



## City of Austin

### Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

February 26, 2019

Van Dyck Earthworks & Design, LLC.

Joseph Van Dyck

Contractor

33 Delaware Creek Rd.

Blanco, TX 78606

[Vandyck.designs@gmail.com](mailto:Vandyck.designs@gmail.com)

Dear Mr. Van Dyck:

The City has approved the execution of a contract with your company for Urban Restoration.

Responsible Department:	Austin Water
Department Contact Person:	Lisa O'Donnell
Department Contact Email Address:	<a href="mailto:Lisa.odonnell@austintexas.gov">Lisa.odonnell@austintexas.gov</a>
Department Contact Telephone:	512-659-1761
Project Name:	Urban Restoration
Contractor Name:	Van Dyck Earthworks & Design, LLC
Contract Number:	MA 2200 NA190000047
Contract Period:	2/26/2019 – 2/25/2021
Dollar Amount	\$111,000
Requisition Number:	RQM 18110900105

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: Lisa O'Donnell  
Ryan Brazier  
Andy Ramirez

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Van Dyck Earthworks & Design  
For  
Urban Restoration  
MA 2200 NA190000047**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Van Dyck Earthworks & Design ("Contractor"), having offices at Blanco, TX 78606.

**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 Joseph Van Dyck, Phone: (405) 606-5626, Email Address: [vandyck.designs@gmail.com](mailto:vandyck.designs@gmail.com). The City's Contract Manager for the engagement shall be Lisa O'Donnell, (512) 659-1761, Email Address: [Lisa.ODonnell@austintexas.gov](mailto:Lisa.ODonnell@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 Exhibit B in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid an amount not-to-exceed \$111,000 for all fees and expenses upon the successful delivery of the Commodities and Services, as described herein.

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 Utility
Attn:	Monica Pauliuc
Address	3621 RR 620 South
City, State, Zip Code	Austin, TX 78738

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

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

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

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

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

### 3.6 **Final Payment and Close-Out.**

3.6.1 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.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 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

3.6.2.2 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 twenty-four (24) 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.

5.2 **Contractor To Package Deliverables.** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5.3 **Shipment Under Reservation Prohibited.** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5.4 **Title & Risk of Loss.** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

5.5 **Right Of Inspection And Rejection.** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.6 **No Replacement Of Defective Tender.** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.7 **Special Tools & Test Equipment.** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.8 **Equal Opportunity.**

5.8.1 **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.

**5.8.2 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.

**5.9 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.

**5.10 Delays.**

**5.10.1** 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.

**5.10.2** 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.

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

**5.11.1 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.

**5.11.2 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.

**5.11.3 Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all



other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

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

5.13 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

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

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach 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

P O Box 1088

Austin, TX 78767

To the Contractor:

Van Dyck Earthworks & Design

ATTN: Joseph Van Dyck, Contract Manager

Street Address 33 Delaware Creek Rd.

Blanco, TX 78606

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.



**7.14 Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**7.15 Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**7.16 Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

**7.17 Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

**7.19 Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**7.20 Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

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

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

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

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

## 7.22 **Subcontractors.**

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

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

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

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

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

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract

shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

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

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

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

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

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

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Solicitation.**

7.27.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.27.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) \_\_\_\_\_ percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.27.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.27.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) \_\_\_\_\_ percent of the employee's annual compensation while employed by the Contractor

7.28 **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.

7.29 **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)

7.30 **PROHIBITION OF BOYCOTT ISRAEL VERIFICATION**

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.

B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:

- i. does not "boycott Israel"; and
- ii. will not "boycott Israel" during the term of this **Contract**.

C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

7.31 **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.

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

7.31.2 the Supplemental Purchase Terms and Conditions;

7.31.3 the Standard Purchase Terms and Conditions;

7.31.4 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.

Van Dyck Earthworks & Design

By:   
Signature

Name: Joseph Van Dyck  
Printed Name

Title: Contractor

Date: 25 Feb 2019

CITY OF AUSTIN

By:   
Signature

Name: Georgia Billela  
Printed Name

Title: Procurement Specialist III

Date: 2/26/19

## **List of Exhibits**

Exhibit A	Non Discrimination Certification, Section 0800
Exhibit B	Van Dyck Earthworks & Design Proposal (“Contractor’s Proposal”)
Exhibit C	Van Dyck Earthworks & Design Pricing Agreement

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

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

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

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

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

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

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

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

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

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

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

**Sanctions:**

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

**Term:**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CONTRACTOR	_____
Authorized	
Signature	_____
Title	_____



# Habitat Restoration Projects for Vireo Preserve and JJ&T Properties

**Proposal put together by:**

**Elenore Goode/Texastopia Farm**

**Pete VanDyck/DroughtProofTX**

**Lisa and Jim O'Donnell/Balcones Canyonlands Preserve**

**John Chenoweth/Austin Water**

## **Abstract**

Multiple landscape-scale contour berm and swale earthwork restoration projects are proposed for preserves within the Balcones Canyonland Preserves (Vireo Preserve and JJ&T) with the goals of restoring:

- native flora and fauna communities, and in particular the historic forests and woodland habitats of the Texas Hill Country and all of its endangered, threatened, and declining species,
- soil health, structure, and microbiology,
- groundwater,
- habitat connectivity,
- and implementing erosion control and rainfall runoff control earthworks to create aquifer recharge and reduce flooding.

There is potential from this type of rehydration-focused and landscape-scale holistic management to restore the function of local hydrological cycles and mitigate drought and flood events.

## **Historical, Local, and Ecological Context**

We know from research and historical accounts that the ecological landscape of the Texas Hill Country used to be abundant with a rich diversity of plants and animals that are largely missing today. The steep slopes of the Hill Country were originally covered with deep soils and 70 foot tall forests of juniper, oaks, and a diverse array of many other tree and understory species, including many shade-loving grasses.

Many of these plant and animal species have been pushed to local extinction across much of their historic range, with survivors of the rarest plants only clinging on in small pockets of suitable habitat, such as moist protected canyons. Centuries of deforestation, habitat fragmentation, erosion, tillage, overbrowsing/grazing by cattle, sheep, and goats, and the introduction of frequent anthropogenic fire into the landscape are responsible for the initial ecological destruction of the Texas Hill Country, which had already thoroughly happened by 1860.

Texas also used to be one of the prime destinations for healing mineral springs and hot springs in the world, and while some of those famous lowland and pressure/fissure springs are still flowing perennially, many of those and most upland

springs have been rendered totally dry by the loss of their topsoil and vegetation which slows and infiltrates the heavy rains into the aquifers.

Restoring the historic forests of the Hill Country is the key to restoring biodiversity and having healthy springs flowing year-round, to having more local rainfall created by plant and soil moisture, and healthy connected ecosystems where our endangered and declining species can thrive. The ability of the historic forests to slow and infiltrate heavy rainfall down into the limestone and build deep sponge-like soils from decaying litter and wood is vital for the recharging and healthy functioning of aquifers and springs. Without the protective forest cap on steep hills to slow and infiltrate the rapid rainfall events, that rain will be lost as catastrophic flooding events. Depending on how we manage our watersheds, we can create either drought, or resilience to it.

The projects being proposed for these preserves include some of the current best solutions restoration professionals have been studying and utilizing for remedying these issues effectively on a landscape scale, and for effectively returning some of the most degraded parts of the Hill Country to healthy and thriving forests.

### **Restoration Goals and Solutions**

Within the broader ecological conservation context that the Balcones Canyonlands Preserves are set aside for, there are many more specific goals and intensive restoration projects being passionately pursued by dedicated biologists. These goals include, but are not limited to:

- Restoration of the historic forest and woodland habitats that were the dominant vegetation type of these steep hills and terraces.
- Restoration of historic plant and animal diversity.
- Habitat protection, enrichment, and restoration for animal and plant species that are endangered or threatened.
- Restoring habitat connectivity/decreasing fragmentation, creating new habitat edge.
- Re-vegetation of slopes and ledges that are currently barren or degrading.
- Erosion control and stabilization of steep and degrading slopes.
- Soil improvement and building to hold and soak in more rainfall moisture.
- Rainfall runoff control and management through contour land planning to recharge aquifers and prevent soil loss and scouring of creeks.
- Controlling as much water as high up in the landscape and watershed as possible, to slow and soak it at every interval/contour and prevent runoff from gaining damaging speeds.



- Propagation of fungi and promotion of mycelial networks through the forest to improve soil and plant health and restore historic mycorrhizae populations.
- Permaculture restoration methods to improve adaptability and resilience of the local ecosystem.

The projects proposed for Vireo Preserve and JJ&T are designed to implement and fulfill all of these short and long term stated restoration goals for some of the most barren parts of the preserves, where the existing amount of habitat for most species is negligible.

The concept of the berm and swale is to dig a level trench on contour (with the excavated material placed downslope of the trench/swale) to intercept the rainfall runoff falling downhill and soak it into the ground. Appropriate spillway placement for swale outflow ensures a system that functions well by keeping water from backing up behind the berms once the swales are full.

Installing a long, wide stretch of contour berm and swale terrace will help restore ecosystem connectivity in the landscape for the habitat of many small animals and soil microorganisms that are sensitive to lack of moisture or plant cover, distance to food sources, availability of nesting materials, exposure to predators, etc.

The berms and swales both make rich, moist growing beds that will have riparian species thriving in them on spots that were previously dehydrated and desert-like environments. The plants grow very quickly in these conditions and start to build shade, organic matter, help retain moisture, and help act as buffers to sun, sound, and wind.

As more and more heavy rainfall events are captured by the swales, the water table for the springs they are recharging gets higher, and the effects of enough soil building and runoff capture across the landscape can eventually be cumulative enough to revive and re-perennialize dormant and recently-annual springs.

These contour earthworks have proven to be a very reliable, durable, and cost-effective restoration method for us to beneficially impact large degraded areas from all of these ecological angles at once.

## Project Site Overview and Ecology

We can begin to heal all of this landscape's problems in the same place: the soil. And the place in this picture seems to be missing just that...Where is there soil here?



The before and after pictures in this section are all from an almost 2-year-old project in Dripping Springs, TX, but this same type of degraded, barren, “moonscape” ledge is a common sight across the Hill Country, including our proposed projects sites. The condition of the land is due to the historic land use for timber, sheep, goats, cattle, and cultivation, which in many places washed away an estimated 6+ feet of soil before 1860. These areas are not known to heal or grow much at all on their own, even in decades.

The inability of the soil here to soak in and retain rainfall then leaves the ground dry and dehydrated. These degraded terraces typically continue to erode until the trees and grasses in them are “pedestalled” up on their remaining bit of substrate, and exposed fossils are abundant. Even the hardiest native tree in the hill country, the ashe juniper, struggles to grow and even survive in these areas.

At first glance, these areas may appear to be little more than caliche and bedrock, and in some cases, that really is all that is there. But when we see as much grass still holding on as in the above picture, then there is usually a layer of re-deposited caliche or a hardpan on top of quite a bit more workable substrate than we might think is left from a first glance. This can be seen in this picture, where the excavator has dug into the ground:



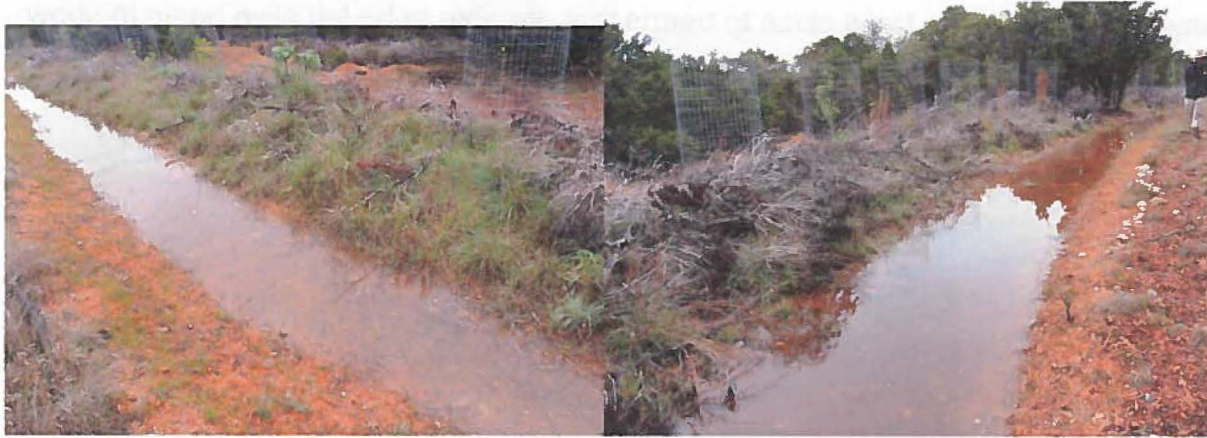


When given the right treatment and care, these brittle, desert-like areas can have a remarkable transformation. These terraces are carefully laid out on contour with a laser level, and then the slow and precise excavation of the substrate helps build a lofty garden bed from the caliche subsoil.

It turns out that we can easily take some of the most degraded parts of our landscapes and transform them into ephemeral wetland habitat that can support species normally found on creeks, like sycamore trees, eastern gamagrass, and more. Abundant growth of riparian species can now take off in a place where the hardy junipers were struggling to survive before:







### **Project Description and Details**

The projects for Vireo and JJ&T Preserves will utilize contour berm and swale earthworks to achieve the stated goals on the scale needed for such a large area. The context of these long, narrow, barren ledges in the Texas Hill Country climate has proven to be highly ideal for restoration with these methods.

This aerial imagery shows one of these ledges (which is the same place as the previous pictures), and the berm and swale installed on it:



EPA award-winning land designer and heavy equipment operator Pete VanDyck is passionate about habitat restoration and being mindful of machinery impact on the landscape. After laying out the lines with a laser level, he skillfully digs the berms with a mini-excavator to de-compact the soil into a lofty, giant garden bed that is passively irrigated by the water soaked into the swale.

Pete also takes care to preserve as much existing vegetation as he can in these barren areas without compromising the functional and precise design of his beautiful

earthworks. The juniper trees close to berms that are able to be left alive begin to show signs of rapid growth, growing more quickly than they likely have ever been able to.



The minor machinery tracks heal well with mulch and seeds. Initial inputs of compost, mulch, irrigation, seeds, live roots, and trees help to jump-start the project with the best chance of success.

#### Project length details:

- 750 linear feet of contour berm and swale earthworks are planned for Vireo Preserve.
- 2600 linear feet are planned for JJ&T.

#### Materials and structures for JJ&T project:

- Plants
- Seeds
- Mulch
- Minerals
- Rain tanks
- Irrigation
- Machinery rental
- Pavillion for rain catchment



This aerial image shows a preliminary concept design for the location of berm and swale projects planned for Vireo Preserve:



This aerial image shows a preliminary concept design for the location of berm and swale projects planned for JJ&T:



## Reference and Further Reading Materials:

The Explorers' Texas volumes by Del Weniger

The Timber of the Edwards Plateau by William L. Bray

Taking the Waters in Texas by Janet Mace Valenza

<http://landsteward.net/cedar-wanted/>

Ecohydrology and the Critical Zone: Processes and Patterns across Scales - G.W. Moore, K. Mcguire, P.A. Troch, and G. Barron-Gafford

<https://www.ncat.org/soilforwater/>

<https://www.rainforclimate.com/en/science-behind>

<http://www.edwardsaquifer.net/geology.html>

<http://www.ecosystemrestorationcamps.org/why-catch-the-rain/>

<http://tobyhemerway.com/150-the-watershed-wisdom-of-the-beaver/>

<https://blog.nationalgeographic.org/2016/12/07/water-in-plain-sight/>

<https://permaculturenews.org/2015/09/22/groundwater-re-charging/>

<https://permaculturenews.org/2015/04/13/rehydrating-the-earth-a-new-paradigm-for-water-management/>

<https://craftsmanship.net/the-new-water-alchemists/>

<https://www.nybooks.com/articles/2016/12/22/whats-happening-to-the-bees-and-butterflies/>

<http://ecofarmingdaily.com/soil-restoration-5-core-principles/>

<https://www.livescience.com/52587-missing-giant-poop-is-hurting-earth.html>

[https://e360.yale.edu/features/insect\\_numbers\\_declining\\_why\\_it\\_matters](https://e360.yale.edu/features/insect_numbers_declining_why_it_matters)

## EXHIBIT C

Van Dyck Earthworks & Design, LLC.  
33 Delaware Creek Rd  
Blanco, Tx 78606

**ESTIMATE**

JJ&T RANCH  
15001 Kollmeyer Dr.  
Austin, Texas 78734

**Estimate #** 0000052  
**Estimate Date** 06/28/2018

Item	Description	Unit Price	Quantity	Amount
	Project Design	1000.00	1.00	1,000.00
	Surveying and Clearing	2600.00	1.00	2,600.00
	Berm and Swale construction	6475.00	1.00	6,475.00
	Native Seed and seeding labor	2450.00	1.00	2,450.00
	Mulching (use mulch on site) 290 yards	5150.00	1.00	5,150.00
	Rain Collection system	70000.00	1.00	70,000.00
	Irrigation system	6900.00	1.00	6,900.00
	Tree Planting	8300.00	1.00	8,300.00

**NOTES:** JJ&T Ranch soil and water conservation project

-Surveying and Clearing: Survey approximately 2600 linear feet of berm and swale. Clear existing cedar brush and set aside for use later as deer protection.

-Berm and swale Construction, 2,600 Linear feet: Equipment Rental w/ delivery, Diesel fuel, Labor, Consumables.

-Native seed from Native American Seed Company

-Mulching: Hire dump truck one day, one day backhoe rental to load truck, one week skid steer rental to move out mulch, raking

-Rain Collection System: clearing and grading, 4 x 6,600 gallon poly cisterns, road base pad for tanks, a 2,400 sf roof with drip edge at 10 ft, plumbing parts, labor, equipment rental for setting tanks. The structure will have room to house at least 4 more tanks of equal size. This allows room for growth and further irrigation projects.

-Irrigation system for 140 trees:  
1" Poly main line, control valves, irrigation control boxes, hose bibs, irrigation 1/2" poly tree drip irrigation system, labor.

- Tree Planting 140 trees, with 140 tree cages. Planting includes the purchase of soil amendments. Trees spaced approx. 20 feet apart

	<b>Subtotal</b>	102,875.00
	<b>Total</b>	102,875.00
	<b>Amount Paid</b>	0.00
	<b>Estimate</b>	\$102,875.00



Van Dyck Earthworks & Design, LLC.  
33 Delaware Creek Rd  
Boerne, Tx 78006

# ESTIMATE

Vireo Preserve  
1107 N Capital of Texas Hwy, Austin, TX 78746

**Estimate #** 0000040  
**Estimate Date** 02/27/2018

Item	Description	Unit Price	Quantity	Amount
	1 day Surveying and layout	320.00	1.00	320.00
	Equipment rental and delivery	1200.00	1.00	1,200.00
	Equipment Operations/ final layout	2000.00	1.00	2,000.00
	Diesel Fuel	125.00	1.00	125.00
	Consumables (flags, paint, grease cleaning supplies)	35.00	1.00	35.00
<u>NOTES:</u> Vireo Preserve soil and water conservation project: Build approximately 750 linear ft of berm and swale with mini excavator.				
<b>Subtotal</b>				3,680.00
<b>Total</b>				3,680.00
<b>Amount Paid</b>				0.00
<b>Estimate</b>				\$3,680.00



## City of Austin Purchasing Office

### Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

Date: 10/5/18

Dept.: Austin Water

To: Georgia Billela, Senior Buyer, Purchasing Office From: Nico Hauwert, BCP Program Manager

PURCHASING POC:

PHONE: (512) 972-1661

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

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this request:

- ☐ 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 a municipality.
- ☐ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- ☒ A procurement of personal, professional, or planning services
- ☐ Other exemption from Chapter 252.022: \_\_\_\_\_

1. Describe this procurement

- What it is for and why it is needed?

We are requesting approval to proceed with a Professional Services Agreement with Van Dyck Earthworks & Design, LLC, to install multiple landscape-scale contour berm and swale earthwork restoration projects on two Balcones Canyonlands Preserve properties (JJ&T, Vireo Preserve) with the goal of reforesting dry, barren landscapes and connecting adjacent forest fragments.

**This ecological restoration project has been approved for funding from Development Service's Urban Forest Replenishment Fund (FDU 7655-5300-1500-7102), Task Order Number TK 2200 2251900400.**

- Describe the following (as applicable):
  - **For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:**
    - Provide description of the event leading to the procurement and a business justification for this purchase.
    - What would be the impact to department operations and the community if this purchase was not made?
    - How and why this vendor was selected?
  - **For Professional, Personal, or Planning Service Exemptions:**
    - Why is the vendor the most qualified to provide the services? Van Dyck Earthworks & Designs has created an award-winning niche market for constructing contour berms and swales to reforest ecologically sensitive sites such as those within the Balcones Canyonlands Preserve. This is a novel method of land restoration conceived and implemented by the vendor.
    - Does this vendor have a history of working with the City? If so, was it on this particular service? No; because this is a novel method of reforestation, this is the first application on a landscape-scale on City property.
    - Will this procurement be component of a larger service or phases of service? We have other sites on the Balcones Canyonlands Preserve that we may consider for this type of restoration work in the future.
    - Is the vendor a City of Austin local vendor? Yes
    - Does the vendor hold an M/WBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications? No
    - What qualifications, certifications, or specialized training does the vendor have? Van Dyck Earthworks & Designs has a unique combination of extensive heavy equipment operating training/experience, landscape design, and implementing permaculture techniques to restore degraded landscapes. The vendor received a national award for these services.
    - What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)? This project is being funded by Development Service's Urban Forestry and Replenishment Fund for this vendor and needs to be implemented this fall. Since we are unaware of any other vendor who does this work, we could lose the funding (\$110,055).
    - What other vendors can provide these services and why are they not the best fit for the contract? This is a unique method developed by Van Dyck Earthworks & Designs and requires very precise, gentle excavation on highly sensitive sites.
  - **For Other Exceptions from Chapter 252.022:**
    - Explain the circumstances of the procurement.



o **Prices were determined to be reasonable based on the following (select all that apply):**

- ☐ Prices are established under a current Cooperative contract.  
Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.
- ☒ Prices are the same or similar to current City contract.  
Notes: This ecological restoration project has been reviewed and approved for funding from Development Service's Urban Forest Replenishment Fund (FDU 7655-5300-1500-7102), Task Order Number TK 2200 2251900400.
- ☐ Prices are the same or similar to current contract with another government.  
Notes: At a minimum, note the contract number, title and government that created the contract.
- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.  
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- ☐ Prices are established by law or regulation.  
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- ☐ Other means of determining Price Reasonableness.  
Notes: Describe any other source that was used to establish Price Reasonableness.

\* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department  
procurement description area



2. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☒ Scope of Work or Statement of Work (if applicable)
- ☒ Vendor's proposal/quote (if applicable)
- ☒ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Professional resumes, certifications, and/or licenses (Professional, Personal or Planning Services Only)
- ☐ Other supporting documentation

3. Because of the above facts and supporting documentation, the City of Austin exempts this procurement from Local Government Code Chapter 252 and intends to contract with:

(Vendor Name): Van Dyck Earthworks & Design, LLC for

(Description of Procurement): Installation of multiple landscape-scale contour berm and swale earthwork reforestation projects on the JJ&T and Vireo Preserve tracts, Balcones Canyonlands Preserve

4. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☒ This is a one-time request for \$110,055

☐ This is a multi-term contract request for \_\_\_\_\_ (# months for base term) in the amount of \$\_\_\_\_\_ with \_\_\_\_\_ (# of renewal options) for \$\_\_\_\_\_ each for a total contract amount of \$\_\_\_\_\_.

Recommended  
Certification

Al - A. Amos 10/4/18  
Originator Date

Approved  
Certification

DM 10/11/2018  
Department Director or designee Date

AD 10/25  
Assistant City Manager / General Manager Date  
or designee (procurement requiring Council approval)

Purchasing Office  
Review

AB 12/6/18  
Authorized Purchasing Office Staff Date

Purchasing Office  
Management Review  
(If required due to signature authority level)

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

**Joseph Van Dyck**

33 Delaware Creek Rd. • Blanco, Texas 78606

(405)606-5626 • vandyck.designs@gmail.com

## **SUMMARY & HIGHLIGHTS**

- Experienced Manager
- Completes difficult projects on schedule
- Works well in a team setting
- Attentive to details
- Experience on sensitive jobsites
- Uniquely qualified

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## **EXPERIENCE**

**Van Dyck Earthworks & Design, Central Texas**

May 2014 – Present

*Owner/Operator*

- Conducts pre-purchase property selection service helps clients identify and purchase land that is easily developed with low risk and oversee deals worth up to \$2,000,000.
- Completed 35 property and conservation project designs for resilient farms, homesteads and private businesses in 15 Texas counties and 4 states, including designs for water, access, buildings, forestry, fencing, soil and energy.
- Managed 80 soil and water conservation construction sites with heavy equipment across central Texas including 5 miles total of conservation terrace, 10 earthen dams, planting of thousands of trees, moving and estimating thousands of cubic yards of various materials.
- Spoken at St. Edwards University for a Masters of Sustainability program, Texas Organic Farmers and Gardeners Association annual conference, multiple public libraries, and taught for Permaculture Design Certificate courses for Texas-based nonprofits Earth Repair Corps and Austin Permaculture Guild.

**United States Navy, San Diego, California**

Feb 2008- Feb 2014

*Sea, Air, and Land/SEAL Teams*

- Completed Basic Underwater Demolition/SEAL (BUD/s) and SEAL Qualification Training (SQT) when the attrition rate was 80%.
- Served in Thailand, Bangladesh, The Philippines, and Guam.
- Achieved the rank of E-6 in less than five years; the average in the Navy is eleven years.
- Oversaw the inventory, maintenance, and readiness of SEAL air operations systems and equipment with 0 shortfalls and 100% readiness.

**Joseph Van Dyck**

33 Delaware Creek Rd. • Blanco, Texas 78606

(405)606-5626 • vandyck.designs@gmail.com

## **EDUCATION**

### **REX 2016 with Darren Doherty**

2016

#### *Regrarians Platform*

- Advanced design course focused on prioritizing the different elements of landscape development with their respective permanence and the order in which we design and plan landscapes and their associated enterprises.

### **Associated Training Services**

2014-2015

#### *Heavy Equipment Operator Training*

- Utilized the Post 9/11 G.I Bill to complete a 6-week comprehensive heavy equipment operator training course emphasizing the highest standard in safety and operation of bulldozer, excavator, loader, dump truck, haul truck, roller compactor, forklift, scraper, grader, surveying, grading, civil blueprint reading, construction soil and materials estimating.

### **Permaculture Design Course with Geoff Lawton**

2014

#### *Permaculture Design Certificate*

- Studied land design and management with concentrations in water harvesting, earth moving, top-soil creation, natural food production, and harmonizing with natural landscape patterns.

### **San Diego Mesa College, San Diego, California**

2013-2014

#### *Pursued a Bachelor of Science: Ecological Engineering*

- Attended courses while on active duty in the United States Navy and continued attending after separation.

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## **Sole Provider of Services**

Soil and water conservation on sensitive sites of ecological importance requires a unique set of skills and experiences. Land managers need someone they can trust to be gentle and respectful of the land, otherwise the projects would be out of the question. My company has demonstrated these qualities and created a niche market for these services. In 2017, Van Dyck Earthworks & Designs was invited to enter in the EPA Region 6 Green Infrastructure/Low Impact Development professional competition at the EPA Stormwater Conference in San Antonio. I won first place against engineers, city planners, and architects for my work in soil and water conservation. I was the best in five states because the project accomplished more for pennies on the dollar while achieving the triple bottom line criteria of economics, environment, and social improvement. Work of this kind and scale is difficult to come across and Van Dyck Earthworks & Design is a proud provider of conscious land management practices.



## PRF Questionnaire and Contract Roles & Responsibilities

### PRF Questionnaire (Including SS Requests)

1. New equipment purchase: identify in detail what you are buying. **N/A**
2. What is needing to be purchased? Explain in detail. This info needs to match each line item on the PRF.  
We are requesting a Professional Services Agreement with Van Dyck Earthworks & Design, LLC, to install multiple landscape-scale contour berm and swale earthwork restoration projects on the JJ&T and Vireo Preserve tracts of the Balcones Canyonlands Preserve properties (BCP), including project design (JJ&T), surveying and clearing, berm and swale construction, native seed and seeding labor, mulching, rainwater collection and irrigation system, tree planting and caging (140 native trees), surveying and layout (Vireo Preserve), equipment rental and delivery, equipment operations/final layout (berm/swale construction), diesel fuel, consumables (flags, paint, grease, cleaning supplies), and soil, compost, native seeds and plants. This ecological restoration project has been approved for funding from Development Service's Urban Forest Replenishment Fund (FDU 7655-5300-1500-7102), Task Order Number TK 2200 2251900400.
3. Why is there a need to purchase this commodity/service?  
The goal of this project is to reforest dry, barren landscapes and connect adjacent forest fragments. Other benefits of this project include:
  - Rebuilding soil health, structure, and microbiology;
  - Erosion control and rainfall runoff control to promote aquifer recharge and reduce flooding;
  - Restoring diverse native flora and fauna communities, and in particular the historic forests and woodland habitats of the Texas Hill Country and all of its endangered, threatened, and declining species;
  - Providing public education on the benefit of these regenerative restoration projects, which can be used across and beyond the BCP.
4. Is this a replacement? If so, what it is replacing? **No**
5. Where will it be used and for what purpose? **See #2 and #3 above**
6. Is it critical for AW operations? If so, please explain.  
Yes; our federal Endangered Species Act permit requires 28,000 acres of Golden-cheeked Warbler habitat and 2,000 acres of Black-capped Vireo habitat. The goal of this project is to reforest areas that are currently not habitat for either species and to connect adjacent forest fragments, since habitat fragmentation is detrimental to these species.
7. Could the AW do without it? If not, why not?  
No. Based on analysis of historical aerial photographs, the sites selected for this project have been devoid of forest canopy since at least 1940. The goal of this project is to help jump-start forest recovery on sites that have been severely impacted by past land use (logging, grazing).
8. Can the old equipment be repaired? If not, why not? **N/A**
9. How frequent is the usage to merit this purchase?  
Golden-cheeked Warblers occupy both tracts for nesting each year, and Black-capped Vireos historically nested at the Vireo Preserve.
10. How did we operate before this purchase?  
The sites selected for this project have been bare limestone with little or no soil since ~1940 and earlier, so both remain unsuitable for Golden-cheeked Warbler and Black-capped Vireos.
11. Is this a new process requiring new equipment? If so, please explain.  
Equipment needed to conduct this research is included in the cost of this project.
12. Was the commodity/service identified in the approved FY budget of the Division requesting the purchase?  
No, this ecological restoration project has been approved for funding from Development Service's Urban Forest Replenishment Fund (FDU 7655-5300-1500-7102), Task Order Number TK 2200 2251900400.



## Certificate of Exemptions

13. Why is this procurement a sole source? Why is the vendor the only viable solution? Provide a detail, "tell the story".  
Van Dyck Earthworks & Designs has created an award-winning niche market for constructing contour berms and swales to reforest ecologically sensitive sites such as those within the Balcones Canyonlands Preserve. This is a novel method of land restoration conceived and implemented by the vendor. This project is being funded by Development Service's Urban Forestry and Replenishment Fund for this vendor and needs to be implemented this fall. Since we are unaware of any other vendor who does this work, we could lose the funding (\$110,055).
14. Include a manufacturer letter stating the justification of the sole source on company letterhead for all sole sources. If a distributor, include a manufacturer letter on company letterhead. *See attached.*
15. 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.) *This unique method developed by Van Dyck Earthworks & Designs and requires very precise, gentle excavation on highly sensitive sites.*
16. Is this item available through any approved City of Austin cooperative? If so, which one? (TXMAS, US Communities, Buyboard, DIR, HGACBUY, NJPA, TCPN, TXSmartBuy) Link to complete list of City approved cooperatives: <http://purchaustintx.coacd.org/intranet/CoopPurch.cfm> *No.*  
Why is no other brand acceptable? Is there a concern regarding warranty, compatibility and/or safety/health and public safety? *This unique method developed by Van Dyck Earthworks & Designs and requires very precise, gentle excavation on highly sensitive sites. This project is being funded by Development Service's Urban Forestry and Replenishment Fund for this vendor and needs to be implemented this fall. Since we are unaware of any other vendor who does this work, we could lose the funding (\$110,055).*
17. 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.) *No.*
18. What are other acceptable brands? If not, what makes them unacceptable? *NA*  
Are there territorial or geographic restrictions? What are they? *No.*
19. Are there resellers, distributors, or dealers in the market? If so, who? *No other suppliers know for ecologically sensitive restoration.*
20. What other suppliers or products/services were considered? What made them unacceptable?
21. If the product is designed to be compatible with existing item, describe the age, value and useful life remaining of the current item. *NA*
22. What is the estimated cost of buying a new item? What is the value of buying the addition versus buying all new? *NA*
23. Is there a way to retrofit another brand? If so, what is the cost? *NA*
24. Is there specialized training or certifications required to maintain or repair the item? If so, explain. *NA*  
What might the estimated cost be of buying a different item? What is the cost comparison? *Since there aren't any alternatives yet, it is hard to calculate costs for comparison.*

## Contract Rolls & Responsibilities

Contract Managers (CM)/Contact Person/Project Manager/Designee		Contract Management Specialists (CMS)
<b>Pre-Contract Award</b>		
Prepare technical Scope of Work (SOW)/Specifications to include clearly-defined deliverables and vendor reporting requirements to assist with contract monitoring		Review SOW/Specifications; add COA or AW language to SOW/Specifications as necessary
<b>Post-Contract Award PRIOR to start of work</b>		
<i>Read the contract</i>		Notify contract manager and designated Budget and Accounting staff of all new term contract awards
Prepare risk assessment using the Risk Assessment Form* to assign an appropriate risk level to the contract—this determines the frequency of desk reviews and whether other activities assigned to the contract manager are mandatory or optional		