



Amendment No.3
to
Contract No. MA 1500 NA200000006
for
Organics Processing Services Program
Between
Employee-Owned Nursery Enterprises, Ltd. DBA Organics "By Gosh"
and the
City of Austin, Texas

1.0 The City hereby accepts a price increase, effective October 24, 2021 for the tipping site to the price per ton listed below:

2040 FM 969, Elgin, TX 78621 - \$17.92 per ton

2.0 The total Contract authorization is unchanged and is recapped below:

Contract Action	Action Amount	Total Contract Amount
Basic Term: 10/24/2019 – 10/23/2022	\$2,178,000.00	\$2,178,000.00
Amendment No. 1: Designate pricing for two locations 2/5/2020	\$0.00	\$2,178,000.00
Amendment No. 2: Price Increase 3/16/2021	\$0.00	\$2,178,000.00
Amendment No. 3: Price Increase 10/18/2021	\$0.00	\$2,178,000.00

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

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

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

**EMPLOYEE-OWNED NURSERY
ENTERPRISES, LTD. DBA ORGANICS "BY
GOSH"**

Signature

Kevin M. Bolin

Printed Name of Authorized Person

CITY OF AUSTIN

Erin D'Vincent Digitally signed by Erin D'Vincent
Date: 2021.11.19 10:58:53 -06'00'

Signature

Erin D'Vincent

Printed Name of Authorized Person

Procurement Manager

Title

November 19, 2021

Date

President

Title

November 17, 2021

Date



Amendment No.2
to
Contract No. MA 1500 NA200000006
for
Organics Processing Services Program
Between
Employee Owned Nursery Enterprises, Ltd. DBA Organics "By Gosh"
and the
City of Austin, Texas

1.0 The City hereby accepts a price increase for both tipping sites to the price per ton listed below:

2040 FM 969, Elgin, TX 78621 - \$16.75 per ton
13602 FM 969, Austin, TX 78724 - \$19.79 per ton

2.0 The total Contract authorization is unchanged and is recapped below:

Contract Action	Action Amount	Total Contract Amount
Basic Term: 10/24/2019 – 10/23/2022	\$2,178,000.00	\$2,178,000.00
Amendment No. 1: Designate pricing for two locations 2/5/2020	\$0.00	\$2,178,000.00
Amendment No. 2: Price Increase 3/16/2021	\$0.00	\$2,178,000.00

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

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

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

**EMPLOYEE OWNED NURSERY
ENTERPRISES, LTD. DBA ORGANICS "BY
GOSH"**

Signature

Kevin Bolin

Printed Name of Authorized Person

CITY OF AUSTIN

Sandy
Wirtanen

Digitally signed by Sandy
Wirtanen
Date: 2021.03.16
15:57:08 -05'00'

Signature

Sandy Wirtanen

Printed Name of Authorized Person

Procurement Specialist IV

Title

3/16/2021

Date

President

Title

March 16, 2021

Date



MEMORANDUM

TO: File

FROM: Sandy Wirtanen

DATE: May 12, 2020

SUBJECT: MA 1500 NA200000006

The last invoice against the previous contract, NA170000183, was invoiced against the subject master agreement in error. This invoice was for an amount of \$47,763.89. In order to have the full authorization amount available on the subject master agreement, the invoice amount was added back into Advantage. The authorization of each option period is unchanged.



Amendment No.1
to
Contract No. MA 1500 NA200000006
for
Organics Processing Services Program
Between
Employee Owned Nursery Enterprises, Ltd. DBA Organics "By Gosh"
and the
City of Austin, Texas

- 1.0 The City hereby amends Section 1 of the Awarded Bid Tab of the above referenced contract to identify the location of the facilities with designated pricing of \$16.50 per ton for material sorted, tipped, and/or processed as 2016 and 2040 FM 969, Elgin, TX 78621.
- 2.0 The City hereby amends Section 1 of the Awarded Bid Tab of the above referenced contract to add a second facility with designated pricing of \$19.50 per ton for material sorted, tipped, and/or processed at 13602 FM 969, Austin, TX 78724, in accordance with Contractor's Bid Sheet. The Contractor shall maintain this location at least through May 31, 2020, after which date the City approves the removal of this location from the above referenced contract upon written notice from the Contractor.
- 3.0 The City hereby amends the above referenced contract to replace William Kish, bkish@organicsbygosh.com as the Officer/Authorized Representative for Employee Owned Nursery Enterprises, Ltd. DBA Organics "By Gosh" with Brian Silver, email: brian@organicsbygosh.com and phone: 512-568-0927.
- 4.0 The City hereby deletes both previously numbered Section 0500 – Scope of Work, Sections 3.6.1 of the above referenced contract and replaces them with a new combined Section 3.6.1 to read as follows:
- 3.6.1 At least once per calendar year, the Contractor shall conduct material audits to determine the amount of contamination in the collected materials. The City has the right to request up to two audits per calendar year. The City and the Contractor will agree in writing to the dates, schedule, and service level of each audit before the audit is conducted. The City has the right to conduct the audit or appoint another contractor to conduct the audit. The audit shall meet ASTM Standard D 5231-92 sorting requirements. The City shall be responsible for: selecting the routes used in the audits randomly and on a rotating basis; documenting results; and generating a report of the material audit. The number of routes selected for each audit will be enough to ensure a 90 percent confidence level in the collected data. The Contractor shall be responsible for all other components of the material audit.
- 5.0 The total Contract authorization is recapped below:

Contract Action	Action Amount	Total Contract Amount
Basic Term: 10/24/2019 – 10/23/2022	\$2,178,000.00	\$2,178,000.00
Amendment No. 1: Designate pricing for two locations 2/5/2020	\$0.00	\$2,178,000.00

- 6.0 MBE/WBE goals were not established for this contract.
- 7.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 8.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

EMPLOYEE OWNED NURSERY
ENTERPRISES, LTD. DBA ORGANICS "BY
GOSH"

CITY OF AUSTIN


Signature


Signature

Brian Silver
Printed Name of Authorized Person

~~Sandy Wirtanen~~ Matthew Duree
Printed Name of Authorized Person

General Manager
Title

~~Procurement Specialist IV~~ Procurement Manager
Title

3/4/2020
Date

3-11-20
Date



CITY OF AUSTIN, TEXAS
Purchasing Office
INVITATION FOR BID (IFB)
OFFER SHEET

SOLICITATION NO: IFB 1500 SLW1018

COMMODITY/SERVICE DESCRIPTION: Organics Processing Services Program

DATE ISSUED: May 27, 2019

REQUISITION NO.: RQM 1500 19030700364

COMMODITY CODE: 98859

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

BID DUE PRIOR TO: June 18, 2019 at 2 PM

BID OPENING TIME AND DATE: June 18, 2019 at 3 PM

Sandy Wirtanen
Procurement Specialist IV

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701

Phone: (512) 974-7711

E-Mail: sandy.wirtanen@austintexas.gov

LIVE BID OPENING ONLINE:

For information on how to attend the Bid Opening online, please select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # IFB 1500 SLW1018	Purchasing Office-Response Enclosed for Solicitation # IFB 1500 SLW1018
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

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

SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY (USB FLASH DRIVE) OF YOUR RESPONSE

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

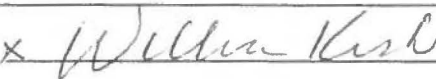
SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200 V2	STANDARD SOLICITATION INSTRUCTIONS, UPDATED JUNE 26, 2018	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	5
0500	SPECIFICATION	8
0600	BID SHEET – Must be completed and returned with Offer	2
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0700	REFERENCE SHEET – Complete and return if required	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810 V2	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION, UPDATED JUNE 26, 2018	*
0815	LIVING WAGES CONTRACTOR CERTIFICATION–Complete, sign and return	1
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:**

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all revisions, addenda and documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Employee Owned Nursery Enterprises, Ltd. d/b/a Organics "By Gosh"
Company Address: 13602 FM 969
City, State, Zip: Austin, Texas 78724
Vendor Registration No. EMP8321200
Printed Name of Officer or Authorized Representative: William Kish
Title: General Manager
Signature of Officer or Authorized Representative: x 
Date: June 25, 2019
Email Address: bkish@organicsbygosh.com
Phone Number: 512-276-1211

(* Completed Bid Sheet, section 0600 must be submitted with this signed Offer Sheet above to be considered for award)

ACCEPTANCE:

The Offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract No. MA 1500 NA200000006.

CITY OF AUSTIN

Awarded this 24th day of October, 2019



Signature

Matthew Duree

Printed Name and Title of Authorized Person

10/24/2019

Date

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

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

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

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

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

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

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

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

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

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PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

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

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

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

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the 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.

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

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

51. HOLIDAYS: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

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

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

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

54. **EQUAL OPPORTUNITY**

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

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

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

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

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

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

56. PROHIBITION OF BOYCOTT ISRAEL VERIFICATION

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

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

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The following Supplemental Purchasing Provisions apply to this solicitation:

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

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by one week prior to the offer closing date by 1:00 PM CST. Any requests should be emailed to sandy.wirtanen@austintexas.gov.

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

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

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

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

OR PURInsuranceCompliance@austintexas.gov

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

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:

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- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
 - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
3. **TERM OF CONTRACT:**
- A. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 36 months. The Contract may be extended beyond the initial term for up to two additional 12 month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
 - B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
 - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
 - D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)
- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information below cannot be processed and will be returned to the vendor. All invoices shall be emailed to ARR.AP@austintexas.gov and to the Contract Operations Manager on or before the fifteenth of each month for all the services provided the prior month and shall be itemized. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

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- i. A unique invoice number;
 - ii. The ARR provided purchase order or delivery order number and the ARR contract number, if applicable;
 - iii. The department's name, "Austin Resource Recovery";
 - iv. The name of the Contract Manager;
 - v. The Contractor's name and remit to address; and
 - vi. If applicable, the Contractor's tax identification number, which must exactly match the information in the Contractor's registration with the City.
- B. The Contractor agrees to accept payment by credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. **LIVING WAGES:**

The City's Living Wage Program, Rule R161-17.14, is located at:

<http://www.austintexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$15.00 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (**see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

7. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:**

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- A. On June 14, 2018, the Austin City Council adopted Ordinance No. 20180614-056 replacing Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly had communication restricted in the ordinance section 2-7-104 during the No-Lobbying Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf and is also included in the Solicitation, [Section 0200 V2, Solicitation Instructions June 26, 2018](#).

8. ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%
Database Name: CPI – All Urban Consumers
Series ID: CUUR0300SA0

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<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: South Urban	
Description of Series ID: All Items	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.

9. **INTERLOCAL PURCHASING AGREEMENTS:**

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

10. **CONTRACT MANAGER:** The Contract Operations Manager will be the main point of contact at ARR and will manage the services, operations, and communications under the ensuing agreement. The City will notify the Contractor in writing in the event there is any change in contract administration responsibilities. Email communication is preferred, but in the case of emergencies, please contact the Contract Operations Manager by phone. The Contract Operations Manager for this contract will be Amy Slagle.

Amy Slagle – Division Manager

Phone: 512-974-4302

Email: amy.slagle@austintexas.gov

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

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VERSION 2 SCOPE OF WORK
ORGANICS PROCESSING SERVICES PROGRAM
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1.0 PURPOSE

The City of Austin ("City") seeks Contractors to provide complete processing, sorting, and composting of organics, yard waste, food scraps, and food/oil-soiled compostable paper ("Organic Materials"), as well as marketing services to include detailed data reporting to support the City's residential curbside Organic Materials collection program ("Program"). The Contractor shall specialize in composting organics and have experience operating integrated solid waste management programs that place a high priority on customer service and the diversion of waste from landfill disposal.

The Contract will be utilized by Austin Resource Recovery ("ARR"). The City reserves the right to allow other City departments to utilize the Contract. All eligible bids submitted in response to this Invitation For Bid ("IFB") that address the objectives of the solicitation will be considered by ARR. However, ARR reserves the right to reject any or all bids, in whole or in part, and award to one or more Contractor(s). The Contractor shall provide products and services as described herein. Until revised or rescinded in writing, this SOW shall apply to future purchases and contractual obligations.

2.0 BACKGROUND

In 2012, the City began a pilot curbside residential organics program utilizing both City- and customer-supplied carts and containers. The purpose of this expanding program is to reduce waste and ensure that Organic Materials can be adequately composted for reuse. The program will help the City achieve its Zero Waste Goals of reducing the amount of waste sent to the landfill by 90 percent by the year 2040.

In fall 2017, the pilot was expanded to cover 38,000 residents bringing the total to 52,000 homes on the compost program. ARR expanded the program again in 2018 to an additional 38,000 homes and plans to add 52,000 homes in 2019 with all remaining homes in 2020. A citywide program would bring compost collection to over 200,000 residential customers. Therefore, the Contractor should support, in its bid, its ability to regularly accept and properly process increase in tonnages as the Program expands toward potential annual deliveries of 40,000 tons of organic materials with full citywide participation. The City continues to collect Organic Materials using both City and customer-supplied carts and containers.

3.0 SCOPE OF WORK

3.1 Facility Requirements

- 3.1.1 The Contractor shall have a processing facility where City vehicles can transport and drop-off all Organic Materials no more than 30 miles from City Hall.
- 3.1.2 The Contractor shall furnish a facility or facilities with the capacity to handle the amount of Organic Materials that will be collected as the Program expands as described herein. The Contractor shall provide all skills, manpower, equipment, supplies, utility services, vehicles, transportation, and all resources necessary to successfully accept, screen, sort, and process, as well as to successfully market, sell, analyze, and report on, the amount of Organic Materials delivered to the Contractor by the City and fulfill the requirements of this contract. The Contractor shall provide detailed information regarding the facility's production, storage, and processing capacities, and its ability to handle projected increases in deliveries.
- 3.1.3 Any and all facilities/locations used must be fully licensed, permitted, and in compliance with all required federal, state, county, and City regulations. The City

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reserves the right to request proof of compliance from the Contractor at any time during the contract.

- 3.1.4 The Contractor shall not relocate facilities without permission from the City. The Contractor shall provide documentation (e.g., ownership, lease, rental agreement) supporting it has, and can maintain, the same suitable site for the duration of the entire contract, including extensions, should any be exercised at the City's sole discretion.
- 3.1.5 The Contractor shall keep locations open to accept deliveries from the City between 7:00 a.m. and 7:00 p.m. Central Time, Monday through Friday, and between 7:00 a.m. and 3:00 p.m. on Saturdays, excluding Thanksgiving Day, Christmas Day, and New Year's Day. However, the Contractor shall be open for deliveries on the three following Saturdays subsequent to the above-listed holidays. The City may require the Contractor to remain open longer periods of time in emergency situations or so that it may complete collection routes which are delayed due to unusual circumstances. In those circumstances, the City will notify the Contractor by email or telephone as soon as possible to provide additional times and services needed.
- 3.1.6 The Contractor shall ensure that City drivers have safe ingress and egress at the facility for delivering Organic Materials and unloading vehicles, with adequate space to allow for multiple vehicles to unload at the same time. Facilities shall minimize vehicle backup requirements, have driveways/delivery paths that are a minimum of twelve feet wide, and have no steep grades or sharp turns.
- 3.1.7 The Contractor shall minimize vehicle unloading times. Vehicles must be able to unload the contents of the vehicle within 15 minutes of arriving at the facility. City vehicles shall be given priority to unload vehicle contents.

3.2 Organic Compostable Materials

At a minimum, the following materials are to be considered Organic Materials:

- A. Animal meats including but not limited to: deli meats, sandwiches, raw and cooked meats (including beef, poultry, pork, venison, bison, and other types of meat), meat trimmings and renderings, and seafood;
- B. Vegetable and fruit materials;
- C. Animal, vegetable, and fruit fats;
- D. Soiled paper products including but not limited to: soiled paper/soiled food products, soiled paper cups, soiled paper plates/paper towels, paper, non-foam egg cartons, napkins, tissue papers, cardboard cereal and food boxes, empty and/or used pizza boxes, empty and/or used paper food containers, wet and waxed cardboard, and waxed paper;
- E. Yard waste and leaves including but not limited to: grass, lawn and garden clippings, small trees/bushes and branches, pinecones, shrub/bush trimmings, brush, yard/garden paper and cardboard products, flowers, plants, and soil.
- F. All unpackaged food waste including but not limited to: all food scraps, nuts and shells, corn cobs, coffee and tea bags/grounds/leaves and filters, eggs and egg shells, breads and bakery products, cheese and dairy products, food scraps, all edible grocery items, bones, and frozen foods;
- G. Untreated, unpainted, unstained wood products, boxes and wood pieces small enough to fit into composting cart including but not to be limited to: wooden crates, popsicle sticks and small wood objects, wood shavings, unpainted and untreated pallets, lumber, cedar shingles, and other clean wood; and
- H. Miscellaneous biodegradable items including but not limited to: pet hair/fur, feathers, sawdust, paper bags, cereal boxes, newspaper, shredded paper, compostable utensils,

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dog and cat food, bone meal, and Biodegradable Products Institute certified compostable food waste bags.

NOTE: The City reserves the right to add additional materials as determined compostable, including but not limited to, dead animals. All additional compostable materials shall be mutually agreed upon in writing via an amendment.

3.3 Collection and Processing Procedures

- 3.3.1 Currently the City collects and delivers approximately 23 loads daily from the current residential customers participating in the Program. However, the number of deliveries and associated tonnages are subject to change, without notice.
- 3.3.2 The City reserves the right to include additional yard waste (leaves, grass, branches, brush) as an immediate contingency in the event the City's Hornsby Bend processing site is unavailable and/or due to unforeseen and/or changing circumstances. The City estimates around 4,400 tons a month from the City's current yard-trimmings and brush collection programs could be diverted to the Contractor's facility. This is **not** to be construed as a guaranteed quantity; however, the Contractor must be able to accept these materials should this occur.
- 3.3.3 The Contractor shall take title and sole custody of all Organic Materials upon delivery to the Contractor's facility.
- 3.3.4 The Contractor shall not reject a load unless the load can be shown and supported to contain at least 10 percent contamination by weight. Any claim of 10 percent or greater contamination in a load must be fully documented and the documentation submitted to the Contract Operations Manager within 24 hours as a Notice of Rejected Load. Upon rejection, the load shall be set aside and segregated from other materials. The Contractor shall photograph rejected loads, using arrows, markings, and descriptions emphasizing the contaminants. Some form of measurement must be included in a supporting photograph to document the rejected load claim (e.g., the weight ticket of load as delivered compared to contamination weight). The Contractor shall provide date, time, weight, and truck number of the vehicle delivering contaminated materials. The City will make a good faith effort to reduce contamination from identified problematic routes. The City reserves the right to inspect and/or audit any such claim asserted. Failure to provide supported documentation for the rejected load shall disqualify the load from any related contamination fees. Rejected loads are permitted to be landfilled by the Contractor.
- 3.3.5 The Contractor shall fully address all methods used to report and screen out contamination in its bid. All methods are subject to City approval.
- 3.3.6 The Contractor shall recycle items within contaminated material that are considered recyclable under the City's residential recycling program.
- 3.3.7 The Contractor shall be solely responsible for the disposal of any and all contaminated materials and shall provide information regarding any facility where contaminated waste will be disposed of with its bid. All disposal facilities must be properly permitted and in full compliance with all regulatory requirements.
- 3.3.8 The Contractor shall have all scales calibrated and certified annually to be in full Texas Department of Agriculture compliance and shall provide the City with state documentation of verification with the Contractor's bid and on an annual basis, without prior request from the City.

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3.4 Marketing and Selling Organic Materials

- 3.4.1 The Contractor shall be solely responsible for processing, composting, marketing, selling, recycling, and/or beneficially reusing all Organic Materials received from the City's Program.
- 3.4.2 The City reserves the right to request, and the Contractor shall provide, documentation supporting that all Organic Materials delivered to the Contractor are used in an environmentally positive way and that no reusable materials are burned or disposed of.

3.5 Safety

- 3.5.1 The Contractor shall train all employees, subcontractors, and agents in all regulatory requirements, hazards, and dangers in the delivery, collection, sorting, recording, analyzing, and processing of the Organic Materials.
- 3.5.2 The Contractor shall ensure all employees, subcontractors, and agents working with or around, and/or processing Organic Materials shall wear the proper personal protective equipment ("PPE") while on the premises and/or while performing any part of the processing.
- 3.5.3 The Contractor shall provide the City in its bid, or within 10 calendar days of request from the City, a safety plan and response procedures for any and all safety concerns, including but not limited to fire, flood, and injuries. The awarded Contractor shall implement and maintain the safety plan throughout the period of any awarded contract.

3.6 Contamination Sampling and Reporting

- 3.6.1 The City reserves the right to request that the Contractor conduct material audits on collected materials to determine the amount of contamination in the collected materials. Schedule for the audits shall be provided at a service level as mutually agreed upon between the City and the Contractor in writing via an amendment. The City reserves the right to appoint another contractor to conduct the auditing services for the materials associated with the ensuing contract or the City may perform the audit themselves.
- 3.6.1 Upon request from the City, the Contractor shall conduct material audits to determine the amount of contamination in the collected materials. The audits shall be conducted at a predetermined and agreed upon date with the City and shall meet ASTM Standard D 5231-92 sorting requirements. The City shall be responsible for selecting the routes used in the audits. The routes will be chosen randomly on a rotating basis. The number of routes selected (for each audit) will be enough to ensure a 90% percent confidence level in the collected data.
- 3.6.2 The Contractor shall provide staff and perform the material audits with City personnel or City-appointed auditors present to record the results. The audits will establish the ratio of contamination to compostable materials delivered. The Contractor shall provide a separate and safe area to accommodate sampling and sorting of materials during audit. This area will also be suitable to conduct material audits in inclement weather such as rain, snow, and high temperatures. The City defines high temperature as anything above 90 degrees Fahrenheit.
- 3.6.3 The Contractor shall provide all required materials needed for staff to perform audits; this includes, but is not limited to, scales, tarps, sorting bins, and truck staging area/waiting area.

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4.0 OTHER RESPONSIBILITIES OF THE CONTRACTOR

4.1 Project Manager

The Contractor shall provide a Project Manager who shall oversee the contract. The Contractor shall also provide ARR with contact information for the Project Manager and for an alternate contact person who must be available by telephone between 7:00 a.m. and 5:00 p.m. Central Time, Monday through Friday. The Contractor shall also provide ARR with contact information for their designated emergency contact who must be available by telephone for after-hours and weekend emergencies. The City reserves the right to request a change in Project Manager. The Contractor shall notify the Contract Operations Manager within 48 hours of any change in the Project Manager assigned to this contract.

4.2 Spills and Leaks

4.2.1 The Contractor shall possess all properly authorized Occupational Safety and Health Administration ("OSHA") and Texas Department of Transportation hazardous waste operations and emergency response spill kits and shall be responsible for any and all spills and/or leaks.

4.2.2 All damage, accidents, and/or injuries that occur as a result of any leaks and/or spills shall be the sole liability and responsibility of the Contractor. The Contractor, its employees, subcontractors, or consultants shall solely be responsible and liable for all the management, cleanup, resulting damages, expenses, and all drips, leaks, and/or spills from any source, solid or liquid, and/or loss of debris, even minimal amounts, that occur from the transportation, pick up, disposal, or processing of materials associated with this contract. Cleanup shall conform to all federal, state, and local regulations and ordinances

5.0 CITY'S RESPONSIBILITIES

5.1 The City's Audit Report

The City or City-appointed auditors will be present to record the findings from the material audits (please reference Section 3.6, Contamination Sampling and Reporting) and will generate a report with the findings. The City will share the results of the material audit with the Contractor.

6.0 OMISSIONS

It is the intention of this IFB to acquire the services described herein. All items and/or services omitted from this document which are clearly necessary to meet the objectives of the services described will be considered requirements, although not directly specified or called for herein. Pricing and discounts (if applicable) for any necessary but omitted item or service shall be listed in the Contractor's bid sheet.

7.0 MINIMUM QUALIFICATIONS

7.1 Minimum Qualifications

The Contractor shall submit information demonstrating compliance with the minimum qualifications specified below. Bids that do not meet the minimum requirements will be deemed non-responsive and will not be considered. The Contractor must have:

- A. Written documentation verifying that the Contractor has a minimum of three years' experience providing organic material processing services, along with the annual average residual rates for all organics processed at identified processing facilities from each of the past three years;
- B. Demonstrated compliance with all applicable federal, state, and local laws and

CITY OF AUSTIN
VERSION 2 SCOPE OF WORK
ORGANICS PROCESSING SERVICES PROGRAM
SOLICITATION NUMBER: IFB 1500 SLW1018

regulations, including Texas Commission on Environmental Quality (TCEQ) permit (e.g., Compost Facility Permit or Registration, or Notice of Intent to Operate a Compost Facility) as applicable for the facility location and the materials processed pursuant to Title 30 Texas Administrative Code, submitted with the Contractor's bid; and

- C. A list of at least three names, addresses, and telephone numbers with individuals at entities or commercial references for similar work as outlined in these specifications. Municipality references are preferred.

7.2 Contingency Plan

The Contractor shall also submit with their bid, or within 10 calendar days of request from the City, a contingency plan to provide for continuity of operations should a processing facility be adversely impacted by a disaster or other event. Please include any alternative facilities that may be used.

8.0 REPORTING, PERMITS, AND INVOICES

8.1 Reports

8.1.1 Daily Reports

This report shall be provided to the Contract Operations Manager on a daily basis. The report shall be emailed to the Contract Operations Manager and reflect the information from the prior business day. At a minimum, these reports shall include the following information:

- A. Weight ticket of each load as delivered, pre-sorted to include date, truck number, and weight;
- B. Total tons of material received;
- C. Tiered/equity-based pricing per ton and volume reduction pricing based upon tonnage delivered;
- D. Digital photographs with arrows, dates, and data recording each contaminated load as delivered, showing noticeable contamination, if any, per load as delivered; and
- E. Total tons of material received, breaking out the weight of material that was rejected.

8.1.2 Monthly Reports

This report shall be provided to the Contract Operations Manager on a monthly basis with the invoice. At a minimum, these reports shall include the following information:

- A. Weight ticket of each load as delivered, pre-sorted to include date, truck number, and weight;
- B. Total tons of material received per month;
- C. Tiered/equity-based pricing per ton and volume reduction pricing based upon tonnage delivered;
- D. Digital photographs with arrows, dates, and data recording each contaminated load as delivered, showing noticeable contamination, if any, per load as delivered;
- E. Any prorated services for that month;
- F. Total tons of material received per month, breaking out the weight of material that was rejected; and
- G. The tonnages received that month and percentage of material recycled.

8.1.3 Annual Reports

Upon request from the City, the Contractor shall provide an annual report to the City that defines all efforts and results from this program for the community and citizens of the Austin area, as well as an annual diversion rate per ton for materials diverted from the landfills resulting from this program.

CITY OF AUSTIN
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8.1.4 Other Reports

The City reserves the right to request additional reports that may be required by local, state, and federal laws and/or regulations, as well as reports that may be beneficial to the City's Zero Waste initiative or that may correlate with the scope of work and specifications described herein.

8.2 Certifications, Licenses and Permits

8.2.1 The Contractor shall have, maintain, and make available upon request throughout the term of any resulting contract, all licenses and permits required by federal, state, and local agencies to provide all services described herein. All services provided in relationship to this IFB, directly and indirectly, shall be in compliance with all laws, ordinances, specifications, rules, and regulations for this service as established by the City of Austin, State of Texas, State Board of Health, U.S. Environmental Protection Agency ("EPA"), OSHA, TCEQ, and any other federal, state, or local governmental provisions. The Contractor is presumed to know what the legal requirements are and shall be solely responsible to maintain all said regulatory requirements and is liable for the failure to do so.

8.2.2 The Contractor and all subcontractors shall comply with all laws applicable to the services under this contract, including all federal, state, and local laws, and Travis County and City ordinances. The Contractor and all subcontractors shall have and maintain current identification numbers, licenses, permits, and other governmental approvals or authorizations required by all applicable environmental or safety laws. ARR may, at any time, terminate this contract with cause based on the Contractor's or any subcontractor's noncompliance with applicable environmental or safety laws. The Contractor shall be solely responsible for its compliance and its subcontractors' compliance.

8.3 Prorated Billing and Fees

8.3.1 Prorated Billing: All services that are performed for less than the entire month shall be prorated on the invoice. Prorated bills shall note the ending and/or beginning date of the services being charged. The method(s) used by the Contractor to calculate prorated bills shall be subject to the approval of the City.

8.3.2 Fees: As the Program expands, the City expects increases in the number of deliveries and in the tonnages of delivered Organic Materials; therefore, the City seeks a contract that is to be established on tiered and equity-based pricing per delivery and/or weight. The City seeks a Contractor(s) that will structure pricing to provide a decrease in processing and other fees as deliveries and/or tonnages increase.

8.4 Audits and Inspections

8.4.1 ARR or other authorized City staff will have the right to inspect/audit, at any time, all licenses, permits, or written approvals issued by a governmental entity involving the Contractor and its agents. The Contractor shall notify and provide copies to ARR of any amendments, renewals, or replacements to their applicable licenses and permits within thirty calendar days after the effective date of amendment, renewal, or replacement.

8.4.2 ARR or other authorized City staff will have the right to inspect/audit, at any time, the Contractor's premises (offices and facilities) and vehicles being used in support of the services under the contract. The Contractor and any subcontractors shall also allow access by ARR or other authorized City staff to audit financial statements and all environmental, safety, and training records.

CITY OF AUSTIN
VERSION 2 SCOPE OF WORK
ORGANICS PROCESSING SERVICES PROGRAM
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9.0 DEFINITIONS

Composting – the process of converting difficult to handle organic materials into a mixture of decayed organic matter used for fertilizing and agriculture.

Compostables – materials capable of undergoing biological decomposition in a compost site as part of an available program such that the material is not visually distinguishable and breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

Contaminants – any materials outside the definition of organic/compostable matter included herein and as determined outside the scope of organic and or biodegradable that are commingled in the processing loads to include glass, plastics, metals, and foam products.

Food Waste – all food scraps, including all animal meats, dairy products, grease, and bones; paper which has been contaminated with food, fat, or grease; and soiled cardboard and paper, including paper towels, paper plates, bags, tissue, and waxed paper.

Organic Waste – includes food, yard and wood waste, City-approved compostable bags, single-use food service ware, and other organic materials as mutually agreed to by the City and the Contractor.

Wood Waste – any wood or tree limbs over four inches in diameter, unpainted and untreated pallets, lumber, cedar shingles, and other clean wood delivered to the City facilities.

Yard Waste – plant material (leaves, grass clippings, branches, brush, flowers, roots, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two inches in diameter; and biodegradable waste approved for the yard waste programs of the City.

Zero Waste – a goal that is ethical, economical, efficient, and visionary, to guide people in changing their lifestyles and practices to emulate sustainable natural cycles, where all wasted materials are designed to become resources for others to use. Zero Waste means designing and managing products and processes to systematically avoid and eliminate the volume and toxicity of waste and materials, conserve and recover all resources, and not burn or bury them. Implementing Zero Waste will eliminate all discharges to land, water, or air that are a threat to planetary, human, animal, or plant health. (As defined by the Zero Waste International Alliance.) Any lowercase version of zero waste is referring to no waste burned or buried.

Zero Waste Strategic Plan – adopted by the Austin City Council on January 15, 2009, and defined as a Diversion Rate of 90 percent of the total materials generated within the city limits. Therefore, Zero Waste will be reached when Total Diverted Tons divided by (Total Diverted Tons + Total Disposed Tons) equals 90 percent.

**0600 - BID SHEET
CITY OF AUSTIN
ORGANICS PROCESSING SERVICES PROGRAM
SOLICITATION NUMBER: IFB 1500 SLW1018**

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

The quantities listed are annual estimates and not a guarantee of actual volume. The City reserves the right to make multiple awards based on individual line items, cost, geographic location, convenience, or any criteria or any combination deemed most advantageous to the City. The Contractor may choose to submit pricing for all items listed on the bid sheet or only specific items on the bid sheet in consideration of this solicitation.

If your pricing structure is based on a different type of breakdown, please provide this on a separate worksheet. The City reserves the right to request further explanation on any bids provided. Pricing and discounts (if applicable) for any necessary but omitted item or service shall be listed in the Contractor's bid sheet.

Section 1

LINE ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED QUANTITY PER MONTH (IN TONS)	ANNUAL PRICE
1.1	Organic material sorting, tipping, and/or processing fees for Tier 1 (<750 tons)	PER TON	\$16.50	750	\$148,500.00
1.2	Organic material sorting, tipping, and/or processing fees for Tier 2 (750-1250 tons)	PER TON	\$16.50	1250	\$247,500.00
1.3	Organic material sorting, tipping, and/or processing fees for Tier 3 (1250-1750 tons)	PER TON	\$16.50	1750	\$346,500.00
1.4	Organic material sorting, tipping, and/or processing fees for Tier 4 (>1750 tons)	PER TON	\$16.50	2250	\$445,500.00
1.5	Contamination disposal fee (if any)	PER TON	\$0.00	1	\$0.00
TOTAL ANNUAL PRICE:					\$1,188,000.00

Section 2 ADDITIONAL ITEMS - These items will not be used to determine award.

LINE ITEM	DESCRIPTION	Estimated Cost
2.1	Cost of Contamination Sampling Audit (As described in Section 3.6 of the Scope of Work. You may provide another worksheet outlining those costs, if necessary.)	\$0.00

Please check the boxes below as confirmation of submittal.

X	Offer Sheet - required
X	Bid Sheet (Section 0600) -required
X	Local Business Presence Identification Form (Section 0605) - If applicable
X	Reference Sheet (Section 0700) -required
X	Non-Discrimination Certification (Section 800) -required
X	Living Wages Contractor Certifications (Section 815) -required
X	Nonresident Bidder Provisions (Section 0835) -required
X	Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form (Section 0900) - required
X	Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan (Section 0905) - if applicable
N/A	No Offer Reply Form (Section 1000) -if applicable
X	TCEQ permit (e.g., Compost Facility Permit or Registration or Notice of Intent to Operate a Compost Facility) and materials processed
X	Contingency plan to provide for continuity of operations should a processing facility adversely affected by disaster or other event
X	I UNDERSTAND THAT FAILURE TO SUBMIT THE COMPLETED FORMS ABOVE MAY RESULT IN DISQUALIFICATION OF MY BID
X	I UNDERSTAND THAT SUBMITTING WITH MY BID ANY CLARIFICATION STATEMENTS, QUALIFYING STATEMENTS, AND/OR EXCEPTIONS TO THE CITY'S TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF MY BID

COMPANY NAME: Employee Owned Nursery Enterprises, Ltd. Db a Organics "By Gosh"
EMAIL ADDRESS: bkish@organicsbygosh.com

0600 - BID SHEET - SUPPLEMENTAL INFORMATION FOR ALTERNATIVE OFFER (OPTION # 2)

CITY OF AUSTIN

ORGANICS PROCESSING SERVICES PROGRAM

SOLICITATION NUMBER: IFB 1500 SLW1018

Section 1**OPTION # 1 (AS PROVIDED IN BID SHEET) - TIP AT OBG COMPOST FACILITY #2: 2016 FM 969, ELGIN TEXAS 78621**

LINE ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED QUANTITY PER MONTH (IN TONS)	ANNUAL PRICE
1.1	Organic material sorting, tipping, and/or processing fees for Tier 1 (<750 tons)	PER TON	\$16.50	750	\$148,500.00
1.2	Organic material sorting, tipping, and/or processing fees for Tier 2 (750-1250 tons)	PER TON	\$16.50	1250	\$247,500.00
1.3	Organic material sorting, tipping, and/or processing fees for Tier 3 (1250-1750 tons)	PER TON	\$16.50	1750	\$346,500.00
1.4	Organic material sorting, tipping, and/or processing fees for Tier 4 (>1750 tons)	PER TON	\$16.50	2250	\$445,500.00
1.5	Contamination disposal fee (if any)	PER TON	\$0.00	1	\$0.00
TOTAL ANNUAL PRICE:					\$1,188,000.00

OPTION # 2 (CURRENT CONTRACT SITE) - TIP AT OBG ORGANICS PROCESSING FACILITY: 13602 FM 969, AUSTIN TEXAS 78724

LINE ITEM	DESCRIPTION	UNIT	UNIT PRICE	ESTIMATED QUANTITY PER MONTH (IN TONS)	ANNUAL PRICE
1.1	Organic material sorting, tipping, and/or processing fees for Tier 1 (<750 tons)	PER TON	\$19.50	750	\$175,500.00
1.2	Organic material sorting, tipping, and/or processing fees for Tier 2 (750-1250 tons)	PER TON	\$19.50	1250	\$292,500.00
1.3	Organic material sorting, tipping, and/or processing fees for Tier 3 (1250-1750 tons)	PER TON	\$19.50	1750	\$409,500.00
1.4	Organic material sorting, tipping, and/or processing fees for Tier 4 (>1750 tons)	PER TON	\$19.50	2250	\$526,500.00
1.5	Contamination disposal fee (if any)	PER TON	\$0.00	1	\$0.00
TOTAL ANNUAL PRICE:					\$1,404,000.00

Section 2 ADDITIONAL ITEMS - These items will not be used to determine award.

LINE ITEM	DESCRIPTION	Estimated Cost
2.1	Cost of Contamination Sampling Audit (As described in Section 3.6 of the Scope of Work. You may provide another worksheet outlining those costs, if necessary.)	\$0.00

COMPANY NAME: Employee Owned Nursery Enterprises, Ltd. DbA Organics "By Gosh"EMAIL ADDRESS: bkish@organicsbygosh.com

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	Employee Owned Nursery Enterprises, Ltd. d/b/a Organics "By Gosh"	
Physical Address	13602 FM 969 Austin, Texas 78724	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	<input type="checkbox"/> No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	<input type="checkbox"/> No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	<input type="checkbox"/> Yes	No

SUBCONTRACTOR(S): Yes

Name of Local Firm	Cynthia Cueva Luna - d/b/a Alpha Transportation	
Physical Address	8902 Covey Ct., Austin, TX 78758	
Is your headquarters located in the Corporate City Limits? (circle one)	<input type="checkbox"/> Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	<input type="checkbox"/> Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S): N/A

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

Responding Company Name Employee Owned Nursery Enterprises, Ltd. d/b/a Organics "By Gosh"

Note to Buyer: request the least number of references necessary to determine Offeror responsibility suggest starting at 3 and generally not more than 5. (ERASE)

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

- | | |
|---------------------------|--|
| 1. Company's Name | <u>Austin Community College District</u> |
| Name and Title of Contact | <u>Andy Kim, AIA, C.E.M., LEED AP, Director, Energy & Sustainability</u> |
| Project Name | <u>Organics Collection and Service Processing Program</u> |
| Present Address | <u>ACC Service Center-9101 Tuscany Way</u> |
| City, State, Zip Code | <u>Austin, TX 78754</u> |
| Telephone Number | <u>(512) 223-1123</u> Fax Number <u>()</u> |
| Email Address | <u>akim@austincc.edu</u> |

- | | |
|---------------------------|---|
| 2. Company's Name | <u>The University of Texas at Austin</u> |
| Name and Title of Contact | <u>Robert Moddrell, Resource Recovery Manager</u> |
| Project Name | <u>Organics Collection and Service Processing Program</u> |
| Present Address | <u>1301 E Dean Keeton St.</u> |
| City, State, Zip Code | <u>Austin, TX 78712</u> |
| Telephone Number | <u>(512) 471-9178</u> Fax Number <u>()</u> |
| Email Address | <u>robert.moddrell@austin.utexas.edu</u> |

- | | |
|---------------------------|---|
| 3. Company's Name | <u>Oldcastle</u> |
| Name and Title of Contact | <u>Ken Allen</u> |
| Project Name | <u>Product Packaging</u> |
| Present Address | <u>1320 Arrow Point Dr, #62</u> |
| City, State, Zip Code | <u>Cedar Park, TX 78613</u> |
| Telephone Number | <u>(903) 277-1139</u> Fax Number <u>()</u> |
| Email Address | <u>ken.allen@oldcastle.com</u> |

City of Austin, Texas

Section 0800

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

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

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

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

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

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

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

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

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

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

Sanctions:

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

Term:

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

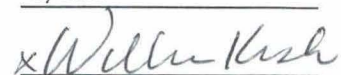
Dated this 25th day of June, 2019

CONTRACTOR

Authorized
Signature

Title

Employee Owned Nursery
Enterprises, Ltd d/b/a Organics
"By Gosh"



General Manager

Section 0815: Living Wages Contractor Certification

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$15.00 per hour.

- (1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$15.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title
Kevin Newton	Employee Owned Nursery Enterprises, Ltd	Prime	\$20.00 per hour	Yard Lead Manager
Lavar Price	Employee Owned Nursery Enterprises, Ltd	Prime	\$16.00 per hour	QA Manager/Equip Operator
Kelvin Jackson	Employee Owned Nursery Enterprises, Ltd	Prime	\$15.00 per hour	QA Staff
David Brown	Employee Owned Nursery Enterprises, Ltd	Prime	\$15.00 per hour	QA Staff
Lenin Aguero	Employee Owned Nursery Enterprises, Ltd	Prime	\$15.00 per hour	QA Staff
Roger Mickens, Jr.	Employee Owned Nursery Enterprises, Ltd	Prime	\$16.00 per hour	Equipment Operator

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$15.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$15.00 per hour.

Contractor's Name: Employee Owned Nursery Enterprises, Ltd. d/b/a Organics "By Gosh"

Signature of Officer
or Authorized
Representative:



Date: June 25, 2019

Printed Name: William Kish

Title: General Manager

Section 0835: Non-Resident Bidder Provisions

Company Name Employee Owned Nursery Enterprises, Ltd. d/b/a Organics "By Gosh"

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: N/A Which State: N/A

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: N/A

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER: IFB 1500 SLW1018
SOLICITATION TITLE: Organics Processing Services Program

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☐ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

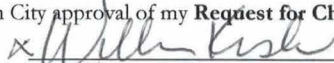
☒ **YES, I DO intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	Employee Owned Nursery Enterprises, Ltd. d/b/a Organics "By Gosh"		
City Vendor ID Code	EMP8321200		
Physical Address	13602 FM 969		
City, State Zip	Austin, Texas 78724		
Phone Number	512-276-1211	Email Address	bkish@organicsbygosh.com
Is the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

William Kish - General Manager _____

 June 25, 2019

Name and Title of Authorized Representative (Print or Type)

Signature/Date

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM**

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: IFB 1500 SLW1018

SOLICITATION TITLE: Organics Processing Service Program

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

☒ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL** of the following **CHECK BOXES MUST** be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.

☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.

☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the **Austin Metropolitan Statistical Area**, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER: IFB 1500 SLW1018

SOLICITATION TITLE: Organics Processing Service Program

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: IFB 1500 SLW1018

SOLICITATION TITLE: Organics Processing Service Program

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input checked="" type="checkbox"/> MBE <input checked="" type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	Cynthia Cueva Luna - d/b/a Alpha Transportation
Vendor ID Code	V000009 N 499
Contact Person	Cynthia Cueva Luna Phone Number: 512-769-0732
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$ Dependent on the volume of product deliveries under the contract
List commodity codes & description of services	Delivery of marketed and sold end products.
Justification for not utilizing a certified MBE/WBE	N/A

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☒ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

John Wesley Smith

06.27.19

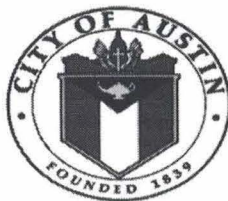
Reviewing Counselor

Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

Director/Assistant Director or Designee

Date



**ADDENDUM
ORGANICS PROCESSING SERVICES PROGRAM
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 1500 SLW1018

Addendum No: 1

Date of Addendum: 5/29/2019

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Clarifications:

- 1) The 0500 Scope of Work has been replaced in its entirety as VERSION 2 Scope of Work.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

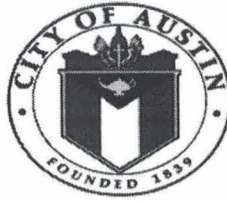
ACKNOWLEDGED BY:

WILLIAM KISH
Name

Will Kish
Authorized Signature

6/25/19
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



**ADDENDUM
ORGANICS PROCESSING SERVICES PROGRAM
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 1500 SLW1018

Addendum No: 2

Date of Addendum: 6/5/2019

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Questions and Answers:

Q1: Will there be a pre-bid meeting prior to closing on 6/18?

A1: No, there is no pre-bid scheduled.

Q2: Who holds the current contract?

A2: Employee Owned Nursery Enterprises LTD alias Organics by Gosh

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

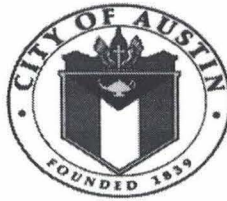
ACKNOWLEDGED BY:

WILLIAM KISH
Name

William Kish
Authorized Signature

6/25/19
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



**ADDENDUM
ORGANICS PROCESSING SERVICES PROGRAM
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 1500 SLW1018

Addendum No: 3

Date of Addendum: 6/10/2019

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Questions and Answers:

Q1: Please clarify whether there are any restrictions on composting/processing the Organic Compostable Materials in Section 3.2 of the Scope with biosolids materials either onsite at Hornsby Bend Biosolids Management Plant or at a separate composting/processing facility.

A1: Food waste cannot be processed at Hornsby Bend since it is within five miles of the airport.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

ACKNOWLEDGED BY:

WILLIAM KISH
Name

William Kish
Authorized Signature

6/25/19
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



**ADDENDUM
ORGANICS PROCESSING SERVICES PROGRAM
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 1500 SLW1018

Addendum No: 4

Date of Addendum: 6/14/2019

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Questions and Answers:

Q1: Does the City intend to use this contract as a replacement for the existing Organics Processing Services contract with Employee Owned Nursery Enterprises, LTD. dba Organics "By Gosh"?

A1: Yes.

Q2: During the term of this contract, will the contractor be authorized to compost/process biosolids materials with the Organic Compostable Materials listed in Section 3.2 of the Scope of Work?

A2: No.

Q3: Please clarify the differences in the Scope of Work for this solicitation and the Scope of Work for the existing Organics Processing Services contract with Employee Owned Nursery Enterprises, LTD. dba Organics "By Gosh".

A3: There were not a large amount of substantial changes. One change was to the contamination amount allowed in a load(s) before rejection. The current contract can be found at https://www.austintexas.gov/financeonline/contract_catalog/OCCViewMA.cfm?cd=MA&dd=1500&id=NA170000183 for a full comparison.

Q4: During the term of this contract, will organic materials collected from multi-family and/or commercial properties located within the City of Austin, be directed/sent to the contractor for processing/composting?

A4: This contract is for residential customers only.

Q5: How many loads have been rejected for excessive contamination under the existing Organics Processing Services contract with Employee Owned Nursery Enterprises, LTD. dba Organics "By Gosh"?

A5: Zero.

Q6: During the term of this contract, will the contractor be authorized to utilize the Organic Compostable Materials listed in Section 3.2 of the Scope of Work as a bulking agent or amendment for composting/processing biosolids materials?

A6: No.

Q7: Please clarify the volume of dead animals handled/disposed of by the City over the last 12 months and include the source and a description of the City's dead animal waste stream.

A7: FY 18 (October 1, 2017 – September 30, 2018) – Total tons of dead animals collected = 36 tons. Dead animals are collected from City rights of way.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

ACKNOWLEDGED BY:

WILLIAM KISH
Name

William Kish
Authorized Signature

6/25/19
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



**ADDENDUM
ORGANICS PROCESSING SERVICES PROGRAM
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 1500 SLW1018

Addendum No: 5

Date of Addendum: 6/18/2019

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Changes to the solicitation due date as follows:

- 1) The bid due date is hereby extended until 2:00 PM Tuesday, June 25, 2019.
- 2) The bid opening date is hereby extended until 3:00 PM Tuesday, June 25, 2019.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

ACKNOWLEDGED BY:

WILLIAM KISH
Name

William Kish
Authorized Signature

6/25/19
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Sandy Wirtanen 512-974-7711	PM Name/Phone	N/A
Sponsor/User Dept.	Austin Resource Recovery	Sponsor Name/Phone	Sydney Richardson 512-974-1899
Solicitation No	IFB 1500 SLW1018	Project Name	Organics Processing Services
Contract Amount	\$5,000,000 over 5 years	Ad Date (if applicable)	5/27/2019
Procurement Type			
<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			
Provide Project Description**			
The contract will be for organics processing services. City trucks will pick up organics from residential customers and deliver to the vendor for processing.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Previous solicitation, SLW0509REBID, was solicited without goals, and then vendor indicated there would be no subcontracting.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
98859 - 100% - Mulch/compost Production Services			
Sandy Wirtanen		5/8/2019	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	5/8/2019	Date Assigned to BDC	5/9/2019
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBES | <input type="checkbox"/> No availability of M/WBES |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input 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 3 MBE/WBES.

Subcontracting Opportunities Identified

no subcontracting opps.

John Wesley Smith

John Wesley Smith

05.09.19

SMBR Staff

Signature/ Date

SMBR Director or Designee

[Signature]

Date

5/10/19

Returned to/ Date:

EC Please review & approve TF 5-10-19