to minimize expenses.

Task Description	Total Labor Cost	Total Expenses	Total Cost by Task
Task 1			
Install CO2 meters and anemometers	\$15,147.80	\$16,240.00	\$31,387.80
Task 2			
Hydrogeologic studies. Hours can be moved to different rate categories as exact tasks have not been determined. Task 2 will not exceed \$13,550.51 total.	\$13,550.51	\$-	\$13,550.51
Task 3			
Cumulative Totals	\$28,698.31	\$16,240.00	\$44,938.31

Timeline

Work on this project will begin within two weeks of notice to proceed. A report for Task 1 will be submitted electronically within four weeks of completion of field work. One round of revisions will be addressed within two weeks of receipt of comments. A reasonable reporting timeline for Task 2 will be determined by Dr. Nico Hauwert.

Thank you for your consideration and for the opportunity to propose. Please do not hesitate to contact us with any questions or concerns you may have. I can be reached via email at brian@zaraenvironmental.com or by phone at 512-291-4555 (office) or 512-632-8409 (cell). We look forward to hearing from you regarding this work.

Sincerely,



Brian D. Cowan, P.G.
Project Manager/Hydrogeologist
Zara Environmental LLC



EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative 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 employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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 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 practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

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

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

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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

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

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

Sanctions:

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

Term:

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

Dated this _____ day of _____, _____

CONTRACTOR	_____
Authorized	_____
Signature	_____
Title	_____

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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

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

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

Sanctions:

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


Term:

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

Dated this 22nd day of September, 2017.

CONTRACTOR
Authorized
Signature

Zara Environmental LLC


Krista McDermid

Title

Vice President

EXHIBIT “C”

CITY OF AUSTIN, TEXAS PURCHASE SPECIFICATION

FOR

Air Monitoring of 3 Caves and Hydrogeological Studies

1.0 SCOPE AND CLASSIFICATION

1.1 Scope: This establishes minimum specifications for air monitoring in 3 caves and assistance on hydrogeological studies. Included in these specifications are actions on Scope and Classification, Material Requirements, Contractor Requirements, and Invoicing.

1.2 Location: Services shall be provided at the following location(s): Continuous air monitoring equipment will be installed in 3 caves to be determined, but likely will include:

Grassy Cove Cave, 9950 Escarpment Blvd 78739
Whirlpool Cave, Brush Country at Convict Hill rd. Millipede
Cave, McNeil High School

1.3 Classification:

1.3.1 Install air monitoring equipment-Task 1

1.3.2 Assist with hydrogeological studies-Task 2

2.0 AWARD

2.1 The City reserves the right to award all or in part of this contract pursuant to the City's best interests.

3.0 CONTRACTOR REQUIREMENTS

3.1 Upon award of the contract, the Contractor shall contact the Project Manager within 7 business days to set up a meeting to discuss the contract and access to work sites.

3.2 Work shall begin within 30 calendar days of award of contract and must be completed on or before September 30, 2017.

3.2.1 Work shall begin no later than August 1, 2017, if the contract is approved.

3.3 A US Fish and Wildlife permitted Biologist must be present to inspect the work.

3.4 Work Hours:

3.4.1 The Contractor may work anytime from dawn until dusk, 7 days a week.

3.4.2 No employee of the Contractor shall be permitted on City property outside of work hours. Any Contractor employee found on City property without the permission of the Project Manager shall be considered trespassing and subject to penalty of law.

3.5 Damage Prevention:

3.5.1 Contractor operations shall minimize disturbance to soil and herbaceous vegetation. If at any time the Project Manager deems that operation of equipment is resulting in excessive soil or herbaceous disturbance, he may instruct the Contractor to adjust operations accordingly. This may involve suspending operations when the soil is wet or otherwise altering equipment operations to reduce disturbance to soil or herbaceous vegetation.

3.5.2 The Contractor shall follow a Wildfire Prevention Plan as provided by the Project Manager. The Wildfire Prevention Plan ensures that fire extinguishers are in place on all equipment and that the Contractor has the appropriate contact information in case of a fire.

3.5.3 The Contractor shall have at least 1 fully-functional and accessible 5 lb. fire extinguisher on each vehicle (including mechanized equipment) while on City property.

3.5.4 The Contractor shall notify the Project Manager within 30 minutes of any spill by Contractor employees. Spills of fuels, lubricants, hydraulic oils, or solvents shall be addressed by excavating contaminated soil, removing from the site, and disposing of it in an approved facility, at no additional cost to the City.

3.5.5 The Contractor shall have proper spill containment devices including shovels, trash bags, and leak containment receptacles.

3.5.6 Damage or contamination to sites, materials, or facilities including but not limited to soil, water, vegetation, roads, gates, fences, buildings, structures, and infrastructure on City property caused by Contractor employees shall be replaced or repaired by the Contractor within ten (10) business days, to the satisfaction of the Project Manager, at no additional cost to the City.

3.5.7 There shall be a penalty imposed by the City for unnecessary cutting of or damage to any non-target trees. This shall be based on Sec 3 of the City of Austin "Environmental Criteria Manual," (https://www.municode.com/library/tx/austin/codes/environmental_criteria_manual?nodeId=S3TRNAARPR_3.5.0DEC_3.4MIME) for replacement of trees. However, as specified in Paragraph 4.5.4, cutting of certain trees or shrubs under the direction of the Project Manager.

3.5.8 The Contractor may store equipment on-site at a location or locations

specified by the Project Manager.

- 3.5.9 The City will not be responsible for any lost or damaged equipment left by the Contractor on City property.

3.6 Contractor Employees:

- 3.6.1 The Contractor shall provide qualified supervisors and workers skilled to operate equipment needed to perform these services. Personnel shall be the direct employees of the Contractor.
- 3.6.2 The Contractor shall provide and maintain an adequate number of employees to satisfactorily perform the scheduled work and meet the project deadline.
- 3.6.3 The Contractor shall provide each employee with proper identification that contains both the names of the Contractor and the employee. Employee identification shall be clearly visible at all times while on City property.
- 3.6.4 The Contractor shall designate a responsible, English-speaking supervisor who will be at the work site at all times when work is being conducted.
- 3.6.5 The Contractor shall be responsible for instructing employees on appropriate safety measures.
- 3.6.6 No alcoholic beverages, firearms, hunting, fishing, collection of artifacts or other natural items, open fires, or camping will be permitted on City property.

4.0 MATERIAL REQUIREMENTS

- 4.1 The Contractor shall provide labor and equipment necessary to perform these services. The City Project Manager or designee reserves the right to inspect the Contractor's equipment at any time prior to or during the term of this contract. Failure to provide and maintain suitable equipment shall be grounds for termination of the contract.
- 4.2 The Contractor shall be prepared to include an equipment inventory list upon request by the City Project Manager or designee.
- 4.3 The use of mechanized equipment may not be feasible in some areas due to rocky or steep terrain, in dense woodland, or under low branches.
- 4.4 Only equipment with rubber tires or tracks is acceptable. Metal tracks will not be allowed.

5.0 INVOICING

- 5.1 The Contractor shall provide invoicing for completed work. The Contractor shall

submit invoicing by phase or completion of project.

City of Austin Water
Wildland Conservation Division
Attn: Monica Pauliuc
3621 FM 620 South
Austin, Texas 78738

Phone: (512) 972-1662
Email: monica.pauliuc@austintexas.gov

5.2 Invoice(s) shall include, but is not limited to, the following:

- Contractor's name as appears on the Contract and/or W9
- Contractor's address and phone number
- Contractor's sequential invoice number
- City's CT number (purchase order)
- Date of service
- Location of service
- Itemized invoice

6.0 INSPECTIONS

6.1 The City Project Manager or designee can and will conduct periodic inspections throughout the course of the project.

7.0 COMPLETION OF WORK

7.1 The Contractor shall contact the Project Manager for final inspection. Any deficiencies or unsatisfactory work will be noted and corrective action by the Contractor shall be made within 10 business days at no additional cost to the City.

7.2 The Project Manager will be the sole judge of completion of work.

7.2.1 The City's Project Manager is:

Nico Hauwert
3621 FM 620 South
Austin, TX 78738

Phone#: (512) 972-1661
Fax#: (512) 972-1665
Email address: nico.hauwert@austintexas.gov

Wildfire Prevention Plan Template

Location of Work:

BCP: _____

WQPL: _____

Tract name(s): _____

Nearest gate address: _____

GPS coordinates: _____

Date(s): _____

Type of work: _____

Specifics of Work: _____

Number of personnel: _____

Fire prevention/suppression
equipment on site: _____

Fire prevention preparation: _____

Fire department jurisdiction: _____

Spotter:

During active high fire danger periods a member of the work group will be designated as a spotter to observe and report potential wildfire ignitions. During hot work such as welding, or high risk activities such as operation of vehicles or power equipment in heavy fuels the spotter will be dedicated only to that responsibility.

Name of designated spotter: _____

**Emergency
Contact:**

An emergency contact will be the designated point of contact who will be available in the event Wildland Conservation Division Management needs to contact a project team in the field.

Name of emergency contact: _____

Best method of contact: _____

Personnel: _____

Supervisor: _____

Project Manager: _____

Phone: _____

Fire Manager: Lucien M. Ball (Mobile 512-940-3452) (Office 512-972-1683)
WQPL Manager: Kevin A. Thuesen (cell 512-632-8064) (Office 512-972-1666)
BCP Manager: Nico Hauwert (Mobile 512-695-4597) (Office 512-972-1661)
WCD Division Manager: Sherri L. Kuhl (Mobile 512-299-6775) (Office 512-972-1664)



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 06/08/2017 DEPT: AWU
TO: Purchasing Officer or Designee FROM: Nico Hauwert
BUYER: Balcones Canyonland Preserve PHONE: (512) 972-1661

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☒ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

- Mr. Brian Cowan of Zara Environmental has conducted the only extensive air-quality study of BCP and other Austin-area caves and development methodology for continuous monitoring.
- Mr. Brian Cowan pioneered the tracing, water quality, and drip-rate analysis techniques he co-authored (with Dr. Hauwert) in a guidelines document for determining sources of drips in caves
- Zara staff hold U.S. Fish & Wildlife Service 10(A) permits for accessing protected caves.
- Mr. Cowan and Zara staff are familiar with safely accessing BCP and other caves in this study.
- Mr. Cowan collected water quality samples for Flint Ridge Cave, Blowing Sink, Maple Run, and Goat caves conducted preliminary analysis of drip rates for the two hydrogeological studies being completed.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

There is no other firm qualified to conduct the necessary air-quality monitoring and work to complete several hydrogeological studies. Because the cave work is so specialized, Watershed Protection Dept previous created sole source contracts with Zara and the Austin City Council approved another larger contract for similar work.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Zara Environmental LLC which will cost approximately \$ 44,938.31 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Alex W. Stewart 6/8/2017
Originator Date

Approved
Certification

T. M. 6/14/2017
Department Director or designee Date

Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

[Signature] 7/27/17
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013

PRF QUESTIONNAIRE

CERTIFICATE OF EXEMPTION (SS) DOCUMENTS ONLY:

A detailed explanation must be included in #5 of the Certificate of Exemption form answering the following questions.

- 1. Why is this procurement a sole source? Why is the vendor the only viable solution? Provide a detail, "tell the story".**

Brian Cowan of Zara has conducted the only extensive air-quality monitoring study of Austin caves and developed methodology for continuous monitoring. He is co-author on published guidelines for conducting hydrogeologic studies. No other contractor has conducted the tracing and drip studies we require. Zara staff hold required federal permits and are also approved to access BCP caves for hydrogeological studies. Zara staff are familiar with the BCP permit caves and have been co-authors on reports addressing these caves.

- 2. Include a manufacturer letter stating the justification of the sole source on company letterhead for all sole sources. If a distributor, include a manufacturer letter on company letterhead.**

Attached.

- 3. What analysis has been done to determine that this procurement is a sole source? (i.e. market research/knowledge, internet searches, evaluation of other companies, information from other municipalities, etc.).**

I have reviewed scientific literature regarding air quality in caves and discussed future possible studies with Texas State University and University of Texas. I have discussed with USFW Staff the level of hydrogeological studies that have been submitted and none (other than the City of Austin studies) approach the level of sophistication that Brian Cowan and Zara have cooperatively conducted.

- 4. Is this item available through any approved City of Austin cooperative? If so, which one? (TXMAS, US Communities, Buyboard, DIR, HGACBUY, NJPA, TCPN, TxSmartBuy) Link to complete list of City approved cooperatives:**
<http://purchaustintx.coacd.org/intranet/CoopPurch.cfm>

No.

- 5. Why is no other brand acceptable? Is there a concern regarding warranty, compatibility and/or safety/ health and public safety?**

Because the work is specialized research in nature, very few conduct these studies with the quality and knowledge required.

- 6. Has this procurement been competitively bid in the past? How have we been currently obtaining this item? (i.e. procard, spot purchases, through a cooperative, ect.)**

No, previous specialized cave work of this nature utilized Zara Environmental LLC under sole source by Watershed Protection Department (in cooperation with Austin Water Wildlands Conservation) or approved as sole source by Austin City Council (July 2013).

- 7. What are other acceptable brands? If not, what makes them unacceptable?**

Other firms would not be familiar with our caves from extensive prior work, have not conducted extensive air monitoring in them, have not participated in the data collection, data analysis or report preparation that went into the hydrogeological studies. Not many consultants hold US Fish and Wildlife 10(a)(1)(A) permits for work in federal permit caves.

8. Are there territorial or geographic restrictions? What are they?

It requires local contractors to work on the caves rapidly without extensive transportation costs. For example, while working on the ongoing Flint Ridge hydrogeological study, Zara's office was 1 mile away from the cave sites that allowed their staff to quickly respond to rain event-triggered activities.

9. Are there resellers, distributors, or dealers in the market? If so, who?

No.

10. What other suppliers or products/services were considered? What made them unacceptable?

Not applicable.

11. If the product is designed to be compatible with existing item, describe the age, value and useful life remaining of the current /item.

Not applicable

12. What is the estimated cost of buying a new item? What is the value of buying the addition versus buying all new?

Not applicable.

13. Is there a way to retrofit another brand? If so, what is the cost?

Not applicable.

14. Is there specialized training or certifications required to maintain or repair the item? If so, explain.

A US Fish & Wildlife biological permit and BCP access permit, cave safety and techniques training. Advanced degree associated with cave air studies.

15. What might the the estimated cost be of buying a different item? What is the cost comparison?

Not applicable.

FOR ALL PURCHASES (including SS requests):

1. If this is a repair and the equipment had to be disassembled at a repair shop, tell the story of what occurred; ie. cost for disassembly, estimate cost of repairs, was the vendor on a rotation list, was the vendor next in line for work. This type of purchase would not be a sole source.

Not applicable.

2. What is needing to be purchased? Explain in detail. This info needs to match the each line item on the PRF.

Labor to Install CO2 meters and anemometers in 3 caves, purchase equipment for air monitoring in 3 caves, and hydrogeological studies

3. Why is there a need to purchase this commodity/service?

Air-quality monitoring is required for public and worker safety as well as ecosystem research to preserve permit caves. Hydrogeological studies of caves are required for our federal BCP permit.

4. Is this a replacement? If so, what it is replacing?

No.

5. Where will it be used and for what purpose?

Various sites across west Austin.

6. Is it critical for AWU operations? If so, please explain.

The City of Austin and Travis County commit in a federal BCP permit to preserve 62 caves with rare cave invertebrates.

7. Could the AWU do without it? If not, why not?

The federal permit requires that we conduct hydrogeological studies prior to permitting infrastructure projects to help understand and protect water sources for the caves. For example: the Davis Lane realignment project by City of Austin Public Works was permitted under the assurance that a hydrogeological study for Blowing Sink, Goat Cave, and Maple Run Caves would be completed. The City of Austin is also required to complete a hydrogeological study for Flint Ridge Cave, since a highway will be built within ¼ mile.

8. Can the old equipment be repaired? If not, why not?

Not applicable.

9. How frequent is the usage to merit this purchase?

Public tours of wild caves average about 3 tours per week of groups typically 15 in size, by various City departments and non profit groups, and may expand in the future. City staff conduct faunal surveys in caves and other work weekly.

10. How did we operate before this purchase?

Cave work as a practice incorporates air quality meters for instant reading in various points in various caves. The data is adequate to evaluate air quality for the purposes of work going on at that time, but inadequate to derive predictive patterns in air quality and direction. Continuous air-quality monitoring in a few sample caves will provide a more proactive understanding of safety issues and factors affecting the cave ecosystems that we are charged with protecting. The completion of hydrogeological studies will eventually

need to be completed for most of the 62 permit caves, although the highest priority are those potentially threatened by immediate impacts.

11. Is this a new process requiring new equipment? If so, please explain.

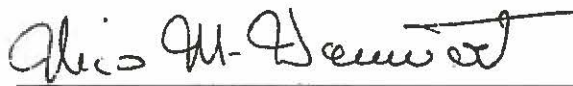
For air monitoring, portable carbon dioxide loggers with small power demands with aerometers with high sensitivity to measure slight airflow is required.

12. Was the commodity/service identified in the approved FY budget of the Division requesting the purchase?

Yes, work on cave systems was imbedded in the FY2017 budget under 5020-2200-6607 object code 5860.

Because of their specialized cave expertise, Zara Environmental LLC was previously provided sole source contracts by Watershed Protection for hydrogeological studies in cooperation with Austin Water Wildlands Conservation. In July 2013, Austin City Council approved another sole source contract with Zara Environmental to restore caves on the Blowing Rock Research Management Unit. Zara Environmental LLC is a woman-owned business. Brian Cowan and other Zara staff hold USFW 10(a)(1)(A) permits for working in federal permit caves and are currently included on BCP access permits for hydrogeological studies. Their staff are very familiar with many of our BCP permit caves, often from work predating the 1996 permit or City of Austin/Travis County acquisition. Brian Cowan is co-author on published guidelines for conducting hydrogeological studies.

Thank you,



Nico M. Hauwert, Ph.D., PG
Balcones Canyonland Preserve Program Manager
City of Austin | Austin Water
Wildland Conservation Division
Reicher Ranch, 3621 South FM 620 Rd, Austin TX 78738
Office: 512-972-1661 | Cell: 512-695-4597 | Fax: 512-972-1665
nico.hauwert@austintexas.gov