



# City of Austin

## Purchasing Office

P.O. Box 1088, Austin, TX 78767

05/31/2019

The Nature Conservancy  
318 Congress Ave  
Austin, TX 78701

The Nature Conservancy:

The Austin City Council approved the execution of a contract with your company for Assistance with the Open Space Water Quality Protection Land.

Responsible Department:	<b>City of Austin Watershed Department</b>
Department Contact Person:	David Johns
Contact Email Address:	David.johns@austintexas.gov
Department Contact Telephone:	(512) 974-2781
Responsible Department:	<b>Office of Real Estate Services</b>
Department Contact Person:	Marsha Shultz
Contact Email Address:	Marsha.shultz@austintexas.gov
Department Contact Telephone:	(512) 974-7074
Project Name:	Open Space Water Quality Protection Land
Contractor Name:	Hill Country Conservancy and The Nature Conservancy
Contract Number:	6300-PA190000038
Contract Period:	Initial Term: 05/31/2019-05/30/23 (60 Months)
Dollar Amount	\$375,000 for initial term to be shared among the Contractors
Extension Options:	One 60-month extension option for \$375,000
Agenda Item Number:	33
Council Approval Date:	April 25, 2019

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,

*Claudia Rodríguez*

Procurement Specialist IV  
City of Austin  
Purchasing Office

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ASSISTANCE WITH THE  
OPEN SPACE WATER QUALITY PROTECTION LAND  
WITH  
THE NATURE CONSERVANCY  
CONTRACT NUMBER: 6300- PA190000038**

This Professional Services Agreement For Assistance With The Open Space Water Quality Protection Land (“Agreement”) is entered into between the City of Austin, a Texas home-rule city and municipal corporation (“City”) acting by and through its City Manager or their designee, and The Nature Conservancy, a District of Columbia non-profit corporation having offices at 318 Congress Ave., Austin, TX 78701. (“Contractor”): referred to collectively hereinafter as the “Parties”.

WHEREAS, the City wishes to protect the water quality and quantity in Barton Springs Edwards Aquifer contributing and recharge zones; and

WHEREAS, the City is interested in acquiring property rights in the Barton Springs Edwards Aquifer contributing and recharge zones as supported by the citizens by public vote on November 6, 2018, Proposition D; and

WHEREAS, as a result of voter approval of Proposition D, the City has \$72 million in funding for the Open Space, Water Quality Protection Land (the “**WQPL**”) to purchase land and conservation easements necessary to protect the water quality and quantity in Barton Springs Edwards Aquifer contributing and recharge zones for generations; and

WHEREAS, Contractor is a 501(c) 3 non-profit with experience in acquiring and managing conservation easements, and is an organization dedicated to protecting and preserving natural resources and shares the City's goals of aquifer and water protection in furtherance of its mission for land, water and wildlife preservation, working with local governments to acquire land; and

WHEREAS, Contractor has considerable experience with land conservation strategies, including conservation easements, and desires to contribute this expertise to the WQPL for maximizing its effectiveness and conservation achievements; and

WHEREAS, the Parties desire to collaborate on the WQPL by entering this cooperative agreement for purposes of furthering their mutual goals for conservation; and

WHEREAS, the proposed acquisitions, once completed, will prohibit urban and suburban development over these lands which will produce the optimum level of clean water, high quality water to the Barton Springs Edwards Aquifer contributing and recharge zones as well as other downstream resources; and

WHEREAS, the identification of, negotiation for, and successful acquisition of conservation easements and fee simple acquisitions of large acreage rural tracts is a time and resource intensive process.

WHEREAS, as these transactions will be handled on an exclusively voluntary basis (in lieu of eminent domain), the successful pursuit of these property acquisitions can take a dedicated team months or even years to complete; and

WHEREAS, given a finite pool of funds to effect the proposed property acquisitions and the City's inability to commit the necessary staff hours required for successful completion of the transactions, it is prudent to engage consultants having the requisite expertise and resources necessary to acquire these property interests until the allocated funds are exhausted.

NOW, THEREFORE, the Parties hereto agree to the contract provisions detailed below:

## **ARTICLE I. TERM**

1.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement begins when both parties have signed and executed this Agreement. This is a multi-term contract request for sixty (60) months with 1 renewal option for an additional sixty (60) months until the \$72 million in allocated funds are exhausted.

## **ARTICLE II. SCOPE OF SERVICES**

2.1 Contractor agrees to provide the services described in this Article II and shall receive the compensation described in Article III.

2.2 All work performed by Contractor hereunder shall be performed to the reasonable satisfaction of the City. City shall be under no obligation to pay for any work performed by Contractor that is not reasonably satisfactory to the City. Prior to withholding any payment to Contractor, the City shall advise Contractor of any deficiencies such that the Contractor may resolve them. The City and the Contractor shall meet as often as needed to ensure that all aspects of the Scope of Services are performed.

2.3 Contractor shall, as an independent contractor, to the extent reasonably necessary under the circumstances, perform the work required under the attached Scope of Work (**Exhibit A**):

2.4 Contractor and City may agree to assign Contractor's option or purchase agreement to City or an approved third party at any time prior to the closing on any property under this Agreement. If the Contractor desires for the termination of an option or purchase agreement, Contractor shall provide written notice thereof to the City prior to termination to allow the City an opportunity to accept an assignment of such agreement. In addition, Contractor may proceed to close with a landowner, and in a simultaneous closing between Contractor and City, immediately convey the property to the City or other third party agreed upon by the City and Contractor. The City has the sole discretion and responsibility in determining whether it shall accept such assignment and close with a landowner or accept such conveyance of the property by Contractor in a simultaneous closing, but such decision shall be irrevocable upon approval of the transaction by the City of Austin City Council ("**City Council**"). Properties and Agreements held by the Contractor that are not subject to this agreement shall be exempt from the terms and conditions of Article II, Subsection 2.4.

## **ARTICLE III. COST RECOVERY**

3.1 As further set forth in this Article III below, the City agrees to reimburse Contractor as follows:

- a. **INDIRECT COSTS:** For indirect costs by paying Contractor according to the following two tables at the closing of real estate interests being transferred to the City:

1. Fee Simple Acquisition of Property

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$40,000
\$5,000,000 - \$19,999,999	\$50,000
>\$20,000,000	\$65,000

2. Conservation Easement Acquisition of Property

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$65,000
\$5,000,000 - \$19,999,999	\$75,000
>\$20,000,000	\$90,000

- b. DIRECT COSTS: will be approved and authorized by the Project Manager and may include earnest money, option fees, title insurance, surveys, environmental assessments, legal services, easement documentation reports (baseline surveys), and mapping. No additional fees or expenses of Contractor shall be charged by Contractor nor be paid by City, unless authorized by the Project Manager and the Property Agent.

3.3 City's obligation to reimburse indirect costs will arise upon City's decision to proceed in accordance with Section 2.4 herein, and City shall make payment of such indirect costs either (i) within forty-five (45) days after acceptance of an assignment of the option or purchase agreement from Contractor, or (ii) at the time of a simultaneous closing with Contractor and in consideration for Contractor's assignment or conveyance to City. If City Council does not approve a transaction (whether an assignment by Contractor of a particular option or purchase agreement or a conveyance of the property by Contractor in a simultaneous closing), Contractor will be reimbursed for direct costs for such transaction approved by the Project Manager. Direct costs will be reimbursed at the same time as the indirect costs, or if a transaction is not approved by the City Council, within forty-five (45) days after the City's receipt of an approved invoice for such costs.

3.4. City shall not be obligated or liable under this Agreement to any third party, other than Contractor, for the payment of any monies or the provision of any goods or services hereunder, except as approved and authorized by Project Manager and the Property Agent.

3.5 Invoices, reports, documents and any non-claim information shall be submitted to City as follows:

David Johns, (herein referred to as the **"Project Manager"**)  
City of Austin  
Watershed Protection Department  
505 Barton Springs Road  
Austin, TX 78704  
Tele. (512) 974-2781  
Email: [david.johns@austintexas.gov](mailto:david.johns@austintexas.gov)

or

Marsha Schulz, (herein referred to as the “**Property Agent**”)

City of Austin

Office of Real Estate Services

505 Barton Springs Road, Ste. 1350

Austin, TX 78704

Tele. (512) 974-7075

Email: [marsha.schulz@austintexas.gov](mailto:marsha.schulz@austintexas.gov)

The City shall coordinate services and deliver all notices hereunder to Contractor as follows:

The Nature Conservancy

Attn: Jeff Francell

318 Congress Ave.

Austin, TX 78701

Tele.: (512) 623-1250

Email: [jfrancell@tnc.org](mailto:jfrancell@tnc.org)

3.6 The making and acceptance of final payment will constitute a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

#### ARTICLE IV. OWNERSHIP OF DOCUMENTS

4.1 Any and all writings, documents, reports, findings and information collected and/or produced by Contractor and for which City is required to reimburse Contractor under this Agreement (“**Property Information**”), shall be the property of City, and City shall have the right to use them without restriction. Contractor may use Property Information in furtherance of its activities under this Agreement and subject to the confidentiality provisions below, its charitable purposes, but shall not otherwise use, copy or distribute Property Information without written authorization from Project Manager. This Property Information shall not include any immaterial information or internal correspondence of Contractor, any attorney-client or work-product privileged documents or information of Contractor or any documents or information Contractor is required by law or legal obligation to keep confidential.

4.2 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 and mark/identify as confidential) (collectively, “**Confidential Information**”). Notwithstanding the foregoing, Confidential Information does not include information (i) known to Contractor prior to disclosure by the City, (ii) generally available to the public, (iii) furnished to Contractor by any third party having a legal right to do so, (iv) independently developed by Contractor without the use or reference to Confidential Information or (v) information subject to disclosure under the Texas Public Information Act, currently codified in Texas Govt. Code Chapter 552. 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

PA190000038 (The Nature Conservancy)

without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

## **ARTICLE V. RECORDS RETENTION**

5.1 Contractor and its subcontractors, if any, properly, accurately and completely shall maintain all Property Information and shall make all Property Information available to City at Contractor's office at reasonable times and as reasonably requested during the Agreement period, to include any extension or renewal thereto; and during the Retention Period as defined in Section 5.2 herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

5.2 Contractor shall retain any and all Property Information for a period ("***Retention Period***") which shall commence upon contract execution through a period of no longer than one year from the date of termination of the Agreement. All records shall be disposed of prior to the one-year anniversary of the Agreement termination date, except to the limited extent copies are retained by Contractor for ordinary business purposes. If, during the Retention Period, Contractor has been notified that there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the Property Information until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that the City shall have access to any and all such Property Information at reasonable times, as reasonably requested by City, during said Retention Period. City may, at its election and sole cost, require Contractor to provide copies of said Property Information to City prior to, or at the conclusion of, said Retention Period, at the City's expense.

5.3 Records Retention: With respect to the Property Information,

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
- ii. All Records are the property of the City. During the Retention Period, 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.
- iii. The Contractor shall retain all Records according to the term listed in 5.2 and dispose of all records prior to the one-year anniversary of the Agreement termination date.
- iv. The Contractor shall include sections i. and ii. above in all subcontractor agreements entered into in connection with this Contract.

5.4 Each party immediately shall notify the other party in the event a party receives a request for information from a third party pertaining to the documentation and records referenced herein. Contractor and City will cooperate in processing and handling all such requests.

## **ARTICLE VI. TERMINATION**

6.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term, as stated in Article I herein, or earlier termination pursuant to any of the provisions of this Agreement.

6.2 Termination Without Cause. This Agreement may be terminated by either City or Contractor upon delivery of 30 calendar days' written notice thereof to the other party, provided, in such event, City shall be responsible to reimburse Contractor for all direct costs payable hereunder and City shall be obligated to complete all transactions City has agreed to proceed upon, in accordance with Section 2.4 herein, and pay indirect cost reimbursement for such transactions.

6.3 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement automatically shall terminate as of the effective date of such prohibition.

6.4 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as City may designate, at no additional cost to City, of all Property Information, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Articles IV and V herein. Any Property Information transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such Property Information, if requested.

6.5 Within ninety (90) calendar days of the effective date of completion, termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for monies Contractor claims is owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said ninety (90) calendar days shall negate any liability on the part of City and shall constitute a waiver by Contractor of any and all right or claims to collect moneys to which Contractor may be entitled for services performed pursuant to this Agreement.

6.6 Upon the effective date of completion, expiration or termination of this Agreement, Contractor shall have no obligation to continue any work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

6.7 Termination not sole remedy. In no event shall either party's action of terminating this Agreement be deemed an election of such party's remedies, nor shall such termination limit, in any way, at law or at equity, such party's right to seek damages from or otherwise pursue the other party for any default hereunder or other action.

6.8 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.

6.9 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.

6.10 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 Section 6.8, (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 proposal, or in any report or deliverable required to be submitted by the Contractor to the City. However, the City shall provide Contractor with written notice of any default and a thirty (30) day period after receipt of such notice to cure the default to City's satisfaction.

## **ARTICLE VII. INSURANCE**

7.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Watershed Protection Department, which shall be clearly labeled "Open Space Water Quality Protection WQPL" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Manager. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

7.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

7.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage



2. Business Automobile Liability a. Coverage for all Owned, Hired, and Non-Owned vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
3. Worker's Compensation and Employers' Liability	<u>Statutory Benefits as outlined in Texas Worker's Compensation Act (Section 401);</u> <u>Employer's Liability limits as follows:</u> <u>\$100,000 bodily injury each accident;</u> <u>\$500,000 bodily injury by disease policy limit;</u> <u>\$100,000 bodily injury by disease each employee</u>

7.4 Contractor agrees to require, by written contract, that all subcontractors engaged and paid by Contractor for which reimbursement will be sought from the City providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Contract for all purposes.

7.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 calendar days.

City of Austin  
Attn: Watershed Protection Department  
P.O. Box 1088  
Austin, Texas 78767

7.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- b) Provide for an endorsement that the "other insurance" clause shall not apply to the City of Austin where the City is an additional insured shown on the policy;

- c) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- d) Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

7.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

7.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

7.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

7.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Austin for liability arising out of Contractor's operations under this Agreement.

7.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

7.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **ARTICLE VIII [Intentionally Omitted]**

## **ARTICLE IX. ASSIGNMENT AND SUBCONTRACTING**

9.1 Contractor shall supply qualified personnel as may be necessary to complete the work under this Agreement.

9.2 Before utilizing any subcontractor to perform any part of the work identified in this Agreement, Contractor shall seek written authorization from Project Manager, who shall approve or reject such a request in Project Manager's reasonable discretion. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall not be obligated to any third party, including any subcontractor or employee of Contractor, for performance of services or payment of fees unless authorized by Project Manager. Any references in this Agreement to an assignee, transferee or subcontractor indicate only such an entity as has been approved by City.

9.3 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by

subcontracting or any other means without the consent of Project Manager. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

9.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate or otherwise dispose of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VI herein, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

## **ARTICLE X. INDEPENDENT CONTRACTOR; NO AGENCY**

10.1 Contractor and City acknowledge, covenant and agree that Contractor is an independent contractor with City and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venture's between City and Contractor. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Contractor under this Agreement and that the Contractor is acting on its own behalf and has no authority to bind the City.

10.2 The purpose and intention of this Agreement are to collaborate on the City acquiring fee title or conservation-easement rights in real property through options, purchase contracts, assignments or conveyances. Contractor's role exclusively is of an independent contractor. Provisions in this Agreement for maintenance of insurance, for the benefit of City or Indemnification of City or similar provisions of this Agreement, in no way indicate that Contractor is not an independent contractor.

10.3 This Agreement is not intended to restrict Contractor in its conservation efforts. Without limiting the foregoing, Contractor may acquire, sell or otherwise dispose of any property through assignment of options or purchase contracts at its sole discretion, except those properties that become subject to this Agreement. Further, Contractor may continue to work with other persons, entities, non-profits and other city or county governments, as well as private conservation buyers, with respect to acquiring, selling or transferring property desirable for protecting land.

## **ARTICLE XI. CONFLICT OF INTEREST**

11.1 Contractor acknowledges that it is informed and understands that the Charter of the City of Austin and its Ethics Code prohibit a City officer or employee, as those terms are defined in Chapter 2-7 of the Austin City Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities.

11.2 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or

representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract.

11.3 As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

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

11.4.1 If the Contractor qualifies as a "company", then the Contractor verifies that it:

- a) does not "boycott Israel"; and
- b) will not "boycott Israel" during the term of this Contract.

11.4.2 The Contractor'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.

## **ARTICLE XII. AMENDMENTS**

12.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms of this Agreement shall be effected by amendment in writing and executed by both City and Contractor.

## **ARTICLE XIII. SEVERABILITY**

13.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including, but not limited to, the Austin City Charter, Austin City Code or ordinances of the City of Austin, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause(s) or provision(s) hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause(s) or provision(s) was/were never contained herein; it also is the intention of the Parties hereto that, in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added, as a part of the Agreement, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

**ARTICLE XIV.  
QUALIFICATIONS**

14.1 Each Party warrants and certifies to the other that it is qualified and has the capabilities to comply with its obligations hereunder.

**ARTICLE XV.  
COMPLIANCE AND WARRANTY**

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

**ARTICLE XVI.  
NONWAIVER OF PERFORMANCE**

16.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by Project Manager, as described in Article XII herein. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges or remedies to always be specifically preserved hereby.

**ARTICLE XVII.  
JURISDICTION, VENUE, AND DISPUTE RESOLUTION**

17.1. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in Travis and Hays County, Texas.

17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Austin, Travis County, Texas. The City waives its sovereign immunity as to the enforcement of the terms and conditions of this agreement but not otherwise.

17.3 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.

17.4 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.

## **ARTICLE XVIII. LEGAL AUTHORITY**

18.1 The signer of this Agreement for each Party represents, warrants, assures and guarantees to the other Party that he/she has full legal authority to execute this Agreement on behalf of the respective Party and to bind said Party to all of the terms, conditions, provisions and obligations contained herein.

18.2 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 Contractor 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.

## **ARTICLE XIX. PARTIES BOUND**

19.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives and successors and assigns, except as otherwise expressly provided for herein.

19.2 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.

## **ARTICLE XX. SECTION HEADING**

20.1 The section headings contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **ARTICLE XXI. ADMINISTRATIVE CONSENTS**

21.1 The Director of Watershed Protection Department and the Project Manager may, without further City Council action, agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and may declare Contractor defaults and pursue remedies for such defaults.

## **ARTICLE XXII. NON-DISCRIMINATION**

22.1 As a party to this contract, Licensee understands and agrees to comply with the *Non-Discrimination Policy* of the City of Austin contained in Chapter 5-4 of the Austin City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

22.2 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.

## **ARTICLE XXIII. MODIFICATIONS**

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

## **ARTICLE XXIV. ENTIRE AGREEMENT**

24.1 This Agreement, together with its Exhibits, if any, constitute the final and entire Agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless those agreements are in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XII herein.

*{SIGNATURE ON NEXT PAGE}*

IN WITNESS WHEREOF, the Parties have caused their representatives to set their hands as of the later of the dates of the signatures below:

**City of Austin,**  
a Texas home-rule city and municipal corporation

By: Claudia Rodriguez  
Name: Claudia Rodriguez  
Title: Procurement Specialist IV  
Date: 05/31/2019

**Contractor**  
(Name) The Nature Conservancy

By: Sam Gooden  
Name: Sam Gooden  
Title: Director of Land and Ac  
Date: 5/31/19

Approved As To Form:

Brandon W. Carr  
Assistant City Attorney  
BRANDON W. CARR

List of Exhibits:

Exhibit A – Scope of Work  
Exhibit B – The Nature Conservancy Pricing Proposal  
Exhibit C- The Nature Conservancy Professional Statement



**Exhibit A**  
**Scope of Work**  
**For**  
**Land Interests and Preservation Consulting for Water Conservancy**

**Description:** The City wishes to protect the quality and quantity of water in Barton Springs and is interested in acquiring property and/or interests in property in the Barton Springs Edwards Aquifer contributing and recharge zones, in Travis and Hays County, as supported by the citizens by public vote in the November 6, 2018 bond election (Proposition D).

**1.0     Introduction**

***About the City of Austin***

The City of Austin, Texas, population 840,000, is the 13th largest city in the country. This vibrant and dynamic city tops numerous “Best” lists for business, entertainment, cost of living and quality of life. Austin was selected as the “Best City for the Next Decade” (Kiplinger), the “Top Creative Center” in the US (Entrepreneur.com) and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community Forum. Austin continues to lead the country with its vision of being the “Most Livable City in the Country”, emerging as a player on the international scene with such events as SXSW, Formula 1 and being home to companies such as Apple, Samsung, Dell, The Seton Healthcare Family and St. David's HealthCare systems. From the home of state government and the City of Texas, to the “Live Music Capital of the World” and its growth as a film center, Austin has gained worldwide attention as a hub for education, business, health, and sustainability. Since 1900, Austin's population has doubled every 20 years, with continued projected record-breaking growth into the next decade and beyond.

**2.0     Purpose**

The mission of the Water Quality Protection Lands (“WQPLP”) is to acquire land in fee title or conservation easement in the Barton Springs contributing and recharge zones to provide for the conservation of water quality and water quantity. The objective is to produce the optimum level of clean, high quality water to recharge the Barton Springs Edwards Aquifer while also providing comprehensive watershed benefits to all downstream creeks, rivers and lakes. Watershed benefits include protection of drinking water, reduction of flood impacts and preservation of recreational resources.

**3.0     Background**

The WQPL has been funded primarily through voter-approved bond funding with significant contribution from landowners and other entities. Funds go towards the acquisition of valuable watershed conservation land either through fee simple or conservation easement purchase. Since the program's inception in 1998, over \$155 million in bond funding and \$24 million in partner contributions have been used toward the permanent protection of over 28,000 acres of conservation land. An inter-department team including Watershed Protection Department, the Office of Real Estate, and the Wildlands Division of Austin Water, collaborates on acquisitions and Wildlands manages the properties.

#### 4.0 **Definitions**

- “City” is defined as the City of Austin, Texas
- “Contractor” is defined as a 501(c)3 entity that conforms to the criteria described in Section 5.1, subsections (j) through (n), below.
- “Project Manager” is defined as the City’s lead contact relative to described Tasks and Requirements in Section 5.0 below.
- “Project Sponsor” is defined as the City’s sponsor contact (Watershed Protection Department) relative to described Tasks and Requirements in Section 5.0 below.

#### 5.0 **Tasks/Requirements**

##### 5.1 ***Contractor’s Responsibilities***

(a) Contractor shall work with the City’s Project Manager and Project Sponsor in the City’s efforts to acquire real property and /or real property interests (Fee Simple or Conservation Easement) (the “Property”) in the Barton Springs Edwards Aquifer Recharge and Contributing Zones, both inside and outside Travis County for the protection of water quality and quantity for the benefit of the citizens of Austin and those in its extraterritorial jurisdiction.

(b) Contractor shall identify candidate Properties within the described geography and make initial contacts and perform initial negotiations with property owners to determine such owners’ interest in the purchase of real estate and real estate interests, including conservation easements, and options for purchase agreements between landowners and Contractor.

(c) Contractor, Project Manager and Project Sponsor shall identify and discuss specific potential Property acquisitions and their acceptability for acquisition, before Contractor initiates substantive discussion and/or enters into substantive negotiations with owner(s) of a Property or Properties.

(d) Upon Project Manager and Project Sponsor’s written authorization to Contractor to advance the potential acquisition of a Property, Contractor may elect to initiate negotiations for the purchase of real estate and real estate interests, including conservation easements, with the Property owner. Contractor may elect to enter into option and/or purchase agreements between Property owner(s) and Contractor. Any such agreement shall include assignment provisions for subsequent assignment by Contractor to the City, in the event Contractor and City mutually elect to pursue assignment of such option and/or purchase agreements.

(e) Upon approval by the Project Manager and Project Sponsor of a Property, Contractor may elect, and shall be further authorized by City, to coordinate and conduct due diligence on identified Properties, which may include, but is not limited to, continued landowner outreach, site visits, obtaining and reviewing title commitments, performing environmental assessments, surveys, and easement documentation reports (baseline surveys) (in the event conservation easements are to be acquired), and shall provide such information to the Project Manager and Project Sponsor for the City’s independent review, analysis and approval or rejection of same.

(f) Contractor will keep the Project Manager and Project Sponsor informed on the status of the acquisition of the Property or Properties.

- (g) Contractor shall work collaboratively with the City, outside legal counsel and other professionals pursuant to this Scope of Work. Internal legal counsel of Contractor and the City shall collaborate on projects, but each party shall rely on its own counsel and neither party shall have a duty to provide legal advice to the other party.
- (h) Contractor shall arrange site visits to the Property and project areas, provide owner contact information, coordinate and present potential Property acquisitions and provide additional information and assistance to the Project Manager as needed.
- (i) Contractor will give prompt written notice to the City whenever the Contractor observes or otherwise becomes aware of any defect, deficiency or delay in the acquisition of a Property or Properties under this Scope of Work.
- (j) Contractor shall maintain its status as a 501(c) 3 organization during the term of the Contract.
- (k) Contractor shall demonstrate experience in land conservation and protection in the Central Texas area.
- (l) Contractor shall demonstrate experience purchasing fee simple conservation properties and transferring to local city and county governments.
- (m) Contractor shall demonstrate experience purchasing and negotiating conservation easements and transferring to local city and county governments.
- (n) Contractor shall demonstrate experience managing conservation easements.
- (o) Contractor shall conduct and/or assist with presentations to City Boards and Commissions and Council.

## **5.2 City's Responsibilities**

- (a) City will designate the City's Project Manager and Project Sponsor and notify Contractor of same.
- (b) City shall, in a reasonable time, examine all studies, reports, sketches, estimates, drawings, proposals and other documents submitted by the Consultant with respect to a candidate Property or Properties.
- (c) City shall, in a reasonable time, provide Contractor with City's analysis of a specific Property or group of Properties, and provide consequent direction to Contractor.
- (d) City will coordinate and conduct appraisal(s) and land plan(s) on a specific Property or Properties that have been submitted by the Contractor and are acceptable to the Project Manager and Project Sponsor. City shall, in a reasonable time, conduct such appraisal and land plan, and provide same to Contractor upon receipt.
- (e) City will provide Contractor with access to information in the custody or control of the City relevant to the negotiations for, development of, and completion of, Property acquisitions.
- (f) City will give written notice to the Contractor whenever the City observes or otherwise becomes aware of any defect, deficiency or delay in the Contractor's work product or services.
- (g) City will give written notice to the Contractor, if the City elects to terminate work on any potential Property acquisition.

6.0 **Deliverables/Milestones**

<b>Deliverables/Milestones</b>	<b>Description</b>	<b>Timeline (due/completion date, reference date, or frequency)</b>	<b>Performance Measure/ Acceptance Criteria</b>
Fee Simple land acquisition	Acquiring interest in land for fee simple ownership, which includes all entitlements.	Due upon closing	City Approval
Conservation Easement COA Management	Acquiring easement interest that would protect the natural, productive or cultural features of the property, limiting the right to develop. Ownership remains in the landowners' name, property is restricted with Conservation Easement. Conservation Easement is managed by City.	Due upon closing	City Approval
Conservation Easement Contractor Management	Acquiring easement interest that would protect the natural, productive or cultural features of the property, limiting the right to develop. Ownership remains in the landowners' name, property is restricted with Conservation Easement. Conservation is managed by Contractor.	Due upon closing	City Approval

### **Vendor's Proposal**

Fees and reimbursements will be as follows:

- a. **INDIRECT COSTS:** For indirect costs by paying Contractor according to the following two tables at the closing of real estate interests being transferred to City:

1. **Fee Simple Acquisition of Property**

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$40,000
\$5,000,000 - \$19,999,999	\$50,000
>\$20,000,000	\$65,000

2. **Conservation Easement Acquisition of Property**

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$65,000
\$5,000,000 - \$19,999,999	\$75,000
>\$20,000,000	\$90,000

- b. **DIRECT COSTS:** may include earnest money, option fees, title insurance, surveys, environmental assessments, easement documentation reports (baseline surveys), and mapping.



## **The Nature Conservancy Professional Statement**

### **History**

Founded in 1951, The Nature Conservancy is the leading conservation organization, working around the world to protect ecologically important lands and waters for nature and people. Everything we do is rooted in good science and is driven by pragmatic solutions to the most pressing conservation threats at the largest scale. We work in all 50 states and more than 70 countries, protecting habitats ranging from grasslands to coral reefs. We have protected more than 120 million acres of land and thousands of miles of rivers, along with managing over 100 marine conservation projects globally.

The Conservancy's efforts to conserve the natural heritage of Texas began in 1964. Today the Conservancy owns 38 nature preserves across the state and assists in private land conservation through 157 separate conservation easement agreements with landowners. In Texas, The Nature Conservancy has assisted federal, state and local government agencies in protecting lands for over fifty years. Overall, working with public entities and private landowners, the Conservancy has helped to permanently protect more than 920,000 acres in Texas.

### **Mission**

The mission of the Conservancy is to conserve the lands and waters on which all life depends. Across the globe, our preserves and conservation projects serve as field labs for developing the best ways to protect land, water, and wildlife. Our vision is a world where the diversity of life thrives, and people act to conserve nature for its own sake and its ability to fulfill our needs and enrich our lives. We aim to achieve our mission and vision with the dedicated efforts of our diverse staff, including more than 600 scientists, who are working to foster conservation around the world. We pursue a non-confrontational, collaborative approach that prioritizes working with a range of partners, from individuals and governments to local nonprofits and corporations. Together, we protect nature, for people today and for future generations.

Currently, our programs focus on four major global priorities: Protect Land and Water; Tackle Climate Change; Build Healthy Cities; and Provide Food and Water Sustainably—all while connecting people with nature.

### **Experience of the Firm**

The Nature Conservancy holds more conservation easement than any public or private organization in Texas. We currently oversee 157 conservation easements in Texas totaling approximately 400,000 acres, with easements in every region of the state. TNC currently holds more than 50 easements in the Edwards Plateau. These easements protect endangered species such as the golden-cheeked warbler and black-capped vireo and important rivers such as the Blanco, Frio, Pedernales, Colorado, and Guadalupe. TNC also owns over 98,000 acres in the state of Texas, including 38 nature preserves and other

partnership projects. Finally, the Conservancy has worked with many public land management entities in Texas to add more than 415,000 acres to their land and conservation easement holdings. Examples include City of Austin, City of San Antonio, Texas Parks & Wildlife Department, Texas General Land Office, Texas A&M Forest Service, U.S. Fish & Wildlife Service, National Park Service, and USDA Forest Service.

The Nature Conservancy has worked for 30 years to protect natural habitats and groundwater resources in the Edwards Plateau region. The Conservancy's first accomplishment in Central Texas was participation in a partnership with the City of Austin, Travis County, U.S. Fish & Wildlife Service, and other parties to create the Balcones Canyonlands Conservation Plan. Beginning in the early 1990s, TNC acquired and conveyed thousands of acres of sensitive land to help create the City of Austin's Balcones Canyonlands Preserve system. Today, that system includes more than 28,000 acres of habitat for federally endangered species including the golden-cheeked warbler, black-capped vireo, and karst invertebrates; the Conservancy played a role in preserving more than half of this acreage. From 1998 through 2000, the Conservancy assisted City of Austin's Proposition 2 Watershed Protection Program to acquire land in the Barton Springs Segment of the Edwards Aquifer. TNC led negotiations for the City, resulting in 15,000 acres of fee title and conservation easement lands protecting water quality and quantity. The Conservancy assisted the City in expending \$47 million of its \$50 million in open space bonds approved by voters in 2006. The City relied on TNC's expertise in negotiating conservation easements to protect lands with important natural resources for less than half of cumulative appraised values. In 2008, TNC again assisted the City of Austin by facilitating the \$30 million acquisition of a portion of the historic Rutherford Ranch in the Recharge Zone to the Barton Springs Segment of the Edwards Aquifer. The property had been sold and resold to two private real estate development corporations and was slated for the development of more than 1,000 single-family homes. The conservation easement negotiated by the Conservancy and the City involved a bargain sale by the landowner, protecting 3,098 acres for significantly less than fair market value. In March 2010, TNC assisted the City of Austin with the purchase of a key 13-acre inholding within the Barton Creek Wilderness Park for \$5.5 million. The property was slated for extensive commercial development that included 300,000 square feet of office space and parking near sensitive portions of Barton Creek. Most recently, TNC assisted the City of Austin with acquisition of the 607-acre Jeremiah Venture tract for \$18 million, which was subsequently added to the City's municipal preserve system in 2013. This tract was also slated for development of 1,000 single family homes and the developer was seeking a permit to discharge treated effluent on the property, an unprecedented action in the Barton Creek Recharge Zone.

In addition to our work with the City of Austin, The Nature Conservancy has worked diligently to preserve critical land with the help of other municipal partners in Central Texas. In 2011, TNC partnered with Travis County to acquire 770 acres adjacent to Milton & Joy Reimers Ranch Park surrounding one of the most significant scenic features in the Texas Hill Country, Hamilton Pool. TNC negotiated an option contract with the landowner and assigned the contract to the County, which purchased the property with \$19,225,000 in County parks bonds. TNC's most recent work with Travis County in 2018 involved a conservation easement assist, protecting 738 acres near Reimers Ranch Park for the purchase price of \$4.7 million. The Conservancy also purchased 251 acres in Hays County in 2006 for \$5.1 million that conserved habitat for seven federally endangered species associated with San Marcos Spring, the second largest spring in Texas. TNC held the property until the City of San Marcos was able to raise the

necessary funds in partnership with Hays County, U.S Fish & Wildlife Service, Texas Parks & Wildlife Department, the Meadows Foundation, Lower Colorado River Authority, Guadalupe-Blanco River Authority, and Texas State University. In 2000, the voters in San Antonio passed Proposition 3, the first bond initiative to increase the City's sales tax to fund Edwards Aquifer Protection and collect \$45 million for land purchases. TNC helped the City of San Antonio to identify and prioritize high-quality land tracts and assisted with conservation of three properties in Bexar County. That success led to the passing of three successive bond initiatives in 2005, 2010, and 2015, allocating \$90 million to water quality protection easements and fee acquisitions in Bexar, Medina, and Uvalde counties. Since then, the Conservancy has assisted the City of San Antonio with acquisition of over 75,000 acres of conservation easements and a few significant land purchases, including lands added to Government Canyon State Natural Area and the private preserves around Bracken Bat Cave, the world's largest bat colony.

The Conservancy conducted thorough due diligence in all the above land transactions, for lands acquired directly by TNC and in all partnerships with other public entities. This due diligence includes appraisals, boundary surveys, environmental assessments, baseline documentation reports, and title review. TNC's successful record of completed projects is evidence of its ability to hire well-qualified consultants for a particular project to ensure the best use of public funds and to mitigate risk of future title or environmental issues. The Conservancy has an unblemished history of prompt payment to contractors including real estate appraisers, state licensed land surveyors, environmental consultants, and title companies. TNC's highly competent legal staff has provided valuable assistance to our public partners in identifying and addressing issues with properties prior to closing.





## City of Austin Purchasing Office

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

DATE: 3/12/19

DEPT: OFFICE OF REAL ESTATE SERVICES (ORES)

TO: Purchasing Officer or Designee

FROM: Alex Gale, Interim Officer, ORES

PURCHASING POC: Claudia Rodriguez

PHONE: (512) 974-2959

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: \_\_\_\_\_

## 2. Describe this procurement

- What it is for and why it is needed?

The City seeks to establish a contract with a firm (or firms) to acquire and preserve land, or interests in land, within the Barton Springs and Edwards Aquifer Recharge and Contributing Zones, both inside and outside Travis County for the protection of water quality for the citizens of Austin and the customers of the Austin Water Utility.

- Describe the following (as applicable):

- **For Public Health and Safety:**

- On November 6, 2018, Austin voters approved bond Proposition D which included \$72 million in funding to purchase land and conservation easements on properties in Austin's southern watersheds that feed the Edwards Aquifer, Barton Springs, and the Colorado River.
- A failure to acquire land and conservation easements in Austin's southern watersheds will compromise the quality and quantity of water in Austin's aquifers, springs, greenbelts, parks and ultimately contribute to flooding.
- Only two consultants exist in the Central Texas area that specialize in the negotiation and packaging of open space and conservation easements on the scale required to be effective from both a cost and functionality standpoint.

- **For Professional, Personal, or Planning Service Exemptions:**

- Why is the vendor the most qualified to provide the services? The selected vendors are the only two firms providing this specific service in Central Texas.
- Does this vendor have a history of working with the City? If so, was it on this particular service? These vendors both have experience with this type of work with and on behalf of the City of Austin.
- Is the vendor a City of Austin local vendor? Yes.
- What qualifications, certifications, or specialized training does the vendor have? See attached professional statements for each vendor.
- What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)? If a contract is not secured with these particular vendors it will make it exceedingly difficult, if not impossible to spend the Proposition D bond funds approved by the Austin voters.
- What other vendors can provide these services and why are they not the best fit for the contract? No other vendors provide this particular service.

- **For Other Exceptions from Chapter 252.022:**

- Explain the circumstances of the procurement.

- **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: At a minimum, note the City of Austin contract number and title.

- ☐ 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: Prices were determined based on the prices paid by the City to these same vendors for the same services contemplated in this procurement.

\* 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.

As a result of 2018's Proposition D, the City has \$72 million in funding to purchase land and conservation easements necessary to protect Austin's water quality for generations. The proposed acquisitions, once completed, will limit urban and suburban development over these lands which will result in less contaminants entering into the City's aquifers, springs, greenbelts and parks. In addition, the limiting of urban and suburban development will have a mitigating effect on flooding. The identification of, negotiation for, and successful acquisition of conservation easements and fee simple acquisitions of large acreage rural tracts to preserve water quality is a time and resource intensive process. As they are handled on an exclusively voluntary basis (in lieu of eminent domain), the successful pursuit of these property acquisitions can take a dedicated team months or even years to complete. Given a finite pool of funds to effect the proposed property acquisitions and the City's inability to commit the necessary staff hours required for successful completion of the transactions, it is prudent to engage consultants having the requisite expertise and resources necessary to acquire these property interests until the allocated funds are exhausted. The two firms in consideration are the only firms with experience and a proven track record providing this service in the Central Texas area.

#### **Unique Qualifications of Nature Conservancy**

- Holds and manages more conservation easements (157) than any public or private organization in Texas, totaling more than 400,000 acres.
- Since 1990, TNC has procured 415,000 acres of conservation easements and fee title land for public land management agencies in Texas, including the City of Austin, City of San Antonio, Texas Parks and Wildlife Department, Texas General Land Office, Texas A&M forest Service, national Park service, and USDA Forest Service.
- Since 1998, TNC has purchased and negotiated over 15,000 acres of fee title and conservation easement water quality protection land for the City of Austin

#### **Unique Qualifications of Hill Country Conservancy**

- Since 1999, HCC has procured and managed conservation easements for 19,000 acres of water quality and conservation land.
- Has secured 7,500 acres of water quality protection land for the City of Austin
- Since 2004, HCC has secured over \$10 million in matching funds for City of Austin land and water protection purchases.



3. 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
4. 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): Hill Country Conservancy and The Nature Conservancy for
- (Description of Procurement): Land Interests and Preservation Consulting for Water Conservancy
5. 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 \$ \_\_\_\_\_
- ☒ This is a multi-term contract request for 60 months in the amount of \$72 million with 1 renewal option for an additional 60 months until the \$72 million in allocated funds are exhausted.

Recommended  
Certification

Michael Gates 3-12-19  
Michael Gates – Acting Assistant Director – Office of Real Estate Services  
Originator Date

Approved  
Certification

Alex Gale 3/13/2019  
Alex Gale – Interim Officer – Office of Real Estate Services  
Department Director or designee Date

Rodriguez 3/13/19  
Assistant City Manager / General Manager Date  
or designee (procurement requiring Council approval)

Purchasing Office  
Review

Claudia Rodriguez 3/19/19  
Authorized Purchasing Office Staff Date

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

[Signature] 3-20-19  
Purchasing Officer or designee Date



# City of Austin

## Purchasing Office

P.O. Box 1088, Austin, TX 78767

05/31/2019

Hill Country Conservancy  
5524 Bee Caves Road, Ste#G4  
Austin, TX 78746

Hill Country Conservancy:

The Austin City Council approved the execution of a contract with your company for Assistance with the Open Space Water Quality Protection Land.

Responsible Department:	<b>City of Austin Watershed Department</b>
Department Contact Person:	David Johns
Contact Email Address:	David.johns@austintexas.gov
Department Contact Telephone:	(512) 974-2781
Responsible Department:	<b>Office of Real Estate Services</b>
Department Contact Person:	Marsha Shultz
Contact Email Address:	Marsha.shultz@austintexas.gov
Department Contact Telephone:	(512) 974-7074
Project Name:	Open Space Water Quality Protection Land
Contractor Name:	Hill Country Conservancy and The Nature Conservancy
Contract Number:	6300-PA190000038
Contract Period:	Initial Term: 05/31/2019-05/30/23 (60 Months)
Dollar Amount	\$375,000 for initial term to be shared among the Contractors
Extension Options:	One 60-month extension option for \$375,000
Agenda Item Number:	33
Council Approval Date:	April 25, 2019

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,

*Claudia Rodríguez*

Procurement Specialist IV  
City of Austin  
Purchasing Office

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
ASSISTANCE WITH THE  
OPEN SPACE WATER QUALITY PROTECTION LAND  
WITH  
HILL COUNTRY CONSERVANCY  
CONTRACT NUMBER: 6300- PA190000038**

This Professional Services Agreement For Assistance With The Open Space Water Quality Protection Land (“**Agreement**”) is entered into between the City of Austin, a Texas home-rule city and municipal corporation (“**City**”) acting by and through its City Manager or their designee, and Hill Country Conservancy having offices at 5524 Bee Caves Road, Suite G4 Austin, TX 78746. (“**Contractor**”): referred to collectively hereinafter as the “**Parties**”.

WHEREAS, the City wishes to protect the water quality and quantity in Barton Springs Edwards Aquifer contributing and recharge zones; and

WHEREAS, the City is interested in acquiring property rights in the Barton Springs Edwards Aquifer contributing and recharge zones as supported by the citizens by public vote on November 6, 2018, Proposition D; and

WHEREAS, as a result of voter approval of Proposition D, the City has \$72 million in funding for the Open Space, Water Quality Protection Land (the “**WQPL**”) to purchase land and conservation easements necessary to protect the water quality and quantity in Barton Springs Edwards Aquifer contributing and recharge zones for generations; and

WHEREAS, Contractor is a 501(c) 3 non-profit with experience in acquiring and managing conservation easements, and is an organization dedicated to protecting and preserving natural resources and shares the City's goals of aquifer and water protection in furtherance of its mission for land, water and wildlife preservation, working with local governments to acquire land; and

WHEREAS, Contractor has considerable experience with land conservation strategies, including conservation easements, and desires to contribute this expertise to the WQPL for maximizing its effectiveness and conservation achievements; and

WHEREAS, the Parties desire to collaborate on the WQPL by entering this cooperative agreement for purposes of furthering their mutual goals for conservation; and

WHEREAS, the proposed acquisitions, once completed, will prohibit urban and suburban development over these lands which will produce the optimum level of clean water, high quality water to the Barton Springs Edwards Aquifer contributing and recharge zones as well as other downstream resources; and

WHEREAS, the identification of, negotiation for, and successful acquisition of conservation easements and fee simple acquisitions of large acreage rural tracts is a time and resource intensive process.

WHEREAS, as these transactions will be handled on an exclusively voluntary basis (in lieu of eminent domain), the successful pursuit of these property acquisitions can take a dedicated team months or even years to complete; and

WHEREAS, given a finite pool of funds to effect the proposed property acquisitions and the City's inability to commit the necessary staff hours required for successful completion of the transactions, it is prudent to engage consultants having the requisite expertise and resources necessary to acquire these property interests until the allocated funds are exhausted.

NOW, THEREFORE, the Parties hereto agree to the contract provisions detailed below:

## **ARTICLE I. TERM**

1.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement begins when both parties have signed and executed this Agreement. This is a multi-term contract request for sixty (60) months with 1 renewal option for an additional sixty (60) months until the \$72 million in allocated funds are exhausted.

## **ARTICLE II. SCOPE OF SERVICES**

2.1 Contractor agrees to provide the services described in this Article II and shall receive the compensation described in Article III.

2.2 All work performed by Contractor hereunder shall be performed to the reasonable satisfaction of the City. City shall be under no obligation to pay for any work performed by Contractor that is not reasonably satisfactory to the City. Prior to withholding any payment to Contractor, the City shall advise Contractor of any deficiencies such that the Contractor may resolve them. The City and the Contractor shall meet as often as needed to ensure that all aspects of the Scope of Services are performed.

2.3 Contractor shall, as an independent contractor, to the extent reasonably necessary under the circumstances, perform the work required under the attached Scope of Work (**Exhibit A**):

2.4 Contractor and City may agree to assign Contractor's option or purchase agreement to City or an approved third party at any time prior to the closing on any property under this Agreement. If the Contractor desires for the termination of an option or purchase agreement, Contractor shall provide written notice thereof to the City prior to termination to allow the City an opportunity to accept an assignment of such agreement. In addition, Contractor may proceed to close with a landowner, and in a simultaneous closing between Contractor and City, immediately convey the property to the City or other third party agreed upon by the City and Contractor. The City has the sole discretion and responsibility in determining whether it shall accept such assignment and close with a landowner or accept such conveyance of the property by Contractor in a simultaneous closing, but such decision shall be irrevocable upon approval of the transaction by the City of Austin City Council ("**City Council**"). Properties and Agreements held by the Contractor that are not subject to this agreement shall be exempt from the terms and conditions of Article II, Subsection 2.4.

## **ARTICLE III. COST RECOVERY**

3.1 As further set forth in this Article III below, the City agrees to reimburse Contractor as follows:

- a. **INDIRECT COSTS:** For indirect costs by paying Contractor according to the following two tables at the closing of real estate interests being transferred to the City:

1. Fee Simple Acquisition of Property

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$40,000
\$5,000,000 - \$19,999,999	\$50,000
>\$20,000,000	\$65,000

2. Conservation Easement Acquisition of Property

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$65,000
\$5,000,000 - \$19,999,999	\$75,000
>\$20,000,000	\$90,000

- b. DIRECT COSTS: will be approved and authorized by the Project Manager and may include earnest money, option fees, title insurance, surveys, environmental assessments, legal services, easement documentation reports (baseline surveys), and mapping. No additional fees or expenses of Contractor shall be charged by Contractor nor be paid by City, unless authorized by the Project Manager and the Property Agent.

3.3 City's obligation to reimburse indirect costs will arise upon City's decision to proceed in accordance with Section 2.4 herein, and City shall make payment of such indirect costs either (i) within forty-five (45) days after acceptance of an assignment of the option or purchase agreement from Contractor, or (ii) at the time of a simultaneous closing with Contractor and in consideration for Contractor's assignment or conveyance to City. If City Council does not approve a transaction (whether an assignment by Contractor of a particular option or purchase agreement or a conveyance of the property by Contractor in a simultaneous closing), Contractor will be reimbursed for direct costs for such transaction approved by the Project Manager. Direct costs will be reimbursed at the same time as the indirect costs, or if a transaction is not approved by the City Council, within forty-five (45) days after the City's receipt of an approved invoice for such costs.

3.4. City shall not be obligated or liable under this Agreement to any third party, other than Contractor, for the payment of any monies or the provision of any goods or services hereunder, except as approved and authorized by Project Manager and the Property Agent.

3.5 Invoices, reports, documents and any non-claim information shall be submitted to City as follows:

David Johns, (herein referred to as the **"Project Manager"**)  
City of Austin  
Watershed Protection Department  
505 Barton Springs Road  
Austin, TX 78704  
Tele. (512) 974-2781  
Email: [david.johns@austintexas.gov](mailto:david.johns@austintexas.gov)



or

Marsha Schulz, (herein referred to as the “**Property Agent**”)

City of Austin

Office of Real Estate Services

505 Barton Springs Road, Ste. 1350

Austin, TX 78704

Tele. (512) 974-7075

Email: [marsha.schulz@austintexas.gov](mailto:marsha.schulz@austintexas.gov)

The City shall coordinate services and deliver all notices hereunder to Contractor as follows:

Hill Country Conservancy

ATTN: Frank Davis

P.O. Box 163125

Austin, TX. 78716

Tele.: (512) 328-2481 ext 203

Email: Frank@hillcountryconservancy.org

3.6 The making and acceptance of final payment will constitute a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

#### **ARTICLE IV. OWNERSHIP OF DOCUMENTS**

4.1 Any and all writings, documents, reports, findings and information collected and/or produced by Contractor and for which City is required to reimburse Contractor under this Agreement (“**Property Information**”), shall be the property of City, and City shall have the right to use them without restriction. Contractor may use Property Information in furtherance of its activities under this Agreement and subject to the confidentiality provisions below, its charitable purposes, but shall not otherwise use, copy or distribute Property Information without written authorization from Project Manager. This Property Information shall not include any immaterial information or internal correspondence of Contractor, any attorney-client or work-product privileged documents or information of Contractor or any documents or information Contractor is required by law or legal obligation to keep confidential.

4.2 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 and mark/identify as confidential) (collectively, “**Confidential Information**”). Notwithstanding the foregoing, Confidential Information does not include information (i) known to Contractor prior to disclosure by the City, (ii) generally available to the public, (iii) furnished to Contractor by any third party having a legal right to do so, (iv) independently developed by Contractor without the use or reference to Confidential Information or (v) information subject to disclosure under the Texas Public Information Act, currently codified in Texas Govt. Code Chapter 552. 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

PA190000038 (Hill Country Conservancy)

without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

## **ARTICLE V. RECORDS RETENTION**

5.1 Contractor and its subcontractors, if any, properly, accurately and completely shall maintain all Property Information and shall make all Property Information available to City at Contractor's office at reasonable times and as reasonably requested during the Agreement period, to include any extension or renewal thereto; and during the Retention Period as defined in Section 5.2 herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

5.2 Contractor shall retain any and all Property Information for a period ("***Retention Period***") which shall commence upon contract execution through a period of no longer than one year from the date of termination of the Agreement. All records shall be disposed of prior to the one-year anniversary of the Agreement termination date, except to the limited extent copies are retained by the Contractor for ordinary business purposes. If, during the Retention Period, Contractor has been notified that there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the Property Information until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such Property Information at reasonable times, as reasonably requested by City, during said Retention Period. City may, at its election and sole cost, require Contractor to provide copies of said Property Information to City prior to, or at the conclusion of, said Retention Period, at the City's expense.

5.3 Records Retention: With respect to the Property Information,

- i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
- ii. All Records are the property of the City. During the Retention Period, 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.
- iii. The Contractor shall retain all 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.
- iv. The Contractor shall include sections i. and ii. above in all subcontractor agreements entered into in connection with this Contract.

5.4 Each party immediately shall notify the other party in the event a party receives a request for information from a third party pertaining to the documentation and records referenced herein. Contractor and City will cooperate in processing and handling all such requests.

## **ARTICLE VI. TERMINATION**

6.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term, as stated in Article I herein, or earlier termination pursuant to any of the provisions of this Agreement.

6.2 Termination Without Cause. This Agreement may be terminated by either City or Contractor upon delivery of 30 calendar days' written notice thereof to the other party, provided, in such event, City shall be responsible to reimburse Contractor for all direct costs payable hereunder and City shall be obligated to complete all transactions City has agreed to proceed upon, in accordance with Section 2.4 herein, and pay indirect cost reimbursement for such transactions.

6.3 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement automatically shall terminate as of the effective date of such prohibition.

6.4 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as City may designate, at no additional cost to City, of all Property Information, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Articles IV and V herein. Any Property Information transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such Property Information, if requested.

6.5 Within ninety (90) calendar days of the effective date of completion, termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for monies Contractor claims is owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said ninety (90) calendar days shall negate any liability on the part of City and shall constitute a waiver by Contractor of any and all right or claims to collect moneys to which Contractor may be entitled for services performed pursuant to this Agreement.

6.6 Upon the effective date of completion, expiration or termination of this Agreement, Contractor shall have no obligation to continue any work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

6.7 Termination not sole remedy. In no event shall either party's action of terminating this Agreement be deemed an election of such party's remedies, nor shall such termination limit, in any way, at law or at equity, such party's right to seek damages from or otherwise pursue the other party for any default hereunder or other action.

6.8 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.

6.9 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.

6.10 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 Section 6.8, (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 proposal, or in any report or deliverable required to be submitted by the Contractor to the City. However, the City shall provide Contractor with written notice of any default and a thirty (30) day period after receipt of such notice to cure the default to City's satisfaction.

## **ARTICLE VII. INSURANCE**

7.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Watershed Protection Department, which shall be clearly labeled "Open Space Water Quality Protection WQPL" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Manager. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

7.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

7.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

2. Business Automobile Liability a. Coverage for all Owned, Hired, and Non-Owned vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
3. Worker's Compensation and Employers' Liability	<u>Statutory Benefits as outlined in Texas Worker's Compensation Act (Section 401);</u> <u>Employer's Liability limits as follows:</u> <u>\$100,000 bodily injury each accident;</u> <u>\$500,000 bodily injury by disease policy limit;</u> <u>\$100,000 bodily injury by disease each employee</u>

7.4 Contractor agrees to require, by written contract, that all subcontractors engaged and paid by Contractor for which reimbursement will be sought from the City providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Contractor shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Contract for all purposes.

7.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 calendar days.

City of Austin  
Attn: Watershed Protection Department  
P.O. Box 1088  
Austin, Texas 78767

7.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a) Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- b) Provide for an endorsement that the "other insurance" clause shall not apply to the City of Austin where the City is an additional insured shown on the policy;

- c) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- d) Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

7.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

7.8 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

7.9 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

7.10 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Austin for liability arising out of Contractor's operations under this Agreement.

7.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

7.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **ARTICLE VIII [Intentionally Omitted]**

## **ARTICLE IX. ASSIGNMENT AND SUBCONTRACTING**

9.1 Contractor shall supply qualified personnel as may be necessary to complete the work under this Agreement.

9.2 Before utilizing any subcontractor to perform any part of the work identified in this Agreement, Contractor shall seek written authorization from Project Manager, who shall approve or reject such a request in Project Manager's reasonable discretion. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall not be obligated to any third party, including any subcontractor or employee of Contractor, for performance of services or payment of fees unless authorized by Project Manager. Any references in this Agreement to an assignee, transferee or subcontractor indicate only such an entity as has been approved by City.

9.3 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means without the consent of Project Manager. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

9.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate or otherwise dispose of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VI herein, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

## **ARTICLE X. INDEPENDENT CONTRACTOR; NO AGENCY**

10.1 Contractor and City acknowledge, covenant and agree that Contractor is an independent contractor with City and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venture's between City and Contractor. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Contractor under this Agreement and that the Contractor is acting on its own behalf and has no authority to bind the City.

10.2 The purpose and intention of this Agreement are to collaborate on the City acquiring fee title or conservation-easement rights in real property through options, purchase contracts, assignments or conveyances. Contractor's role exclusively is of an independent contractor. Provisions in this Agreement for maintenance of insurance, for the benefit of City or Indemnification of City or similar provisions of this Agreement, in no way indicate that Contractor is not an independent contractor.

10.3 This Agreement is not intended to restrict Contractor in its conservation efforts. Without limiting the foregoing, Contractor may acquire, sell or otherwise dispose of any property through assignment of options or purchase contracts at its sole discretion, except those properties that become subject to this Agreement. Further, Contractor may continue to work with other persons, entities, non-profits and other city or county governments, as well as private conservation buyers, with respect to acquiring, selling or transferring property desirable for protecting land.

## **ARTICLE XI. CONFLICT OF INTEREST**

11.1 Contractor acknowledges that it is informed and understands that the Charter of the City of Austin and its Ethics Code prohibit a City officer or employee, as those terms are defined in Chapter 2-7 of the Austin City Code, from having a financial interest in any contract with the City or any City agency such as city-owned utilities.

11.2 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract.

11.3 As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

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

11.4.1 If the Contractor qualifies as a "company", then the Contractor verifies that it:

- a) does not "boycott Israel"; and
- b) will not "boycott Israel" during the term of this Contract.

11.4.2 The Contractor'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.

## **ARTICLE XII. AMENDMENTS**

12.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms of this Agreement shall be affected by amendment in writing and executed by both City and Contractor.

## **ARTICLE XIII. SEVERABILITY**

13.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including, but not limited to, the Austin City Charter, Austin City Code or ordinances of the City of Austin, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause(s) or provision(s) hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause(s) or provision(s) was/were never contained herein; it also is the intention of the Parties hereto that, in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added,



as a part of the Agreement, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

#### **ARTICLE XIV. QUALIFICATIONS**

14.1 Each Party warrants and certifies to the other that it is qualified and has the capabilities to comply with its obligations hereunder.

#### **ARTICLE XV. COMPLIANCE AND WARRANTY**

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

#### **ARTICLE XVI. NONWAIVER OF PERFORMANCE**

16.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of City, such changes must be approved by Project Manager, as described in Article XII herein. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges or remedies to always be specifically preserved hereby.

#### **ARTICLE XVII. JURISDICTION, VENUE, AND DISPUTE RESOLUTION**

17.1. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in Travis and Hays County, Texas.

17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of Austin, Travis County, Texas. The City waives its sovereign immunity as to the enforcement of the terms and conditions of this agreement but not otherwise.

17.3 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.

17.4 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.

## **ARTICLE XVIII. LEGAL AUTHORITY**

18.1 The signer of this Agreement for each Party represents, warrants, assures and guarantees to the other Party that he/she has full legal authority to execute this Agreement on behalf of the respective Party and to bind said Party to all of the terms, conditions, provisions and obligations contained herein.

18.2 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 Contractor 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.

## **ARTICLE XIX. PARTIES BOUND**

19.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives and successors and assigns, except as otherwise expressly provided for herein.

19.2 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.

## **ARTICLE XX. SECTION HEADING**

20.1 The section headings contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

**ARTICLEXXI.**  
**ADMINISTRATIVE CONSENTS**

21.1 The Director of Watershed Protection Department and the Project Manager may, without further City Council action, agree to, sign and deliver, on behalf of City, all consents, certificates, memoranda, estoppels and modifications of nonmaterial rights and obligations arising under this Agreement and may declare Contractor defaults and pursue remedies for such defaults.

**ARTICLE XXII.**  
**NON-DISCRIMINATION**

22.1 As a party to this contract, Licensee understands and agrees to comply with the *Non-Discrimination Policy* of the City of Austin contained in Chapter 5-4 of the Austin City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

22.2 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.

**ARTICLE XXIII.**  
**MODIFICATIONS**

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

**ARTICLE XXIV.**  
**ENTIRE AGREEMENT**

24.1 This Agreement, together with its Exhibits, if any, constitute the final and entire Agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless those agreements are in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XII herein.

*{SIGNATURE ON NEXT PAGE}*

IN WITNESS WHEREOF, the Parties have caused their representatives to set their hands as of the later of the dates of the signatures below:

City of Austin,  
a Texas home-rule city and municipal corporation

By: Claudia Rodriguez

Name: Claudia Rodriguez

Title: Procurement Specialist IV

Date: 05/31/2019

Contractor

(Name) Hill Country Conservancy

By: [Signature]

Name: Frank Davis

Title: Chief Conservation Officer

Date: 5/24/19

Approved As To Form:

[Signature]  
Assistant City Attorney  
BRANDON W. CARR

List of Exhibits:

Exhibit A – Scope of Work

Exhibit B – Hill Country Conservancy Pricing Proposal

Exhibit C- Hill Country Conservancy Professional Statement

**Exhibit A**  
**Scope of Work**  
**For**  
**Land Interests and Preservation Consulting for Water Conservancy**

**Description:** The City wishes to protect the quality and quantity of water in Barton Springs and is interested in acquiring property and/or interests in property in the Barton Springs Edwards Aquifer contributing and recharge zones, in Travis and Hays County, as supported by the citizens by public vote in the November 6, 2018 bond election (Proposition D).

**1.0     Introduction**

***About the City of Austin***

The City of Austin, Texas, population 840,000, is the 13th largest city in the country. This vibrant and dynamic city tops numerous “Best” lists for business, entertainment, cost of living and quality of life. Austin was selected as the “Best City for the Next Decade” (Kiplinger), the “Top Creative Center” in the US (Entrepreneur.com) and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community Forum. Austin continues to lead the country with its vision of being the “Most Livable City in the Country”, emerging as a player on the international scene with such events as SXSW, Formula 1 and being home to companies such as Apple, Samsung, Dell, The Seton Healthcare Family and St. David's HealthCare systems. From the home of state government and the City of Texas, to the “Live Music Capital of the World” and its growth as a film center, Austin has gained worldwide attention as a hub for education, business, health, and sustainability. Since 1900, Austin's population has doubled every 20 years, with continued projected record-breaking growth into the next decade and beyond.

**2.0     Purpose**

The mission of the Water Quality Protection Lands (“WQPLP”) is to acquire land in fee title or conservation easement in the Barton Springs contributing and recharge zones to provide for the conservation of water quality and water quantity. The objective is to produce the optimum level of clean, high quality water to recharge the Barton Springs Edwards Aquifer while also providing comprehensive watershed benefits to all downstream creeks, rivers and lakes. Watershed benefits include protection of drinking water, reduction of flood impacts and preservation of recreational resources.

**3.0     Background**

The WQPL has been funded primarily through voter-approved bond funding with significant contribution from landowners and other entities. Funds go towards the acquisition of valuable watershed conservation land either through fee simple or conservation easement purchase. Since the program's inception in 1998, over \$155 million in bond funding and \$24 million in partner contributions have been used toward the permanent protection of over 28,000 acres of conservation land. An inter-department team including Watershed Protection Department, the Office of Real Estate, and the Wildlands Division of Austin Water, collaborates on acquisitions and Wildlands manages the properties.

#### 4.0 **Definitions**

- “City” is defined as the City of Austin, Texas
- “Contractor” is defined as a 501(c)3 entity that conforms to the criteria described in Section 5.1, subsections (j) through (n), below.
- “Project Manager” is defined as the City’s lead contact relative to described Tasks and Requirements in Section 5.0 below.
- “Project Sponsor” is defined as the City’s sponsor contact (Watershed Protection Department) relative to described Tasks and Requirements in Section 5.0 below.

#### 5.0 **Tasks/Requirements**

##### 5.1 ***Contractor’s Responsibilities***

(a) Contractor shall work with the City’s Project Manager and Project Sponsor in the City’s efforts to acquire real property and /or real property interests (Fee Simple or Conservation Easement) (the “Property”) in the Barton Springs Edwards Aquifer Recharge and Contributing Zones, both inside and outside Travis County for the protection of water quality and quantity for the benefit of the citizens of Austin and those in its extraterritorial jurisdiction.

(b) Contractor shall identify candidate Properties within the described geography and make initial contacts and perform initial negotiations with property owners to determine such owners’ interest in the purchase of real estate and real estate interests, including conservation easements, and options for purchase agreements between landowners and Contractor.

(c) Contractor, Project Manager and Project Sponsor shall identify and discuss specific potential Property acquisitions and their acceptability for acquisition, before Contractor initiates substantive discussion and/or enters into substantive negotiations with owner(s) of a Property or Properties.

(d) Upon Project Manager and Project Sponsor’s written authorization to Contractor to advance the potential acquisition of a Property, Contractor may elect to initiate negotiations for the purchase of real estate and real estate interests, including conservation easements, with the Property owner. Contractor may elect to enter into option and/or purchase agreements between Property owner(s) and Contractor. Any such agreement shall include assignment provisions for subsequent assignment by Contractor to the City, in the event Contractor and City mutually elect to pursue assignment of such option and/or purchase agreements.

(e) Upon approval by the Project Manager and Project Sponsor of a Property, Contractor may elect, and shall be further authorized by City, to coordinate and conduct due diligence on identified Properties, which may include, but is not limited to, continued landowner outreach, site visits, obtaining and reviewing title commitments, performing environmental assessments, surveys, and easement documentation reports (baseline surveys) (in the event conservation easements are to be acquired), and shall provide such information to the Project Manager and Project Sponsor for the City’s independent review, analysis and approval or rejection of same.

(f) Contractor will keep the Project Manager and Project Sponsor informed on the status of the acquisition of the Property or Properties.

- (g) Contractor shall work collaboratively with the City, outside legal counsel and other professionals pursuant to this Scope of Work. Internal legal counsel of Contractor and the City shall collaborate on projects, but each party shall rely on its own counsel and neither party shall have a duty to provide legal advice to the other party.
- (h) Contractor shall arrange site visits to the Property and project areas, provide owner contact information, coordinate and present potential Property acquisitions and provide additional information and assistance to the Project Manager as needed.
- (i) Contractor will give prompt written notice to the City whenever the Contractor observes or otherwise becomes aware of any defect, deficiency or delay in the acquisition of a Property or Properties under this Scope of Work.
- (j) Contractor shall maintain its status as a 501(c) 3 organization during the term of the Contract.
- (k) Contractor shall demonstrate experience in land conservation and protection in the Central Texas area.
- (l) Contractor shall demonstrate experience purchasing fee simple conservation properties and transferring to local city and county governments.
- (m) Contractor shall demonstrate experience purchasing and negotiating conservation easements and transferring to local city and county governments.
- (n) Contractor shall demonstrate experience managing conservation easements.
- (o) Contractor shall conduct and/or assist with presentations to City Boards and Commissions and Council.

## **5.2 City's Responsibilities**

- (a) City will designate the City's Project Manager and Project Sponsor and notify Contractor of same.
- (b) City shall, in a reasonable time, examine all studies, reports, sketches, estimates, drawings, proposals and other documents submitted by the Consultant with respect to a candidate Property or Properties.
- (c) City shall, in a reasonable time, provide Contractor with City's analysis of a specific Property or group of Properties, and provide consequent direction to Contractor.
- (d) City will coordinate and conduct appraisal(s) and land plan(s) on a specific Property or Properties that have been submitted by the Contractor and are acceptable to the Project Manager and Project Sponsor. City shall, in a reasonable time, conduct such appraisal and land plan, and provide same to Contractor upon receipt.
- (e) City will provide Contractor with access to information in the custody or control of the City relevant to the negotiations for, development of, and completion of, Property acquisitions.
- (f) City will give written notice to the Contractor whenever the City observes or otherwise becomes aware of any defect, deficiency or delay in the Contractor's work product or services.
- (g) City will give written notice to the Contractor, if the City elects to terminate work on any potential Property acquisition.

6.0 **Deliverables/Milestones**

<b>Deliverables/Milestones</b>	<b>Description</b>	<b>Timeline (due/completion date, reference date, or frequency)</b>	<b>Performance Measure/ Acceptance Criteria</b>
Fee Simple land acquisition	Acquiring interest in land for fee simple ownership, which includes all entitlements.	Due upon closing	City Approval
Conservation Easement COA Management	Acquiring easement interest that would protect the natural, productive or cultural features of the property, limiting the right to develop. Ownership remains in the landowners' name, property is restricted with Conservation Easement. Conservation Easement is managed by City.	Due upon closing	City Approval
Conservation Easement Contractor Management	Acquiring easement interest that would protect the natural, productive or cultural features of the property, limiting the right to develop. Ownership remains in the landowners' name, property is restricted with Conservation Easement. Conservation is managed by Contractor.	Due upon closing	City Approval



**Fee and Reimbursement Schedule**

Scope of Work Solicitation No. \_\_\_\_\_

22 February 2019

Fees and reimbursements will be as follows:

- a. **INDIRECT COSTS:** For indirect costs by paying Contractor according to the following two tables at the closing of real estate interests being transferred to City:

1. Fee Simple Acquisition of Property

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$40,000
\$5,000,000 - \$19,999,999	\$50,000
>\$20,000,000	\$65,000

2. Conservation Easement Acquisition of Property

<i>Appraisal Amount</i>	<i>Professional Services Fee</i>
<\$5,000,000	\$65,000
\$5,000,000 - \$19,999,999	\$75,000
>\$20,000,000	\$90,000

- b. **DIRECT COSTS:** may include earnest money, option fees, title insurance, surveys, environmental assessments, easement documentation reports (baseline surveys), and mapping.



## Hill Country Conservancy Professional Statement

### Hill Country Conservancy:

Hill Country Conservancy ("HCC") is a 501(c)(3) non-profit organization registered in the State of Texas since 2000. HCC's Mission is to marshal public and private resources to preserve the natural areas and scenic vistas, aquifers and springs, rivers and streams, working farms and ranches, and the rural heritage of Central Texas Hill Country for people to enjoy and cherish for generations to come.

### Conservation Focus:

HCC recognizes the unique and fragile natural resource values of Central Texas, together with the challenges of rapid growth, development, and land fragmentation. Largely using Conservation Easements to effect land conservation, HCC's focus points include protecting water quality, quantity, and aquifer recharge; protecting iconic working lands through best management practices; providing for habitat that protects rare, endangered and protected plant and animal species; and advocating for a sense of place and community by preserving viewsheds, sustaining local economies, and holding inappropriate development at bay.

### Land Protection Services:

Since 1999, HCC has conserved more than 19,000 acres of land by executing perpetual conservation easements with its landowner partners. Of this total, approximately 7,500 acres of land now owned or stewarded by the City of Austin was supported by HCC. HCC engages with landowners committed to the preservation of their lands by working collaboratively to define, create, and enter into a Conservation Easement that prescribes limited and acceptable uses of the land, together with actions and obligations to restore and manage degraded lands, protect watersheds and surface and groundwaters, provide habitat for flora and fauna, and sustain the economic viability of the land itself. The Conservation Easement protects the property in perpetuity, while allowing private ownership and use, and binds any future sale of the property to the Conservation Easement.

### Land Protection Funding:

HCC engages with Federal, State and local public entities, as well as foundation and private donor sources, to bring funding forward for the acquisition and stewardship of lands under a Conservation Easement, or as fee pre-acquisitions for a public entity. In doing so, limited private, foundation and public monies are highly leveraged: since 2004 HCC has secured over \$10M as matching funds for City of Austin land and water protection projects.

**Land Stewardship Services:**

Upon reaching acceptable terms of a Conservation Easement by and between the landowner, HCC, and frequently one or more public agency partners, the easement is executed and recorded together with a baseline property report, and monitored by HCC or the Managing Grantee on an annual basis to assure conformance with the terms and conditions of the conservation easement. HCC or the Managing Grantee has the obligation and right to cure any violations of the conservation easement; HCC maintains a land stewardship fund for monitoring and enforcement purposes.

**Community Engagement:**

HCC's website acts as a key portal into the world of Conservation Easements, with a particular focus on the benefits of, and obligation between, landowners, easement holders, and the easement terms and conditions. Additionally, HCC hosts public monthly "Walk and Talk" events to engage people with the landscape around them. Finally, HCC founded EPIC ("Emerging Professionals in Conservation") to guide the next generation of environmental leadership in Central Texas.

**For More Information:**

Please contact Frank Davis, Chief of Land Conservation  
Hill Country Conservancy  
(512) 328-2481



## City of Austin Purchasing Office

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

DATE: 3/12/19

DEPT: OFFICE OF REAL ESTATE SERVICES (ORES)

TO: Purchasing Officer or Designee

FROM: Alex Gale, Interim Officer, ORES

PURCHASING POC: Claudia Rodriguez

PHONE: (512) 974-2959

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: \_\_\_\_\_



## 2. Describe this procurement

- What it is for and why it is needed?

The City seeks to establish a contract with a firm (or firms) to acquire and preserve land, or interests in land, within the Barton Springs and Edwards Aquifer Recharge and Contributing Zones, both inside and outside Travis County for the protection of water quality for the citizens of Austin and the customers of the Austin Water Utility.

- Describe the following (as applicable):

- **For Public Health and Safety:**

- On November 6, 2018, Austin voters approved bond Proposition D which included \$72 million in funding to purchase land and conservation easements on properties in Austin's southern watersheds that feed the Edwards Aquifer, Barton Springs, and the Colorado River.
- A failure to acquire land and conservation easements in Austin's southern watersheds will compromise the quality and quantity of water in Austin's aquifers, springs, greenbelts, parks and ultimately contribute to flooding.
- Only two consultants exist in the Central Texas area that specialize in the negotiation and packaging of open space and conservation easements on the scale required to be effective from both a cost and functionality standpoint.

- **For Professional, Personal, or Planning Service Exemptions:**

- Why is the vendor the most qualified to provide the services? The selected vendors are the only two firms providing this specific service in Central Texas.
- Does this vendor have a history of working with the City? If so, was it on this particular service? These vendors both have experience with this type of work with and on behalf of the City of Austin.
- Is the vendor a City of Austin local vendor? Yes.
- What qualifications, certifications, or specialized training does the vendor have? See attached professional statements for each vendor.
- What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)? If a contract is not secured with these particular vendors it will make it exceedingly difficult, if not impossible to spend the Proposition D bond funds approved by the Austin voters.
- What other vendors can provide these services and why are they not the best fit for the contract? No other vendors provide this particular service.

- **For Other Exceptions from Chapter 252.022:**

- Explain the circumstances of the procurement.

- **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: At a minimum, note the City of Austin contract number and title.

- ☐ 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: Prices were determined based on the prices paid by the City to these same vendors for the same services contemplated in this procurement.

\* 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.

As a result of 2018's Proposition D, the City has \$72 million in funding to purchase land and conservation easements necessary to protect Austin's water quality for generations. The proposed acquisitions, once completed, will limit urban and suburban development over these lands which will result in less contaminants entering into the City's aquifers, springs, greenbelts and parks. In addition, the limiting of urban and suburban development will have a mitigating effect on flooding. The identification of, negotiation for, and successful acquisition of conservation easements and fee simple acquisitions of large acreage rural tracts to preserve water quality is a time and resource intensive process. As they are handled on an exclusively voluntary basis (in lieu of eminent domain), the successful pursuit of these property acquisitions can take a dedicated team months or even years to complete. Given a finite pool of funds to effect the proposed property acquisitions and the City's inability to commit the necessary staff hours required for successful completion of the transactions, it is prudent to engage consultants having the requisite expertise and resources necessary to acquire these property interests until the allocated funds are exhausted. The two firms in consideration are the only firms with experience and a proven track record providing this service in the Central Texas area.

#### **Unique Qualifications of Nature Conservancy**

- Holds and manages more conservation easements (157) than any public or private organization in Texas, totaling more than 400,000 acres.
- Since 1990, TNC has procured 415,000 acres of conservation easements and fee title land for public land management agencies in Texas, including the City of Austin, City of San Antonio, Texas Parks and Wildlife Department, Texas General Land Office, Texas A&M forest Service, national Park service, and USDA Forest Service.
- Since 1998, TNC has purchased and negotiated over 15,000 acres of fee title and conservation easement water quality protection land for the City of Austin

#### **Unique Qualifications of Hill Country Conservancy**

- Since 1999, HCC has procured and managed conservation easements for 19,000 acres of water quality and conservation land.
- Has secured 7,500 acres of water quality protection land for the City of Austin
- Since 2004, HCC has secured over \$10 million in matching funds for City of Austin land and water protection purchases.

3. 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
4. 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): Hill Country Conservancy and The Nature Conservancy for
- (Description of Procurement): Land Interests and Preservation Consulting for Water Conservancy
5. 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 \$ \_\_\_\_\_
- ☒ This is a multi-term contract request for 60 months in the amount of \$72 million with 1 renewal option for an additional 60 months until the \$72 million in allocated funds are exhausted.

Recommended  
Certification

Michael Gates 3-12-19  
Michael Gates – Acting Assistant Director – Office of Real Estate Services  
Originator Date

Approved  
Certification

Alex Gale 3/13/2019  
Alex Gale – Interim Officer – Office of Real Estate Services  
Department Director or designee Date

Robert Rodriguez 3/13/19  
Assistant City Manager / General Manager Date  
or designee (procurement requiring Council approval)

Purchasing Office  
Review

Claudia Rodriguez 3/19/19  
Authorized Purchasing Office Staff Date

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

[Signature] 3-20-19  
Purchasing Officer or designee Date

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Claudia Rodriquez x42959	<b>PM Name/Phone</b>	
<b>Sponsor/User Dept.</b>	Real Estate Office	<b>Sponsor Name/Phone</b>	Michael Gates x45639
<b>Solicitation No</b>	N/A-Exempt 130202	<b>Project Name</b>	Water Conservancy Consultants
<b>Contract Amount</b>	\$72,000,000 (5 years)	<b>Ad Date (if applicable)</b>	N/A-Exempt
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
This is a CIP, bond funded project related to land acquisitions voter approved in Prop. D. Total bond is \$72 million. \$27 million is scheduled to be approved by Council on 3/7/2019 and the remaining funds shall be contingent upon available budget in future years			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
The City wishes to protect the quality and quantity of water in Barton Springs and is interested in acquiring property and/or interests in property in the Barton Springs Edwards Aquifer contributing and recharge zones, in Travis and Hays County, as supported by the citizens by public vote in the November 6, 2018 bond election (Proposition D).			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
57863-100%			
Claudia Rodriquez		3/6/2019	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>		
<b>Date Received</b>		<b>Date Assigned to BDC</b>
<b>In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>		
<input type="checkbox"/> Goals	% MBE	% WBE
<input type="checkbox"/> Subgoals	% African American	% Hispanic
	% Asian/Native American	% WBE



## GOAL DETERMINATION REQUEST FORM

<input type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input checked="" type="checkbox"/> No Goals
--	--

## GOAL DETERMINATION REQUEST FORM

### This determination is based upon the following:

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

*If Other was selected, provide reasoning:*

### MBE/WBE/DBE Availability

There are 2 MBEs and 0 WBEs available for this project.

### Subcontracting Opportunities Identified

There are no subcontracting opportunities identified.

Sonya Powell

SMBR Staff

*Sonya Powell*

Signature/ Date

*3/8/19*

SMBR Director or Designee

*[Signature]*

Date

*3/15/19*

Returned to/ Date: