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

August 26, 2020

Huther and Associates, Inc.
Rhonda Huther
Office Manager
1156 North Bonnie Brea St.
Denton, Texas 76201
huther@flash.net

Dear Ms. Huther:

The City of Austin approved the execution of a contract with your company for Bio-Monitoring Toxicity Testing Services in accordance with the referenced solicitation.

| | |
|---|---|
| Responsible Department: | Austin Water |
| Department Contact Person: | Ryan Braziel |
| Department Contact Email Address: | Ryan.Braziel@austintexas.gov |
| Department Contact Telephone: | (512) 972–0287 |
| Project Name: | Bio-Monitoring Toxicity Testing Services |
| Contractor Name: | Huther and Associates, Inc. |
| Contract Number: | MA 2200 NA200000186 |
| Contract Period: | 8/26/2020 – 8/25/2022 |
| Dollar Amount | $41,600.00 |
| Extension Options: | 3 X 12-month extensions (at $20,800.00 each) |
| Requisition Number: | RQM 2200 20060300612 |
| Solicitation Type & Number: | IFB 2200 OXV1041 |

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

Sincerely,

Osiris Valdez

Digitally signed by Osiris Valdez
Date: 2020.08.26 10:58:42 -05'00'

Osiris Valdez
Procurement Specialist II
City of Austin
Purchasing Office

cc: Andres Ramirez
Ryan Braziel
Regina Luna
Kenneth Madden

# Solicitation
# COVER SHEET

| IDENTIFICATION | |
|---|---|
| Number | IFB 2200 OXV1041 |
| Title | Bio-Monitoring Toxicity Testing Services |
| Summary | The City of Austin seeks to establish a contract with a qualified vendor to conduct toxicity testing and data interpretation at multiple water treatment and power plants. |
| Type | Invitation for Bid (IFB) |
| Version (Addenda) | |

| AUTHORIZED CONTACT PERSONS | |
|---|---|
| Primary | Osiris Valdez, Procurement Specialist II; (512) 974-2965; Osiris.Valdez@austintexas.gov |
| Secondary | Bianca Ontiveros, Procurement Specialist III (512) 974-2939; Bianca.Ontiveros@austintexas.gov |
| Subcontractor Questions | Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov |
| Notes | See Solicitation Instructions, 3.1 Authorized Contact Persons. |

| IMPORTANT DATES | |
|---|---|
| **OFFERS DUE** | |
| Date and Time | July 23, 2020 @ 2:00 PM CST |
| Notes | See Solicitation Instructions, 5 Offer Submission. |
| **BID OPENING** | |
| Date and Time | July 23, 2020 @ 3:00 PM CST |
| Notes | See Solicitation Instructions, 5 Offer Submission. |
| **QUESTIONS DUE** | |
| Date and Time | July 16, 2020 @ 5:00 PM CST |
| Submission Method | Email Only |
| Notes | See Solicitation Instructions, 3.2 Questions. |

## PRE-OFFER CONFERENCE

| | |
|---|---|
| Conference (Yes/No) | No |
| Mandatory (Yes/No) | N/A |
| Date and Time | N/A |
| Location | N/A |
| Notes | N/A |

## PUBLISHED

| | |
|---|---|
| Date | July 6, 2020 |
| Available Online | https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm |
| Available Hardcopy | Purchasing Office; 124 w. 8th Street, Suite 300; Austin, TX 78701 |

## SOLICITATION DOCUMENTS

| Document name | Pages | Date |
|---|---|---|
| Solicitation Packet – IFB 2200 OXV1041 Includes the following: | | |
| Solicitation Cover Sheet | 2 | 7/6/2020 |
| Solicitation Instructions | 7 | 7/6/2020 |
| Terms and Conditions | 20 | 7/6/2020 |
| Scope of Work | 6 | 7/6/2020 |
| Pricing Submittal – IFB 2200 OXV1041 – Complete and return | 1 | 7/6/2020 |
| Offer and Certifications – IFB 2200 OXV1041 – Complete and return | 8 | 7/6/2020 |

## NIGP CODES

### COMMODITY CODES

| Code | Description |
|---|---|
| 96148 | Laboratory and Field-Testing Services |
| 9614850 | Laboratory Services for Hazardous Waste Environment |

# Offer and Certifications

Solicitation No.
**IFB 2200 OXV1041**

## SUBMITTAL CONTENTS


OFFER CERTIFICATION ..... 1
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## OFFER CERTIFICATION

**Instructions.** Offerors shall complete and sign the Offer Certification section of this section as indicated. Offerors shall not complete any portions of the Acceptance section below. Submittals with incomplete and/or unsigned Offer Certification are not considered to be Offers and will be rejected as nonresponsive.

Company Name: Company Name Huther and Associates, Inc.

Company Address: Address 1156 No. Bonnie Brae St.

City, State, Zip: City State and Zip Denton, Texas 76201

Company's Austin Finance Online Vendor Registration No. Registration No.

Company's Officer or Authorized Representative: Officer's Name Rhonda Huther

Title of Officer or Authorized Representative: Officer's Title Office Manager

Email: Offeror's Email Address huther@flash.net

Offeror's Phone: Phone 940-387-1025

Offeror's Signature: Rhonda Huther

Date: Date Signed 7-15-2020

**OFFER:** The above signed, 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 Offeror, by submitting and signing below, acknowledges that he/she has received and read the entire document packet including all revisions, and addenda and agrees to be bound by the terms therein.

## ACCEPTANCE BY THE CITY

**For City Staff only.** The City will complete and sign this section only if the City accepts the Offer.

Contract Number: MA 2200 NA200000186

Printed Name of City's Authorized Procurement Staff: Osiris Valdez

Title of City's Authorized Procurement Staff: Procurement Specialist II

Signature: Osiris Valdez Digitally signed by Osiris Valdez Date: 2020.08.26 11:02:50 -05'00'

Date: August 26, 2020

Email: Osiris.Valdez@austintexas.gov

Phone: (512) 974-2965

**ACCEPTANCE:** The Offer is hereby accepted. Contractor is now bound to sell the materials or services specified in the Contract.

**CITY OF AUSTIN**
**TERMS AND CONDITIONS**
**IFB 2200 OXV1041**

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

## 1. GENERAL

### 1.1 TERM OF CONTRACT:

A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. 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 holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

### 1.2 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

### 1.3 INVOICES:

A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.

B. Invoices shall be sent to the address on the Purchase Order of Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. 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. Invoices received without all required information cannot be processed and will be returned to the vendor.

C. Invoices for labor shall 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.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting 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.

### 1.4 PAYMENT:

A. All proper Invoices received by the City will be paid within 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 §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 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 under the terms of this Contract, are filed or there is 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 demonstrates 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, §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. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer 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.

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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation.

**1.5 FINAL PAYMENT AND CLOSE OUT:**

A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (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.

**1.6 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.

**1.7 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, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.

B. Records Retention:

i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.

ii. The Contractor shall retain all records for a period of three 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.

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

**1.9 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. If 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.

**1.10 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.

**1.11 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, (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. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.12 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party 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 defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

**1.13 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.14 TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 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.

**1.15 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.

**1.16 DELAYS:**

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 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 Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**1.17 FORCE MAJEURE:**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force

majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

**1.18 INDEMNITY:**

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:
   i. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
      (1) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
      (2) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
   ii. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
   iii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
   iv. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
   v. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
   vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. ***THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.***

C. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.

D. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
   i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
   ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.

E. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT,

SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.

F. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.19 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 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. Notices to the Contractor shall be sent to the address registered with the City. 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 assigned Procurement Specialist.

**1.20 CONFIDENTIALITY:**

The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information 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 in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.

B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are 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.

C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.

D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.

E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.21 TEXAS PUBLIC INFORMATION ACT:**

A. All material submitted by the Contractor to the City related to the Contract 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.

B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least $1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
   i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
   ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
   iii. On completion of the Contract, either:
      (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
      (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.

C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

**1.22 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.

**1.23 ADVERTISING:**

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

**1.24 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.

**1.25 GRATUTIES:**

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.

**1.26 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.

**1.27 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.

**1.28 ASSIGNMENT DELEGATION:**

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

**1.29 WAIVER:**

The 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.

**1.30 MODIFICATIONS:**

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

**1.31 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.

**1.32 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 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 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 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 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 consider 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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 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.

**1.33 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, 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.

**1.34 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.

**1.35 HOLIDAYS:**

The following holidays are observed by the City:

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

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

**1.36 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.

**1.37 COOPERATIVE CONTRACT:**

A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, 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 of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**1.38 NON-DEBARMENT CERTIFICATION:**

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently 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 Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

**1.39 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. **Non-Retaliation**: 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.

C. **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.

**1.40 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:**

Pursuant to Amawi v. Pflugerville Independent School District, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, 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 §2271.001.

B. If the Contractor qualifies as a "company", then the Contractor verifies that he:

i. does not "boycott Israel"; and

ii. will not "boycott Israel" during the term of this Contract.

C. The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 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.

**1.41 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:**

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with

another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

**1.42 ECONOMIC PRICE ADJUSTMENT:**

A. **Price Adjustments**: Prices shown in this Contract shall remain firm for the first twelve (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 (25) percent 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 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.

a. **Adjustment-Request Review**: Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

i. Utilize final Compilation data instead of Preliminary data

ii. If the referenced index is no longer available shift up to the next higher category index.

iii. Index Identification:

| | |
|---|---|
| Weight % or $ of Base Price: 100% | |
| Database Name: Bureau of Labor Statistics | |
| Series ID: CIU2020000300000I | |
| ☒ Not Seasonally Adjusted | ☐ Seasonally Adjusted |
| Geographical Area: United States (National) | |

| |
|---|
| Description of Series ID: Wages and Salaries for Private Industry workers in Service occupations |
| This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All |

| | |
|---|---|
| Weight % or $ of Base Price: 100% | |
| Database Name: Bureau of Labor Statistics | |
| Series ID: CIU2020000000227A | |
| ☒ Not Seasonally Adjusted | ☐ Seasonally Adjusted |
| Geographical Area: West South Central | |
| Description of Series ID: Wages and Salaries for Private Industry workers | |
| 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.

**1.43 INSURANCE:**

A **GENERAL INSURANCE REQUIREMENTS**:

i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City 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. 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.

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

City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767
OR
PURInsuranceCompliance@austinTexas.gov

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 authorized to do business in the State of Texas and have an A.M. Best rating 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 B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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 exposure, 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 greater than $499,999 shall be disclosed on the Certificate of Insurance.

xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.

xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements**: The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum 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.

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. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.

ii. **Commercial General Liability Insurance**: Coverage with minimum bodily injury and property damage per occurrence limits of $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. Independent Contractors coverage (Contractor/Subcontracted work);
   c. Products/Completed Operations Liability for the duration of the warranty period;
   d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

(2) The policy shall also include these endorsements in favor of the City of Austin:
   a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
   b. 30 Day's 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**: Coverage f or 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. 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. If 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.

## 2. GOODS

### 2.1 DELIVERY AND PACKAGING TERMS:

A. DELIVERY AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. destination, prepaid and allowed unless otherwise specified. Unless otherwise stated in this Contract, the Contractor's price shall be deemed to include all delivery and transportation charges of required mode of transportation. 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 set forth in the block of the Purchase Order or Delivery Order entitled "SHIP TO" and/or Offer Sheet. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays. The City expressly reserves all rights under law, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.

B. 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. However, the Contractor shall have the right to substitute a conforming tender; provided if the time for performance has not yet expired. The Contractor shall notify the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.

C. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: All Deliverables must be shipped complete unless arrangements for partial shipments are made in advance. 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

D. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables

E. CONTRACTOR PACKAGING 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, 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 Delivery Order 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 the 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.

**2.2 WARRANTY**:

A. **PRICE**:

i. 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.

ii. The Contractor warrants that its prices provided in this Contract are no higher than its current prices on orders for similar goods under similar terms of purchase.

B. **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. 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.

C. **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.

i. 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.

ii. 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 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.

iii. 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.

iv. 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 fully assist and cooperate with the City to enforce such manufacturer's warranty for the benefit of the City.

**2.3 WARRANTY BY CONTRACTOR AGAINST INFRINGEMENTS**:

A. 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.

B. 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.

C. 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.

**2.4 RESTOCKING FEES**:

A. The Contractor may bill the City restocking fees (if specifically authorized by this Contract) for parts that are Ordered by the City under the Contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.

B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

**2.5 PUBLISHED PRICE LISTS**:

The Published Price List may be superseded or replaced during the Contract term only if price revisions are the result of a modification to the manufacturer's official Published Price List. Written notification from the Contractor of price changes, along with one copy of the revised manufacturer's official Published Price List must be submitted to the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision. The discounts or markups on equipment rental, material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract and are not subject to increase. Failure to submit written notification of Published Price List revisions will result in the rejection of new prices being Invoiced. The City will only pay Invoices according to the last approved price list.

**2.6 OWNERSHIP AND USE OF DELIVERABLES:**

The City shall own all rights, titles, and interests throughout the world in and to the Deliverables, except as stated below.

A. **Patents**: As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. **Copyrights**: As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights. In and to such Deliverables, provided however, that nothing in this Paragraph shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

C. **Additional Assignments**: The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, Specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Clause shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above

**2.7 HAZARDOUS MATERIALS:**

A. If this Contract involves hazardous materials, the Contractor shall provide the City the Material Safety Data Sheets (MSDS), OSHA Form 20, on all chemicals and hazardous materials being used, specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

B. Failure to submit the MSDS is grounds for the City to terminate this Contract immediately.

C. The MSDS, instructions and information required in Paragraph "A" must be included with each shipment under the Contract.

**3. SERVICES**

**3.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES**:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

**3.2 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. Illegally use or possess a firearm, 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 illegally 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.

**3.3 GUARANTEE – SERVICES**:

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following 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 the services warranty 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 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.

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 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.

**3.4 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.

**3.5 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)**:

A. Access to the Austin Water and Austin Energy Departments building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Water and Austin Energy buildings at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.

B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.

C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Water and Austin Energy buildings and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.

D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.

E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

# Scope of Work

Invitation for Bid (IFB) 2200 OXV1041
Description: Bio-Monitoring Toxicity Testing Services

## 1. PURPOSE

The City of Austin, herein after referred to as the 'City', seeks bids from qualified firms, herein after referred to as the 'Contractor', to conduct Toxicity Testing, Data Interpretation and the Generation of Reports required to meet the conditions of the City's Texas Pollutant Discharge Elimination Systems (TPDES) for the Wastewater Treatment Facility(ies) and Power Plant(s) effluents. The Contractor is required to meet all the Scope of Work listed herein as minimum and is required to submit a firm fixed cost for all the commodities/services under the terms of this solicitation.

## 2. SCOPE OF WORK

**Objective:** To determine the chronic and/or acute toxicity of final effluent from the City's Walnut Creek and South Austin Regional Wastewater Treatment Facilities; the City's Austin Energy Sandhill and Decker Power Plants; and the effluent receiving streams of these facilities, on the freshwater organisms as described below:

2.1. Method 1002.0, Ceriodaphnia dubia 7-day survival and Reproduction Test:

2.1.1. Minimum Frequency, Wastewater Facilities: 8/year for wastewater (2 facilities quarterly).

2.1.2. Minimum Frequency, Power Plants: 8/year for power plants (2 plants quarterly). Testing may become less frequent (semi-annually) as permit dictates.

2.2. Method 1000.0 Pimephales promelas (Fathead Minnow) 7-day Larval Survival and Growth Test:

2.2.1. Minimum Frequency, Wastewater Facilities: 8/year for wastewater (2 facilities quarterly).

2.2.2. Minimum Frequency, Power Plants: 8/year for power plants (2 plants quarterly). Testing may become less frequent (semi-annually) as permit dictates.

2.3. Acute 24-hour static toxicity test using Daphnia pulex:

2.3.1. Minimum Frequency, Wastewater Facilities: 4/year for wastewater (2 facilities semi-annually).

2.3.2. Minimum Frequency, Power Plants: 8/year for power plants (2 plants quarterly). Testing may become less frequent (semi-annually) as permit dictates.

2.4. Acute 24-hour static toxicity test using Pimephales promelas:

2.4.1. Minimum Frequency, Wastewater Facilities: 4/year for wastewater (2 facilities semi-annually).

2.4.2. Minimum Frequency, Power Plants: 8/year for power plants (2 plants quarterly). Testing may become less frequent (semi-annually) as permit dictates.

2.5. Acute 48-hour static toxicity test using Daphnia pulex:

2.5.1. Minimum Frequency, Power Plants: 8/year for power plants (2 plants quarterly). Testing may become less frequent (semi-annually) as permit dictates.

2.5.2. Not required for Wastewater Facilities.

2.6. Acute 48-hour static toxicity test using Pimephales promelas:

2.6.1. Minimum Frequency, Power Plants: 8/year for power plants (2 plants quarterly). Testing may become less frequent (semi-annually) as permit dictates.

2.6.2. Not required for Wastewater Facilities.

## 3. CONTRACTOR'S RESPONSIBILITIES

3.1. The Contractor shall be responsible for:
3.1.1. Providing sample containers and shipping containers;
3.1.2. Arranging for pick-up and shipping of all samples;
3.1.3. Assuming all costs associated with the shipment of samples; and
3.1.4. Assuming charges for testing aborted due to problems in sample transportation.

3.2. All wastewater plant samples shall be picked up at their respective plants, while power plant effluent samples shall be picked up at a common, given location.

3.3. The Contractor shall document physical and chemical data for both effluent and dilution water and will include this information in the report.

3.4. The Contractor shall assume responsibility for the custody of samples and the protection of their integrity. The Contractor shall supply chain-of-custody documents for samples received.

3.5. The Contractor shall be available to receive samples and perform testing 7 days a week.

3.6. When called to the site, the Contractor shall be responsible for providing their own PPE (personal protective equipment) necessary to adhere to all power plant or wastewater plant safety rules, including, but not limited to, wearing hardhats, safety glasses, and steel-toed shoes.

3.7. The Contractor shall be expected to make the full extent of its experience and service available to the City throughout all stages of the project. All services and reports shall be under the direction and responsibility of an Aquatic Toxicologist who shall sign all final reports.

3.8. The Contractor shall make available for inspection, on demand, all records on all test organisms and keep all records in bound notebooks. These records will include species, date of receipt of organisms, age, size, source, culture maintenance, and any disease treatments, as well as, records on culture room lighting, culture room temperature, culture water, and organism's food and feeding schedules. The Contractor shall keep and make available, on demand, all records concerning quality assurance/quality control data.

3.9. The Contractor shall be responsible for issuing final reports within ten (10) days of completion of each bioassay. The Contractor shall send the City one (1) complete reproducible unbound copy and a PDF (via e-mail) of each report. These reports will contain:

3.9.1. All documentation pertaining to the analysis as required by the test method;
3.9.2. Chain of custody documentation;
3.9.3. Statistical analysis of the data; as well as a
3.9.4. Summary of the results.

3.10. The Contractor shall submit one (1) report for each test method completed.

3.11. The Contractor shall also complete the appropriate reporting forms for submittal by the City to the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA), as requested by the City.

3.12. The Contractor shall be responsible for providing all materials, equipment and test organisms.

3.13. The Contractor shall provide separate invoices for each Wastewater Treatment Plant and each Power Plant. Each invoice will include a brief description of the work performed and will be itemized by cost for performing each test method, including providing the associated report and forms. The final form and content of the invoice billing history is subject to review and acceptance by the City.

3.14. All wastewater treatment plant reports and invoices will be sent to:

Reports e-mailed to trinity.oneal@austintexas.gov and Kelsey.fincher@austintexas.gov

Invoice's emailed to AWADMINLAB@austintexas.gov

Attention: Trinity O'Neal

All Power Plant reports and invoices will be sent to:

Austin Energy Laboratory Services
2401 Holly Street
Austin, Texas 78702

or emailed to ken.madden@austinenergy.com

Attention: Ken Madden

3.15. The Contractor shall schedule meetings as necessary with the City to define objectives, coordinate schedules, resolve problems and otherwise complete the Scope of Work.

3.16. The Contractor shall, at their own expense, repeat the entire testing of any analysis (including sampling and shipping) that does not meet current TPDES permit specifications, including control mortality. Specifically, if the survival rate in the control animals is not acceptable, the test will be aborted and repeated at no cost to the City.

3.17. Acceptance of Work will be based on submittal of detailed analytical reports and completed regulatory agency biomonitoring report forms within ten (10) working days from the completion of the test(s), as well as the laboratory's continuing compliance with the quality control and testing procedures accepted by the Environmental Protection Agency.

3.18. Cancellation of Testing Due to the sometimes-uncertain availability of the power plant and/or waste treatment facilities, the City of Austin reserves the right to cancel scheduled testing up until the time testing is actually performed at the facility, at no cost to the City.

3.19. Contractor shall maintain TNI (The NELAC Institute) accreditation for the State of Texas for duration of contract.

3.20. Contractor shall submit a copy of TNI certificate of accreditation for the methods requested and performed with Bid Submission, upon renewal of accreditation and upon request from the City.

3.21. Contractor shall notify the City within twenty-four (24) hours in the event of suspension or revocation from the TCEQ Accreditation Program.

## 4. TERM OF CONTRACT

4.1. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twenty-four (24) months.

4.2. The Contract may be extended beyond the initial term for up to three (3) additional twelve (12) month periods at the City's sole option.

## 5. PICKUP/DELIVERY REQUIREMENTS

5.1. Delivery is to be made within three (3) calendar days prior to the start of the sampling event specified in the agreed upon schedule (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.

5.2. Samples shall be picked up by end of business day on the same day of sample completion, according to the agreed upon schedule.

5.3. All wastewater plant samples shall be picked up at their respective plants, while power plant effluent samples shall be picked up at a common, given location.

5.4. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.

5.5. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.

| Location: | Days: |
|---|---|
| Austin Water | 7 Days a Week |
| South Austin Regional WWTP | |
| 1017 Fallwell Lane | |
| Del Valle, Texas 78617 | |

| Location: | Days: |
|---|---|
| Austin Water | 7 Days a Week |
| Walnut Creek WWTP | |
| 7113 East MLK Blvd. | |
| Austin, Texas 78724 | |

| Location: | Days: |
|---|---|
| Austin Energy | 7 Days a Week |
| Laboratory Services | |
| 2401 Holly Street | |
| Austin, Texas 78702 | |

## 6. INVOICES AND PAYMENT

6.1. Invoices shall contain a unique invoice number and the information required in Terms and Conditions, section 1.3 B entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

| | |
|---|---|
| | City of Austin |
| Department | Austin Water |
| Attn: | Laboratory Services Division |
| Address | 1017 Fallwell Lane |
| City, State Zip Code | Del Valle, Texas 78617 |
| | City of Austin |
| Department | Austin Energy |
| Attn: | Laboratory Services Division |
| Address | 2401 Holly Street |
| City, State Zip Code | Austin, Texas 78702 |

## 7. CITY'S RESPONSIBILITIES

7.1. The City's Austin Energy Laboratory Services is responsible for the collection of the power plant samples at Austin Energy Sandhill and Decker Power Plants. It will document collection dates and times, collection methods, time and mode of shipment. All other documentation shall be the responsibility of the Contractor. In the event Austin Energy Laboratory Services cannot collect the samples, it may be necessary to call the Contractor to come to the sampling site. The Contractor shall come fully equipped and prepared to perform sampling, within five (5) business days' notice.

7.2. The Wastewater Treatment Facilities will collect all wastewater plant effluents. It will document collection dates and times, collection methods, time and mode of shipment. All other documentation shall be the responsibility of the Contractor.

## 8. REQUIRED SUBMITTALS

The submittals itself shall be organized in the following format and informational sequence:

8.1. Provide a detailed description of methods already in place towards maintaining a QA/QC program at your facility. Include results of the most current annual EPA, National Pollutant Discharge Elimination System (NPDES), and Discharge Monitoring Report -Quality Assurance (DMR-QA) samples. Include any correspondence applicable to those items listed above.

8.2. Contractor shall submit with bid a copy of current TNI accreditation certificate.

## 9. PROGRESS REPORTS

9.1. The Contractor shall submit monthly, or as otherwise agreed upon by the City and Contractor, progress reports to the Project Manager appointed by the City. The reports shall describe significant achievements and problems which have potential effect on schedule. Reports shall be sufficiently detailed to assure that directions being pursued are in compliance with established and/or projected systems.

**10. CONTRACT MANAGER** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

| Contract Manger: | Contractual Monitor (AW CMS): | Operational Monitor (AW End User): | Operational Monitor (AE End User): |
|---|---|---|---|
| Andres Ramirez | Ryan Braziel | Regina Luna | Ken (Kenneth) Madden |
| Andres.ramirez@austintexas.gov | ryan.braziel@austintexas.gov | regina.luna@austintexas.gov | kenneth.madden@austintexas.gov |
| 512-972-0310 | 512-972-0287 | 512-972- 1203 | 512-505-7812 |

# PRICE SHEET
# CITY OF AUSTIN
# BIO-MONITORING AND TOXICITY TESTING SERVICES

| | |
|---|---|
| **SOLICITATION** | **IFB 2200 OXV1041** |
| **BUYER:** | **Osiris Valdez** |
| **RX No.:** | **20060300612** |
| **CLOSE DATE:** | **July 23, 2020 at 2:00 PM CST** |

**Special Instructions:** Offerors must use this Bid Sheet to submit pricing. **Be advised that altering the bid sheet or taking exceptions to any portion of the solicitation may jeopardize acceptance of your Offer.**

The quantities noted below are estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed, actual purchases may be more or less. Quantities are provided as a guide based on historical or anticipated usage. Order quantities will be as-needed and specified by the City for each order.

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"** or no response (space left blank) will be interpreted by the City that the Offeror does not wish to bid on that item. Be advised, a "no bid" or no response may be considered as non-responsive and may result in disqualification of the bid.

Prices offered on the bid sheet shall be all inclusive of fees not expressly allowed in the scope of work. The Offeror shall not charge separately for administrative, overhead, per diem, and shipping or transportation costs (travel time, fuel surcharges, mileage, stop-fee, etc.) to deliver services or items to the Austin, Texas area. The Offeror shall provide all tools, labor, travel, and equipment necessary to perform the services required under this contract.

The City reserves the right to award a single contract based on overall low cost or multiple awards based on individual or categories/groups of specific line items, cost, or any criteria or combination deemed most advantageous to the City.

**CATEGORY 1 - Toxicity Testing for Austin Water:** The price of sampling and analysis services, shipping containers, arrangement to transport the samples to the Contractor's lab, protective equipment, administrative overhead, and report preparation as specified in the Scope of Work shall be included in the Unit Price.

| ITEM NO. | LABOR | UNIT OF MEASURE | ESTIMATED ANNUAL QUANTITY | UNIT PRICE | EXTENDED PRICE |
|---|---|---|---|---|---|
| 1.1 | Method 1002.0 Ceriodaphnia dubia 7-day | EA | 10 | $560.00 | $5600.00 |
| 1.2 | Method 1000.0 Pimephales promelas 7-day (fathead minnow) | EA | 10 | 560.00 | 5600.00 |
| 1.3 | Acute 24 hour static toxicity test using Daphnia pulex | EA | 6 | 50.00 | 300.00 |
| 1.4 | Acute 24 hour static toxicity test using Pimephates pulex | EA | 6 | 50.00 | 300.00 |
| | | | | **SUBTOTAL FOR CATEGORY 1 =** | $11,800.00 |

**CATEGORY 2 - Toxicity Testing for Austin Energy:** The price of sampling and analysis services, shipping containers, arrangement to transport the samples to the Contractor's lab, protective equipment, administrative overhead, and report preparation as specified in Section 0500 Scope of Work shall be included in the Unit Price.

| ITEM NO. | LABOR | UNIT OF MEASURE | ESTIMATED ANNUAL QUANTITY | UNIT PRICE | EXTENDED PRICE |
|---|---|---|---|---|---|
| 2.1 | Method 1002.0 Ceriodaphnia dubia 7-day | EA | 4 | $560.00 | $2240.00 |
| 2.2 | Method 1000.0 Pimephales promelas 7-day (fathead minnow) | EA | 4 | 560.00 | 2240.00 |
| 2.3 | Acute 48 hour static toxicity test using Daphnia pulex | EA | 4 | 250.00 | 1000.00 |
| 2.4 | Acute 48 hour static toxicity test using Pimephates pulex | EA | 4 | 250.00 | 1000.00 |
| 2.5 | Acute 24 hour static toxicity test using Daphnia pulex | EA | 4 | 50.00 | 200.00 |
| 2.6 | Acute 24 hour static toxicity test using Pimephates pulex | EA | 4 | 50.00 | 200.00 |
| | | | | **SUBTOTAL FOR CATEGORY 2 =** | $6880.00 |
| | | | | **TOTAL FOR CATEGORIES 1 AND 2 =** | $18,680.00 |

Delivery shall be completed within three (3) calendar days after receipt of order either verbally or written. Delivery Method: _____

Delivery Company Name: _____

Print Company Name: Huther and Associates Authorized Representative Name (print): Rhonda Huther

Email: huther@flash.net

**For you reference only check the boxes below for confirmation.**

| | |
|---|---|
| ☑ | Signed Offer Certification Form - Complete and Return |
| ☑ | Non-Discrimination and Non-Retaliation Certification Form - required |
| ☑ | Suspension or Debarment Certification Form - required |
| ☑ | Non-Collusion and Non-Conflict of Interest Form - required |
| ☑ | Non-Resident Bidder and Manufacturing Certification Form - required |
| ☑ | Local Business Presence Identification Form - Optional |
| ☐ | Price Sheet - Complete and Return |
| ☑ | Provide annual Environmental Protection Agency (EPA), National Pollutant Discharge Elimination System (NPDES) and Discharge Monitoring Report-Quality Assurance (DMR-QA) samples as per Scope of Work, Item 8.1 |
| ☑ | Provide National Environmental Laboratory Accreditation Program (TNI) accreditation certificate as per Scope of Work, Item 8.2 |

## LOCAL PRESENCE CERTIFICATION – OPTIONAL

**Instruction.** Offerors wishing to claim Local Presence shall read and acknowledge this certification by checking the applicable box and providing the physical address below.

**OFFEROR HEREBY CERTIFIES**
Offeror's **HEADQUARTERS** or a **BRANCH OFFICE** is within the Austin Corporate City Limits.

☐ **HEADQUARTERS**
☐ **BRANCH OFFICE**
(Check One)

Offeror's Physical Address. _____
(Physical Address of Offeror's Headquarters or Branch Office)

Do you employ anyone at the location checked above who is a resident of the City of Austin?

☐ **Yes**
☑ **No**
(Check One)

**Benefit to the City.** In accordance with Resolution, 20140807-113, Council has determined that contracts awarded to local companies that provide employment to Austin residents is an economic benefit.

**Local Presence.** Offerors may claim Local Presence if at least one (1) of the following are located within the Austin Corporate City Limits, employing residents of Austin.
1. Headquarters; or
2. Branch office.

**Austin Corporate City Limits.** The City of Austin's Full Purpose Jurisdiction, not including the City's Extraterritorial Jurisdiction.

**Headquarters.** The Offeror's administrative center where most of the company's important functions and full responsibility for managing and coordinating the business activities of the firm are located.

**Branch Office.** A company office other than the Offeror's headquarters, that has been in place for at least five (5) years.

## NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

☑ (Check)

**OFFEROR HEREBY CERTIFIES**
Offeror has read the following and will comply with Austin City Code, Sec. 5-4-2.

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 Non-Discrimination and Non-Retaliation Policy set forth below.

## MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY

1. 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.

2. 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.

3. 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 compliant, 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.

4. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and nonretaliation 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.

5. UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NONDISCRIMINATION 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.

6. Contractor agrees 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.

7. The Contractor agrees that this 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 filling. 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.

## SUSPENSION AND DEBARMENT CERTIFICATION

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

---

☑ (Check)

**OFFEROR HEREBY CERTIFIES**
Offeror has **NOT** been debarred from contracting with the City of Austin, any other local governments or states, or the US federal government.

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**Suspended or Debarred Offerors.** The City finds that offerors, including any subcontractors that may be included in the Offer, that are suspended or debarred from contracting with the US federal government, any state or local government, as of the submission date of their offer, are not sufficiently responsible to contract with the City. The City may reject and set aside any offer, or terminate for cause any contract resulting from an offer, in which the offeror falsely certified they were not suspended or debarred when in fact they were.

## NON-COLLUSION AND NON-CONFLICT OF INTEREST CERTIFICATION

**Instruction.** Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

☑ (Check)

**OFFEROR HEREBY CERTIFIES**
Offeror has **NOT** engaged in collusion and is not aware of any conflicts of interests as described below.

**Offeror.** The term "Offeror", as used in this document, includes the individual or business entity submitting the Offer. For the purpose of this Affidavit, an Offeror includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and any person or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

**Anti-Collusion Statement.** Offeror has not in any way directly or indirectly:

**a.** colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.

**b.** paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

**Preparation of Solicitation and Contract Documents.** Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

**Participation in Decision Making Process.** Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

**Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.

**City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.

**Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:

a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income; Section 0810, Non-Collusion, 1 Revised 12/22/15 Non-Conflict of Interest, and Anti-Lobbying Certification;
b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than $100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

## NONRESIDENT BIDDER AND MANUFACTURING CERTIFICATION

**Instruction.** Offerors shall read and checking the applicable boxes in response to both certifications below.

☐ YES ☑ NO
(Check One)

**OFFEROR HEREBY CERTIFIES**
Offeror **IS (YES)** or **IS NOT (NO)** a Nonresident Bidder in accordance with Texas Government Code Ch. 2252.002.

If "Yes" is checked, provide the name of the state where Nonresident Bidder's Principle Place of Business is located.
Click or tap here to enter text.
**(State)**

☑ YES ☐ NO
(Check One)

**OFFEROR HEREBY CERTIFIES**
Offer **INCLUDES (YES)** or **DOES NOT INCLUDE (NO)** Equipment, Supplies and/or Materials in accordance with Texas Government Code Ch. 2252.002

If "YES" is checked, provide the name of the State where majority of the Equipment, Supplies and/or Materials were manufactured
Click or tap here to enter text.
**(State)** Texas

**Reciprocal Preference.** In accordance with Texas Government Code Ch. 2252.002 (see below), the City must apply a reciprocal preference to a Nonresident Bidder's offer, consistent with the applicable preference granted by the state of the Nonresident Bidder's principal place of business. The City will also apply a reciprocal preference to a Resident Bidder or Nonresident Bidder's offer, consistent with the applicable preference granted by the state where the majority of the equipment, supplies and/or materials were manufactured.

**Resident bidder.** An Offeror whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

**Nonresident Bidder.** An Offeror that is not a Resident Bidder.

**Statute:** https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm

**ADDENDUM**
**PURCHASING OFFICE**
**CITY OF AUSTIN, TEXAS**

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**Solicitation: IFB 2200 OXV1041** **Addendum No: 1** **Date of Addendum: 7/15/2020**

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

I. **Questions:** The following questions were sent by a vendor in writing. Each question (Q) will be followed by its answer (A).

(Q) 1. Scope of Work Section 3.1.2 states that the Contractor shall be responsible for arranging for pick-up and shipping of all samples. Is FedEx an acceptable courier for sample pick-up from the respective wastewater plants and power plant common location?
(A) No, the courier referenced in Section 3.1.2 must show chain of custody from plant to testing lab. What is being requested, is a courier employed or contracted out by the testing laboratory to ensure that samples are delivered in a timely manner as to not exceed the required preservation temperature. (See Section 3.4 of the Scope of Work).

(Q) 2. Scope of Work Section 7.1 indicates that in the event that Austin Energy Laboratory Services cannot collect the samples, it may be necessary to call the Contractor to come to the sampling site to assist with sampling. It is permissible for the Contractor to subcontract the sample collection task, if necessary?
(A). Yes, subcontracting the sample collection is allowed.

(Q) 3. Are the wastewater permits available for the plants referenced in the bid?
(A) Yes, the permits are available.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: Osiris Valdez Digitally signed by Osiris Valdez Date: 2020.07.15 14:44:41 -05'00' 7/15/2020
Osiris Valdez, Procurement Specialist II Date
Purchasing Office, (512) 974-2965

ACKNOWLEDGED BY:
Rhonda Huther Rhonda Huther 8-6-2020
Name Authorized Signature Date

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

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Certificate # 2427.01

6390 Joyce Drive
# 100
Golden, CO 80403

Phone 303-940-0033
Fax 866-283-0269
www.phenova.com

August 16, 2019

Ms. Rhonda Huther
Huther and Associates
1156 N Bonnie Brae
Denton, TX 76201
USA

Dear Rhonda,

Thank you for participating in the DMRQA39-WET DMRQA PT Study. Enclosed is your final report, which has been carefully reviewed by the PT specialists at Phenova.

For any analyte falling outside the established acceptance limits, our PT management staff would like to assist you in determining the most appropriate course of corrective action for your facility. Please contact us at any time if we may be of service to you. A final report for your laboratory will be sent to all accrediting agencies you requested at the time of data submittal.

Thank you again for participating in the DMRQA39-WET DMRQA PT Study. We appreciate working with you and look forward to our next study. If you have any questions, please call us at 303-940-0033.

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**Report Definitions:**

***Assigned Value*** The Assigned Value is determined from the study mean, gravimetric and volumetric true concentration of an analyte to be analyzed, calculation and/or an appropriate reference value as stipulated in the EPA National Standards for Water Proficiency Testing Studies Criteria Document (current version), the National Environmental Laboratory Accreditation Conference (NELAC) criteria (ref: NELAC FOT tables, NELAC PT Committee) and other documents distributed by accrediting agencies as applicable.

***Evaluation Limits*** Acceptance Limits are derived from fixed limits, coefficients, constants and calculations stipulated in the EPA National Standards for Water Proficiency Testing Studies Criteria Documents (current version), the National Environmental Laboratory Accreditation Conference (NELAC) criteria (ref: NELAC PT FOT tables, NELAC PT Committee) and other documents distributed by accrediting agencies as applicable.

***Evaluation***

| | |
|---|---|
| *Acceptable* | The reported value falls within the Acceptance Limits. |
| *Not Acceptable* | The reported value falls outside the Acceptance Limits. |
| *No Evaluation* | The reported value is non-numeric and can not be evaluated. |
| *NR* | As required by the NELAC standards and requested by state authorities, any analyte purchased but not reported by your facility is listed as NR (Not Reported). |

This report must not be reproduced except in full, without the written approval of Phenova.
This report must not be used to claim product certification, approval, or endorsement by the American Association for Laboratory Accreditation (A2LA) or any agency of the federal government.

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Fax 866-283-0269
www.phenova.com

# Final Report - DMRQA PT

## Study: DMRQA39-WET

### Opening Date: March 22, 2019 - Closing Date: July 19, 2019

Facility: Huther and Associates
1156 N Bonnie Brae
Denton, TX 76201
USA

Contact: Ms. Rhonda Huther, Office Admin.
940-387-1025

EPA Lab ID: TX01121

NPDES Permit ID:

**Fathead Minnow Method 13 (PT-13-WET) — Lot #: 8543-13**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3410 | Fathead Minnow Acute MHSF 25° - LC50 | 3410 | 2000.0 | S.U. | 35.7 | 25.88 | 16.8 - 54.7 | Acceptable |

**Fathead Minnow Method 15 (PT-15-WET) — Lot #: 8543-15**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3410 | Fathead Minnow Chronic MHSF - Survival NOEC | 3410 | 1000.0 | S.U. | 50 | 25 | 25 - 100 | Acceptable |
| 3410 | Fathead Minnow Chronic MHSF - Growth IC25 (ON) | 3410 | 1000.0 | S.U. | 44.0 | 35.14 | 7.94 - 80.0 | Acceptable |
| 3410 | Fathead Minnow Chronic MHSF - Growth NOEC (ON) | 3410 | 1000.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |

**Ceriodaphnia Method 19 (PT-19-WET) — Lot #: 8543-19**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3315 | Ceriodaphnia Acute MHSF 25° - LC50 | 3315 | 2001.0 | S.U. | 41.0 | 40.61 | 14.7 - 67.4 | Acceptable |

**Ceriodaphnia Method 21 (PT-21-WET) — Lot #: 8543-21**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3315 | Ceriodaphnia Chronic MHSF - Survival NOEC | 3315 | 1002.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |
| 3315 | Ceriodaphnia Chronic MHSF - Reproduction IC25 | 3315 | 1002.0 | S.U. | 27.0 | 28.95 | 17.9 - 36.2 | Acceptable |
| 3315 | Ceriodaphnia Chronic MHSF - Reproduction NOEC | 3315 | 1002.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |

**Daphnia Method 32 (PT-32-WET) — Lot #: 8543-32**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3350 | Daphnia Magna Acute MHSF 25° - LC50 | 3350 | 2021.0 | S.U. | 50.6 | 48.30 | 15.6 - 85.6 | Acceptable |

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# Final Report - DMRQA PT

## Study: DMRQA39-WET

### Opening Date: March 22, 2019 - Closing Date: July 19, 2019

Facility: Huther and Associates
1156 N Bonnie Brae
Denton, TX 76201
USA

Contact: Ms. Rhonda Huther, Office Admin.
940-387-1025

EPA Lab ID: TX01121

NPDES Permit ID:

**Daphnia Method 38 (PT-38-WET) — Lot #: 8543-38**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3355 | Daphnia Pulex Acute MHSF 25° - LC50 | 3350 | 2021.0 | S.U. | 56.4 | 68.70 | 24.2 - 88.5 | Acceptable |

**Mysid Method 42 (PT-42-WET) — Lot #: 8543-42**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3395 | Mysid Acute SSW 25° - LC50 | 3395 | 2007.0 | S.U. | 40.2 | 35.36 | 20.0 - 60.5 | Acceptable |

**Mysid Method 43 (PT-43-WET) — Lot #: 8543-43**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3395 | Mysid Chronic SSW - Survival NOEC | 3395 | 1007.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |
| 3395 | Mysid Chronic SSW - Growth IC25 (ON) | | | S.U. | 28.4 | | 24.0 - 32.9 | NR |
| 3395 | Mysid Chronic SSW - Growth NOEC (ON) | 3395 | 1007.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |

**Menidia Method 44 (PT-44-WET) — Lot #: 8543-44**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3380 | Menidia Acute SSW 25° - LC50 | 3380 | 2006.0 | S.U. | 35.0 | 34.15 | 24.0 - 46.0 | Acceptable |

**Menidia Method 45 (PT-45-WET) — Lot #: 8543-45**

| NELAC Code | Analyte | Method Code | Method Description | Units | Assigned Value | Result | Acceptance Limits | Evaluation |
|---|---|---|---|---|---|---|---|---|
| 3380 | Menidia Chronic SSW - Survival NOEC | 3380 | 1006.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |
| 3380 | Menidia Chronic SSW - Growth IC25 (ON) | | | S.U. | 28.5 | | 21.5 - 35.5 | NR |
| 3380 | Menidia Chronic SSW - Growth NOEC (ON) | 3380 | 1006.0 | S.U. | 25 | 25 | 12.5 - 50 | Acceptable |

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 12, 2019

9489 0090 0027 6009 5100 27

Mr. Bruce Huther
Huther and Associates, Inc.
1156 Bonnie Brae Street
Denton, TX 76201-2421

Subject: Accreditation renewal

Dear Mr. Huther:

I am pleased to advise you the Texas Commission on Environmental Quality is renewing your laboratory's NELAP accreditation. The accreditation is valid until the expiration date on the certificate and scope, contingent on continued compliance with the standards for accreditation and requirements of the state of Texas.

I am enclosing an accreditation certificate and listing of your laboratory's fields of accreditation. Please review the enclosures for accuracy and completeness.

Please contact me by electronic-mail at frank.jamison@tceq.texas.gov or telephone at (512) 239-3754 if I can provide any additional information or assistance.

Sincerely,

Frank Jamison
Data and Records Specialist

Enclosures

# Texas Commission on Environmental Quality

NELAP-Recognized Laboratory Accreditation is hereby awarded to

## Huther and Associates, Inc.

1156 Bonnie Brae Street
Denton, TX 76201-2421

in accordance with Texas Water Code Chapter 5, Subchapter R, Title 30 Texas Administrative Code Chapter 25, and the National Environmental Laboratory Accreditation Program.

The laboratory's scope of accreditation includes the fields of accreditation that accompany this certificate. Continued accreditation depends upon successful ongoing participation in the program. The Texas Commission on Environmental Quality urges customers to verify the laboratory's current location(s) and accreditation status for particular methods and analyses (www.tceq.texas.gov/goto/lab). Accreditation does not imply that a product, process, system or person is approved by the Texas Commission on Environmental Quality.

**Certificate Number: T104704233-19-11**
**Effective Date: 12/1/2019**
**Expiration Date: 11/30/2020**

**Executive Director Texas Commission on Environmental Quality**

# Texas Commission on Environmental Quality

## NELAP - Recognized Laboratory Fields of Accreditation

Huther and Associates, Inc.

1156 Bonnie Brae Street
Denton, TX 76201-2421

Certificate: T104704233-19-11
Expiration Date: 11/30/2020
Issue Date: 12/1/2019

**These fields of accreditation supercede all previous fields. The Texas Commission on Environmental Quality urges customers to verify the laboratory's current accreditation status for particular methods and analyses.**

**Matrix:** ***Non-Potable Water***

| Method | Analyte | AB | Analyte ID | Method ID |
|---|---|---|---|---|
| EPA 1000.0 | Chronic toxicity | TX | 3325 | 10252605 |
| EPA 1002.0 | Chronic toxicity | TX | 3325 | 10253006 |
| EPA 1006.0 | Chronic toxicity | TX | 3325 | 10253802 |
| EPA 1007.0 | Chronic toxicity | TX | 3325 | 10254009 |
| EPA 2000.0 | Acute toxicity | TX | 3300 | 10264809 |
| EPA 2002.0 | Acute toxicity | TX | 3300 | 10214901 |
| EPA 2006.0 | Acute toxicity | TX | 3300 | 10216407 |
| EPA 2007.0 | Acute toxicity | TX | 3300 | 10216009 |
| EPA 2021.0 | Acute toxicity | TX | 3300 | 10215404 |