



# City of Austin

## Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

October 4, 2018

Duke's Root Control  
Braden L. Boyko  
Vice President  
1020 Hiawatha Blvd. West  
Syracuse, NY 13204-1131  
[braden@dukes.com](mailto:braden@dukes.com)

Dear Mr. Boyko:

The Austin City Council approved the execution of a contract with your company for Root Control.

Responsible Department:	Austin Water
Department Contact Person:	Grishma Shah
Department Contact Email Address:	<a href="mailto:Grishma.shah@austintexas.gov">Grishma.shah@austintexas.gov</a>
Department Contact Telephone:	512-972-2018
Project Name:	Root Control
Contractor Name:	Duke's Root Control
Contract Number:	MA 2200 NS180000052
Contract Period:	10/5/2018 – 10/4/2021
Dollar Amount	\$240,000
Requisition Number:	RQM 18040200402
Agenda Item Number:	17
Council Approval Date:	10/04/18

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,

Georgia Billela  
Procurement Specialist III  
City of Austin  
Purchasing Office

cc: Darrell Richmond  
Andy Ramirez  
Grishma Shah

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
DUKE'S ROOT CONTROL  
For  
Root Control for Sanitary Sewer Mains  
MA 2200 NS180000052**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Duke's Root Control ("Contractor"), having offices at Syracuse, NY.

**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 providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. 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.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Braden Boyko, Phone: (315) 472-4781, Email Address: [Braden@dukes.com](mailto:Braden@dukes.com) . The City's Contract Manager for the engagement shall be Grishma Shah, (512) 972-2018, Email Address: [Grishma.Shah@austintexas.gov](mailto:Grishma.Shah@austintexas.gov) . The City's 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 root control for various sized pipes as outlined in Exhibit A:

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid an amount not-to-exceed \$240,000 for all fees and expenses upon the successful completion of the Scope of Work, as described Exhibit A.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **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 itemized and transportation charges, if any, shall be listed

separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Water
Attn:	Grishma Shah
Address	2600 Webberville Road
City, State, Zip Code	Austin, Texas 78702

3.2.3 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.

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

3.2.5 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 set off 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 **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.

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

3.5.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.5.2 The making and acceptance of final payment will constitute:

3.5.2.1 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

3.5.2.2 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.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 36 months.

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

4.1.2 This is a 36 month Contract. Prices are firm for 36 months.

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

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

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.

5.1.2.4 **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 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

5.4 **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.

## 5.5 **Delays.**

5.5.1 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.

5.5.2 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.

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

5.6.1 **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.

5.6.2 **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.

5.6.3 **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.

## 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 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 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 effect 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 2<sup>nd</sup> Street, 4<sup>th</sup> 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:

Duke's Root Control Inc.

ATTN: Braden Boyko, Contract Manager

1020 Hiawatha Blvd West

Syracuse, NY 130204-1131

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 ensure 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](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

**7.29 Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

7.29.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

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

Duke's Root Control Inc.

By: \_\_\_\_\_

Signature

Name: Braden L. Boyko

Printed Name

Title: Vice President

Date: 7/11/2018

CITY OF AUSTIN

By: \_\_\_\_\_

Signature

Name: Georgia Billela

Printed Name

Title: Procurement Specialist III

Date: 10/5/18

### List of Exhibits

Exhibit A	City of Austin Scope of Work
Exhibit B	Duke's Root Control Inc. Pricing Agreement
Exhibit C	Non Discrimination Certification, Section 0800



CITY OF AUSTIN  
PURCHASE SPECIFICATION  
FOR

**CITY-WIDE ANNUAL SERVICE AGREEMENT FOR  
ROOT CONTROL OF SANITARY SEWER MAINS**

**1.0 PURPOSE**

- 1.1 The City of Austin (City) seeks bids in response to this solicitation to establish a contract with a qualified Vendor (Contractor) who can provide Diquat Dibromide for use in treating roots within wastewater collection system across the City of Austin. The Contractor shall provide the chemical and apply product in accordance with manufacturer's instruction to wastewater mains as assigned. The City will reimburse the Contractor in according with the terms of the Contract and bid prices.

**2.0 APPLICABLE SPECIFICATIONS**

- 2.1 NAASCO: National Association of Sewer Service Companies
- 2.2 PACP: Pipeline Assessment and Certification Program
- 2.3 Granite XP: Asset Management & Decision Support Software provided by CUES
- 2.4 CMOM: Capacity, Maintenance, Operation and Maintenance
- 2.5 Contractor shall be responsible for obtaining Temporary Use of Right of Way Permits (TURP) from the City and provision of and maintenance of temporary traffic control devices as required by the City of Austin.
- 2.6 Contractor shall be responsible for obtaining permits for any work performed in the Texas Department of Transportation right of way.
- 2.7 Work shall be performed by Contractor employees with appropriate licenses.
- 2.8 All other federal, state and local guidelines, resolutions, and ordinances not listed.

**3.0 CONTRACTOR GENERAL REQUIREMENTS**

- 3.1 The Contractor shall include in their bid submittal: resumes, licenses, and/or certifications for personnel responsible for root treatment of sanitary sewer mains. The Contractor shall have a minimum of 3 years' experience applying Diquat Dibromide for root control in sanitary sewer systems. Any change of key staff during the contract, the contractor shall inform and obtain approval from the city for suitable replacement.
- 3.2 The Contractor's attention is drawn to the following terms, conditions and responsibilities:
  - 3.2.1 Contractor shall provide Pollution Liability Insurance; in addition to all other

insurance and bonds specified herein.

- 3.2.2 The Contractor shall provide a money-back guarantee on all work specified herein as set forth below.
- 3.2.3 The Contractor is responsible for all property damage and for all cleanup and restoration associated with any chemical spill.
- 3.2.4 The Contractor shall use a reduced-pressure-zone backflow prevention device or air gap whenever accessing fresh water for mixing chemical.
- 3.2.5 For each sewer section (manhole-to-manhole) that is treated under the Contract, the Contractor shall guarantee the work as follows. The Contractor shall, at his own expense, re-treat a sewer section, or refund 100% of the payment received to treat that section, in the event that:
  - Live roots are found in the section within 2 years after the application; or,
  - The section plugs up and floods due to tree-root obstructions within a period of two years, beginning on the date of treatment, and ending two years after the date of treatment.
- 3.2.6 Re-treatments, performed at no charge in honor of the guarantee, do not extend the expiration date of the guarantee. The guarantee applies to sewer stoppages caused by live tree roots. It does not apply to stoppages caused by grease or other foreign matter; flat, collapsed or deformed pipe; or flooding caused by a surcharged or plugged sewer section downstream from a guaranteed sewer section. This guarantee applies to main line sewers only.
- 3.2.7 The Contractor shall comply with all Federal, State and Local Laws, with special attention to those laws that pertain to the handling, transportation, and use of any hazardous materials, and disposal of all pesticide containers.
- 3.2.8 The Contractor shall utilize equipment that is solely used for applying Diquat Dibromide in sanitary sewer systems. If the Contractor wishes to use equipment that has been used to apply other herbicides or chemicals for root control, the Contractor shall submit a quality control plan that outlines how equipment will be effectively cleaned. This plan must ensure that there is no potential for herbicides other than diquat dibromide from entering into the Austin Water Sewer System. This quality control plan must be submitted and approved before use.

**3.3 The Contractor shall follow the sequence of work;**

- 3.3.1 **Packets Assignments:** Contractor will be provided packets of work to be performed and it is the responsibility of the contractor to track the progress of the work. Each Packet contains a combination of sanitary sewer mains of various sizes and lengths located within a sewer sub basin. Any discrepancies shall be brought to the City's Project Manager's attention immediately but no later than 24 hours after the Contractor becomes aware of the discrepancy. Any request for additional payment shall be approved prior to performing the work or additional payment will

not be made.

3.3.2 Contractor must complete at least 50% of assigned work within 6 months after contract is assigned. 100% work must be completed within 11 months after contract is assigned.

3.3.3 The Contractor shall notify the City's Project Manager in form suitable to the City's Project Manager (PM) (phone call, email typically) of any site conditions, such as amount of debris in excess, which would prevent the accomplishment of the work as identified in the "Work Order" immediately but no later than 24 hours after Contractor becomes aware of the conditions.

3.4 Contractor shall be familiar with the work environment and agency coordination requirement for each assignment.

3.4.1 Projects within the Downtown Area Project Coordination Zone (DAPCZ) are subject to the requirements set by City Code 14-11-167. Visit [www.amlegal.com/austin\\_tx/](http://www.amlegal.com/austin_tx/) for City Code and Technical Manuals. Refer to Exhibit 2 for current street limits for the Downtown Area Project Coordination Zone (DAPCZ).

3.4.2 Contractor shall visit the site of each work Plan to verify the location of the manholes without impeding the normal operation of any business in these areas.

3.4.3 Contractor shall develop a work schedule that incorporates any time necessary for the permit process and also coordination of work that does not impede the normal operation of the business of these areas.

3.4.4 Contractor is to coordinate with other contractors that may have activities planned for the same area before work is to commence.

3.4.5 Work will not be allowed in the same area where there is already a special event planned.

#### 4.0 CONTRACTOR MATERIALS REQUIREMENTS

4.1 The Contractor shall provide the labor, materials, equipment, and etc. information for City's Project Manager to review at the start of contract to perform root treatment of sanitary sewer mains.

4.2 The chemical root control agent shall contain an active ingredient of Diquat Dbromide for controlling sewer roots and deterring their re-growth. The chemical root control agent shall be registered with the EPA and the Texas Structural Pest Control Board, prior to the bid opening, and shall be labeled for use in sewers to control tree roots. There shall also be a surfactant system to deliver the active ingredient (herbicide) to the target root tissue.

4.2.1 Active ingredient:

- Shall be a Category "E" compound, the most favorable rating attainable on the U.S. EPA's chronic exposure toxicological rating scale.

- Shall not be considered a carcinogen, teratogen, mutagen, or oncogene, by the United States Environmental Protection Agency.
- Shall carry a "signal word" assigned by the U.S. EPA of either "Warning" or "Caution" on the product label. Pesticides carrying the signal word "Danger" will not be accepted.
- Shall be non-volatile in order to minimize exposure to collections system workers, treatment plant operators and homeowners through inhalation.
- Products containing the active ingredient(s) metam-sodium or copper sulfate are not allowed.

#### 4.2.2 Surfactant system:

- Produce a foam spray that is sprayed onto the pipe walls, existing roots and thoroughly penetrate the "wye" connections of any service laterals.
- Shall enhance the penetration of herbicide into root masses.
- Surfactants designed to foam chemically, upon contact with water, shall not be accepted.

## 5.0 CONTRACTOR OPERATIONAL REQUIREMENTS

### 5.1 Root Treatment

All work shall be performed according to label instructions and in accordance with the best recommended practice for conditions present in the line under treatment. All applications shall be done by foaming or other methods as provided on the product label.

5.1.1 The application of material shall be performed in such a way as to contact roots within the primary main line sewer to be treated. Effort will also be made to penetrate secondary lateral sewers in order to contact roots residing in the "wye" connections. The foam shall be generated through the use of air injection equipment, and the foam shall be pumped into the sewer under pressure as foam. Foam quality shall be sufficient to penetrate "wye" connections and effectively treat large diameter pipe. Therefore, applications of chemicals designed to generate foam "chemically" on contact with water shall not be accepted.

5.1.2 Manholes used to access a main line sewer section for treatment (Access Manholes) must be treated as part of the main line treatment and included as part of the main line section price per foot.

5.1.3 Hydraulic sewer cleaning machines will reduce treatment effectiveness by damaging root growths and inhibiting their uptake of chemical. Hydraulic sewer cleaning machines shall not be used prior to, or during the treatment process.

### 5.2 Damage to Structures

5.2.1 The Contractor shall protect the pipeline and its appurtenances from damage during the root treatment. Any damage resulting from the root treatment, the Contractor shall notify the City and the Contractor shall repair the damage at no additional cost to the City, using repair methods approved by the City.

5.2.2 Manholes dismantled or damaged during the root treatment process shall be repaired and replacement of manhole frames and covers damaged during the root treatment process shall be at Contractor's expense.

5.2.3 Should the Contractor or his employees cause any damage to public or private property, the Contractor will be required to make repairs immediately. The City's Project Manager may, however, elect to make repairs or replacements of damaged property and deduct the cost of such from moneys due or to become due the Contractor under this contract with the City's Project Manager. The Contractor shall not be responsible for any damages caused by sewer stoppages after the course of treatment

5.2.4 If the Contractor observed that there are any damaged manhole not due to root treatment activities, the Contractor shall notify the City of the manholes that are damaged prior to commencing work.

### 5.3 Operational Conditions and Surcharging Sewers

5.3.1 The Contractor shall perform the root treatment of the sewer under flow, i.e. without by-pass pumping. The contractor may have to work during off peak hours, weekends, and nights to perform the work. No additional payment will be made based on the working hours and days of the week.

5.3.2 Where the sewage flow is blocked or obstructed, sufficient precautions shall be taken to protect the public health. The sewer lines shall be protected from damage. The following shall be prevented:

- Sewage back-up into buildings.
- Sewage overflows from manholes, cleanouts or any access to the sewers.
- Disruption of water or sewer services to users upstream and downstream of the Work area.
- Sewage discharge into streets, storm sewers or surface waters.
- Contractor shall be responsible for cleaning up homes and or businesses as a result of sewer back up.

### 5.4 Sewage Spills

5.4.1 Contractor shall not, under any circumstances, allow sewage or solids removed in the root treatment process to be released onto streets or into ditches, catch basins, cleanouts, storm drains, or storm sewer manholes.

5.4.2 If during the root treatment, sewage is spilled, discharged, leaked or otherwise deposited in the open environment due to the Contractor's work, the Contractor shall immediately notify the City's Project Manager's project contact and also notify the Austin Water 24-Hour Emergency Service of the spill at (512) 972-1000. Then the Contractor shall cleanup the sewage and solids and disinfects the area affected. The Contractor is responsible for any fines, penalties or other costs or damages imposed upon the City by any agency or private party as a result of the spill or improper discharge by the Contractor.

## **5.5 Protection of wastewater treatment plant**

- 5.5.1** The Contractor shall take all steps necessary and appropriate to prevent adverse effects on wastewater treatment plant processes during the application process.
- 5.5.2** Notwithstanding the requirement that the active ingredient shall not adversely effect wastewater treatment plant processes, in the event that a wastewater treatment plant experiences any reduction in operating efficiency during the execution of the contract, the Contractor shall immediately suspend all applications, at the direction of the City's Project Manager. The contractor shall continue operations only after problems at the wastewater treatment plant have been corrected, satisfactory to the Wastewater Treatment Plant Operator.

## **6.0 CITY RESPONSIBILITIES – PACKETS AND CONTACT INFO**

- 6.1** The City shall prepare a "Work Order" (Packet Assignments) which consists of designated pipe to be treated for roots. Each sewer segment will be identified by the upstream and downstream node numbers such as manholes, and T connections. Pipe diameter, length, and pipe material (when available) will be identified.
- 6.2** The City shall issue to the Contractor a "Work Order" (Packet Assignments) detailing the pipes that are to be treated for roots. The Work Plan will include a date by which the field work is to be completed and date by which the data and reports are to be delivered to the AW. Figures will be included which show the pipes to be treated for roots and the manhole numbers.

### **6.3 City's Contact:**

Grishma Shah  
Austin Water  
Collection System Engineering Division  
2600 Webberville Road  
Austin, TX 78702  
(512) 972-2056

### **6.4 Work Progress Tracking**

- 6.2.1** The City will provide Work Progress spreadsheet for the Contractor to maintain and submit to City's Project Manager at the end of the business day every Friday.
- 6.2.2** This spreadsheet will also be made available to the Contractor upon request.
- 6.2.3** The City utilizes this spreadsheet to track the daily progress of the work performed.

## **7.0 SAFETY**

- 7.1** The Contractor shall follow all applicable OSHA (Occupational and Safety Health Administration) rules for all tasks performed during this contract. The Contractor shall also follow industry standard safety procedures and other safety practices for all work performed



under this contract. The Contractor shall be responsible for the safety of their employees and any subcontractors at all times. In addition, the Contractor and any subcontractors shall provide a safe environment for the driving public and citizens during the Contractor's activities.

- 7.2 The Contractor shall prepare and submit a Health and Safety Plan with their bid. The City will not accept any liability or release the Contractor from any safety responsibilities. The Contractor is responsible for adherence to their Health and Safety Plan throughout the life of the contract.
- 7.3 A "Safety Data Sheet" ("SDS") is required under Texas Health & Safety Code, Sec. 502.006, as amended, will provide, on or before the date of each delivery of the hazardous material, an electronic version of the most current "Safety Data Sheet" meeting the requirements set forth in Sec. 502.006, Texas Health & Safety Code. Each SDS provided shall bear the date when it was last revised. SDS sheets shall be sent to the following City email address: [awumsds@austintexas.gov](mailto:awumsds@austintexas.gov).
- 7.4 Prior to entering manholes or other structures, the atmosphere shall be evaluated by the Contractor to determine the presence of toxic, flammable or explosive vapors, and to determine oxygen deficient conditions. The Contractor shall take appropriate remedial measures to protect its workers. The Contractor is responsible for adherence to the printed safety plan.

#### 8.0 TRAFFIC CONTROL AND PERMITS

- 8.1 City of Austin Transportation Department for the Temporary Use of Right of Way Permits (TURP).
- 8.2 Request for the use of City right-of-way, including sidewalks, traffic lanes, parking lanes or meters, for all purposes, shall be authorized by the Austin Transportation Department. The Contractor is responsible for obtaining all necessary permits for their work
- 8.3 Contractor is responsible for submitting an application for the Permit for Temporary Use of the Right of Way (TURP) with an engineered traffic control plan. A sample TURP and instructions can be found online at the City web site <http://www.austintexas.gov/departments/transportation> or in Appendix 1. Submit Application to:

##### RIGHT-OF-WAY AUTHORIZATIONS

Right of Way Management  
Austin Transportation Department  
City of Austin, 3701 Lake Austin Blvd.  
Austin, TX 78703

- 8.4 This application is provided for Temporary Use of R.O.W. permits and is required for all work performed within the right-of-way of the City of Austin that does not involve utility cuts. The Contractor shall coordinate with scheduled R.O.W. work.

8.5 Some typical information that may be required to be provided along with the application will be:

- Approximate time frame of each manhole.
- Possibility of intersection work.
- Locations of each manhole and type of closure involved including sidewalk, parking or traffic lane.
- Traffic Control Plan to address each type of closure scenario.

8.6 If any of these standard Traffic control details are not appropriate for a specific work area, the Contractor shall inform the City with appropriate details and as required, the City will coordinate to have the City or its designee prepare an Engineered Traffic Control plan for the appropriate Work area. When required by Right of Way Management, the City or its designee will prepare a Traffic Control Plan (TCP) by a Professional Engineer registered in the state of Texas, which shall be submitted to the City ROW Management for review and approval. Contractor shall schedule their work and provide adequate notification and planning for the preparation of Engineered Traffic Control Plans. For the purpose of this scope of work, adequate notice is at least 4 to 6 weeks in advance of scheduled work.

8.7 Contractor is responsible for the appropriate use of standard Traffic Control details that is available online at <http://www.austintexas.gov/department/transportation>. The cost associated with this effort will be included in per linear footage of the cleaning of the sanitary sewer mains.

8.8 It is the Contractor's responsibility to submit the application and obtain a permit, for any work performed in the Texas Department of Transportation right of way.

8.9 For excavation, the Contractor shall obtain a permit and also all work and procedures shall be performed in conformance with the conditions described in the General Permit. Contractor shall show proof of General Permit as issued by the Department of Watershed Protection and Development Review, upon request.

## 9.0 ACCEPTANCE OF WORK AND PAYMENT

9.1 Unit Prices shall be in accordance to the bid sheet as follows:

9.1.1 Bid Item No. 1: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 4" through 8" size pipe.

9.1.2 Bid Item No. 2: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 10" size pipe.

9.1.3 Bid Item No. 3: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 12" size pipe.



- 9.1.4 Bid Item No. 4: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 15" through 20" size pipe.
- 9.1.5 Bid Item No. 5: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 24" though 30" size pipe.
- 9.1.6 Bid Item No. 6: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 33" through 36" size pipe.
- 9.1.7 Bid Item No. 7: Payment will be made for price per linear foot manhole-to-manhole. Sewer line chemical root control, including all labor, materials, equipment and associated costs, shall be paid for at the unit price bid per linear foot of 42" and above size pipe.
- 9.1.8 Bid Item No. 8: Payment for permits shall be paid out of an allowance for permits listed in the bid form. The permitting costs shall be based upon invoices from the City of Austin for the actual cost of the permits. The contractor's efforts to investigate, review, submit, re-submit, and obtain permits shall be subsidiary and are not included as part of this allowance.

## 9.2 Payment Request

- 9.2.1 Contractor shall meet and review the draft Payment Request with the designated City representatives and agree on the quantities prior to submitting the Payment Request to the City.
- 9.2.2 Payment Request shall be submitted at the 15th day of each month.
- 9.2.3 Revised Project Schedule shall be submitted along with each pay request.
- 9.2.4 For each Pay Request, the Contractor shall provide the submittals.
- 9.2.5 Pay Request Form shall include, but is not limited to, the following:
  - Contractor's name, on a professionally pre-printed form.
  - Contractor's address and phone number
  - City's contract number/purchase order number

## 10.0 OMISSION

- 10.1 It is the intent of this specification to provide completed chemical root treatment service for the City. Any service that have been omitted from this specification, which are clearly

necessary for the complete and legal operation of this service are to be considered a requirement, although not directly specified or called for in this specification. These omissions shall be brought to the immediate attention of the Buyer listed in the solicitation documents and a determination shall be made as to whether the requirements are to be incorporated into the solicitation by means of an addendum to the Invitation for Bid.



1020 Hiawatha Blvd., West  
Syracuse, NY 13204-1131  
1-800-44-ROOTS  
(315) 472-4781  
Fax (315) 475-4203

April 4, 2018

Grishma Shah  
Engineer  
City of Austin  
2600 Webberville Road  
Austin, TX 78702

RE: Root Control for Sanitary Sewer Mains

Dear Ms. Shah:

Duke's Root Control, Inc. agrees to extend its contract pricing to the City of Austin, TX, through 4/4/2021. All other 2018 Root Control For Sanitary Sewer Mains Bid terms and conditions remain the same.

If you require any further information, please call me at 1-800-447-6687. We look forward to being of service.

Sincerely,

Braden L. Boyko  
Vice President

**BID SHEET  
CITY OF AUSTIN  
ROOT CONTROL FOR SANITARY SEWER MAINS**

Bid Date: 3-27-18

Buyer: Duke's Root Control, LLC.

Copies of Bid: Bidder to submit two copies of its signed bid - one original paper copy and 1 electronic copy on a flash drive.

**Special Instructions:** The City will award this contract based upon evaluation of the bid.

Be advised that exceptions taken or qualifying statements made to any portion of the solicitations may jeopardize acceptance of the bid and may result in disqualification of the bid. Prices being submitted shall include ALL discounts, fees such as environmental or any other applicable fees, shipping charges, and FOB Destination.

A bid of '0' (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of 'no bid' will be interpreted by the City that the responder does not wish to bid on that item.

The estimated annual budget for this contract will be \$80,000. Contract award will be issued at the annual budget amount, regardless of the total amount on the bid sheet. The City reserves the right to order any combination of services in any quantity, up to the annual budget.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
	<b>Base Bid</b>				
1	Root Control for pipe sizes 4" through 8"	40.662 00	LF	\$1.59	\$64,652.58
2	Root Control for pipe size 10"	425.00	LF	\$1.76	\$748.00
3	Root Control for pipe size 12"	425.00	LF	\$1.92	\$816.00
4	Root Control for pipe sizes 15" through 20"	425.00	LF	\$3.97	\$1,687.25
5	Root Control for pipe sizes 24" through 30"	425.00	LF	\$6.35	\$2,698.75
6	Root Control for pipe sizes 33" thorough 36"	425.00	LF	\$6.35	\$2,698.75
7	Root Control for pipe sizes 42" and above	425.00	LF	\$6.35	\$2,698.75
8	Allowance for Permit Cost	1.00	EA	\$4,000.00	\$4,000.00
<b>TOTAL BID</b>				<b>\$ 80,000.08</b>	

Please check the boxes below as confirmation.

<input type="checkbox"/>	Offer Sheet - required
<input checked="" type="checkbox"/>	Bid Sheet (Section 0600) -required
<input type="checkbox"/>	Local Business Presence Identification Form (Section 0605) - required
<input type="checkbox"/>	Reference Sheet (Section 0700) -required

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
<input type="checkbox"/>	Nonresident Bidder Provisions (Section 0835)- required				
<input type="checkbox"/>	Compliance Plan (Section 0900) - required				
<input type="checkbox"/>	Health & Safety Plan as referenced in Section 0500 Scope of Work 8.2 - required				
<input type="checkbox"/>	I UNDERSTAND THAT FAILURE TO SUBMIT THE COMPLETED FORMS ABOVE MAY RESULT IN DISQUALIFICATION OF MY BID				
<input type="checkbox"/>	I UNDERSTAND THAT SUBMITTING WITH MY BID ANY CLARIFICATION STATEMENTS, QUALIFYING STATEMENTS, AND/OR EXCEPTIONS TO THE CITY'S TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF MY BID				
ACCOUNTS RECEIVABLE POINT OF CONTACT, NAME: <u>Valerie Butler</u> PHONE NUMBER: <u>315-234-2365</u>					
EMAIL ADDRESS: <u>Valerie@Dukes.com</u>					
DELIVERY TERMS: DELIVERY IS TO BE FOB DESTINATION, PREPAID AND ALLOWED					

**EXHIBIT C**  
**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 11th day of July, 2018

CONTRACTOR  
Authorized  
Signature

  
\_\_\_\_\_  
Braden L. Boyko

Title

Vice President





## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 04/04/2018

DEPT: AWU

TO: Purchasing Officer or Designee

FROM: Grishma Shah

BUYER: Andres Ramirez

PHONE: (512) 972-2018

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.

RAZOROOTER® II, which contains the active ingredient diquat dibromide ("diquat") is a proprietary product of Sewer Sciences, Inc. This product is used to control root growth in the sewer mains. Root growth is one of the source of sanitary sewer overflows in the wastewater collection mains. The US Patent #591973 for "Method for Controlling Root Growth using Diquat Dibromide" was issued July 1999. Duke's Root Control, Inc. is the only commercial applicator licensed by Sewer Sciences, Inc.

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).

The Austin Clean Water Program's Root Control Pilot Program completed in 2008, approved the use of diquat dibromide, an herbicidal foaming agent, for the City of Austin's sanitary sewer (wastewater) lines.\* The product deters growth of tree roots in the lines.

RAZOROOTER® II is the only diquat-based, sewer root control product that is registered with the U.S. Environmental Protection Agency (EPA Registration No. 64898-8) and the Texas Structural Pest Control Board.

RAZOROOTER® II incorporates the use of patented technology (see, "Method of Controlling Root Growth Using Diquat Dribromide, "US Patent # 5919731 issued July of 1999). This technology provides the most advanced means of controlling tree roots in sewer that is available today. At present Duke's Root Control Inc. is the only commercial applicator licensed by Sewer Sciences, Inc. to apply RAZOROOTER® II in Texas.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Duke Root Control which will cost approximately \$ 240,000.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

K. Koel 4/02/18  
Originator Date

Approved  
Certification

[Signature] 4/6/2018  
Department Director or designee Date

[Signature] 4/9/18  
Assistant City Manager / General Manager Date  
or designee (if applicable)

Purchasing Review  
(if applicable)

[Signature] 7/11/18  
Buyer Date Manager Initials

Exemption Authorized  
(if applicable)

\_\_\_\_\_  
Purchasing Officer or designee Date

02/26/2013





Home Office  
1020 Hiawatha Blvd. West  
Syracuse, NY 13204

Phone: 315-472-4781  
800-447-6687  
Fax: 315-475-4203

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**SEWER ROOT CONTROL PRODUCTS**

November 27, 2017

Ms. Grishma Shah  
Engineer  
City of Austin  
2600 Webberville Road  
Austin, TX 78702

RE: Razorooter® II, Patent and Licensing Information

Dear Ms. Shah:

RAZOROOTER® II, which contains the active ingredient diquat dibromide ("diquat"), is a proprietary product of Sewer Sciences, Inc. RAZOROOTER® II is the only diquat-based, sewer root control product that is registered with the U.S. Environmental Protection Agency (EPA Registration No. 64898-8) and the Texas Department of Agriculture/Structural Pest Control Board.

RAZOROOTER® II incorporates the use of patented technology (see, "Method for Controlling Root Growth Using Diquat Dibromide," US Patent # 5919731 issued July of 1999). This technology provides the most advanced means of controlling tree roots in sewers that is available today.

At the present time, Duke's Root Control, Inc. is the only commercial applicator licensed by Sewer Sciences, Inc. to apply RAZOROOTER® II in Texas. Duke's is registered with the Texas Department of Agriculture/Structural Pest Control Board, and Duke's applicators are certified with this same agency to perform pesticide applications to sewers.

If you have any questions or require additional information please contact me at 1-315-472-4781.

Respectfully,

Anthony J. Malavenda  
Director

**GOAL DETERMINATION REQUEST FORM**

<b>Buyer Name/Phone</b>	Georgia Billela/4-2939	<b>PM Name/Phone</b>	Grishma Shan/2-2018
<b>Sponsor/User Dept.</b>	Austin Water/2200	<b>Sponsor Name/Phone</b>	Darrell Richmond /2-0313
<b>Solicitation No</b>	N/A	<b>Project Name</b>	Root Control for Sewer Lines
<b>Contract Amount</b>	\$240,000	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
To Treat Roots in the Sewer Line			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
First Time request as a Certificate of Exemption. The last contract was a co-op. NC15*14			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
96896			
Georgia Billela		7/11/2018	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>			
<b>Date Received</b>	7/11/2018	<b>Date Assigned to BDC</b>	7/11/2018
<b>In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

## GOAL DETERMINATION REQUEST FORM

**This determination is based upon the following:**

- |  |  |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs               |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities         |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source                    | <input type="checkbox"/> Other                                   |

*If Other was selected, provide reasoning:*

### MBE/WBE/DBE Availability

N/A

### Subcontracting Opportunities Identified

N/A

Amy Amaya

SMBR Staff

Signature/ Date

7/18/2018

SMBR Director or Designee

Date

7-18-18

Returned to/ Date:

## **PRF QUESTIONNAIRE ROOT CONTROL FOR SANITARY SEWER MAINS**

### **FOR ALL PURCHASES (including SS requests):**

- 1. New equipment purchase: identify in detail what you are buying.**

Not a new equipment purchase.

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

We need to purchase services for root control to treat tree roots growing in the sanitary sewer mains. These tree roots will continue to grow and will eventually block the sewer main from flowing which will cause a sanitary sewer overflows. The contractor will provide the chemical and apply the chemical to sanitary sewer mains. This chemical will stop the growth, dries up the roots and eventually the roots are washed away.

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

We need a root control contract to perform root control treatment of our sanitary sewer mains. Tree roots in sanitary sewer mains are one of the main causes of sanitary sewer overflows. Applying a chemical treatment to the tree roots growing in sanitary sewer mains is a preventative measure to help reduce sanitary sewer overflows.

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

This purchase is a replacement of the existing root treatment contract. It is a continuing chemical treatment purchase for the use of removal of root in sanitary sewer mains.

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

For root control treatment on sanitary sewer mains to treat the mains that have tree roots growing inside them.

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

Yes. This treatment will help reduce sanitary sewer overflows that occur due to blockage caused by tree roots in sanitary sewer mains.

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

No. The pipelines identified for root control have been prioritized and have a significant amount of tree roots. If they are not treated, the roots will continue to grow leading to a likelihood of a sanitary sewer overflow.

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

Not applicable. This is a chemical that is used to remove roots from the sanitary sewer mains.

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

This will be multiple year contract and will spend \$80,000 for root treatment from the sanitary sewer mains each year.

**10. How did we operate before this purchase?**

Historically, we have had a sole source contract. For many years, it was a yearly contract. The last contract was 2 years. We are now requesting a three year contract to allow for root control to extend multiple years.

The sole source for root control products is a result of environmental considerations. The product provided by Duke's Root control, diquat dibromide, is a proprietary product and is the only product that we know of that has been subject to extensive testing and received approval for not having an adverse effect to the environment or biology. Testing on this product was performed by the U.S. Environmental Protection Agency, the Texas Structural Pest Control Board, and in addition, the product underwent a special pilot study by the City of Austin to check if this safe for the environment and biology. The multiyear pilot study, performed as part of the Austin Clean Water Program was completed in 2008 and through laboratory analysis "found no detection of the product in any of the samples above the required reporting limits" and "no observable negative impacts to trees in the vicinity of the treatments." The reason this is sole source is that we are not aware of any other products on the market that have undergone environmental testing or could meet the City's required environmental criteria.

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

The process is not new. Contractor will provide the chemical and apply the chemical to remove roots from the sanitary sewer mains, therefore no new equipment is needed.

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

Yes. This is an ongoing budget item in the Collection System Engineering Division.

**CERTIFICATE OF EXEMPTION (SS) DOCUMENTS (MUST ALSO COMPLETE QUESTIONS 1-11:**

**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".**

The Austin Clean Water Program's Root Control Pilot Program completed in 2008, approved the use of diquat dibromide, an herbicidal foaming agent, for the City of Austin's sanitary sewer mains. The product deters growth of tree roots in the lines.

To our knowledge, RAZOROOTER ® II is the only diquat-based, sewer root control product that is registered with the U.S. Environmental Protection Agency (EPA Registration No. 64898-8) and the Texas Structural Pest Control Board. RAZOROOTER ® II incorporates the use of patented technology (see, "Method of Controlling Root Growth Using Diquat Dribromide, "US Patent # 5919731 issued July of 1999). This technology provides the most advanced means of controlling tree roots in sewer that is available today. At present Duke's Root Control Inc. is the only commercial applicator licensed by Sewer Sciences, Inc. to apply RAZOROOTER ® II in Texas. To our knowledge, Duke's Root Control is the only commercial applicator that has experience applying Diquat Dibromide in sewer systems.

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

Please see 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.)**

The sole source for root control products is a result of environmental considerations. The product provided by Duke's Root control is a proprietary product and is the only product that we know of that has been subject to extensive testing and received approval for not having an adverse effect to the environment or biology. Testing on this product was performed by the U.S. Environmental Protection Agency, the Texas Structural Pest Control Board, and in addition, the product underwent a special pilot study by the City of Austin to check if this safe for the environment and biology. The multiyear pilot study, performed as part of the Austin Clean Water Program was completed in 2008 and through laboratory analysis "found no detection of the product in any of the samples above the required reporting limits" and "no observable negative impacts to trees in the vicinity of the treatments." The reason this is sole source is that we are not aware of any other products on the market that have undergone environmental testing or could meet the City's required environmental criteria.



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>

Yes. RAZOROOTER ® II is available through Buyboard cooperative.

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

RAZOROOTER ® II, which contains the active ingredient diquat dibromide ("diquat") is a proprietary product of Sewer Sciences, Inc. RAZOROOTER ® II is the only diquat-based, sewer root control product that is registered with the U.S. Environmental Protection Agency (EPA Registration No. 64898-8) and the Texas Structural Pest Control Board. Austin clean water program completed a pilot study in 2008 and this is the only product we are aware of on the market that meets the strict environmental considerations.

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, etc.)

Over the years, this project was bid as a sole source or obtained from the Texas buyboard.

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

Other products used for root treatment use harsher chemicals and do not have diquat dibromide in them which is the main ingredient of this chemical treatment which kills the roots in the sewer. Also this chemical does not kill the tree nor harm the bacteria used for wastewater treatment.

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

Yes, we cannot apply diquat dibromide in environmentally sensitive area i.e. Barton Springs Zone, Edward Aquifer. Also we cannot apply them to sewers which are in or within 50 feet of creeks, rivers or water bodies. As if chemical leaks out of sewer it may cause damage to environment.

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?

We did search for other products/services but Duke's Root control has patent on diquat dibromide chemically and so there are no other manufacturers that make this product or sell this product for use in sanitary sewer systems.

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?**

There is no other brand that manufactures Razorooter II. So we do not have cost estimate for the any other product similar to Razorooter II.

**14. Is there specialized training or certifications required to maintain or repair the item?**

If so, explain.

No.

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

There is no other product that is approved by city to remove roots chemically. Razorooter II is currently a patented product, so there are no other manufacturers in market to do the cost comparison of product.