

By signing below, I represent and certify that I am submitting a binding Offer and am authorized to bind the Offeror to fully comply with the Solicitation to which I submit this Offer. I acknowledge that I have received, read, and understood the entire solicitation document packet sections, including any addenda issued, and agree to be bound by its terms. I understand and agree that Offers submitted with incomplete and/or unsigned Offer Sheets will not be considered and will be rejected as non-responsive.

By submitting this Offer, I certify the following statements are true now and will be for the term of any resulting contract:

1. That my firm and its principals (collectively "we" or "us") are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That we have not in any way directly or indirectly:
 - a. Colluded, conspired, or agreed with any other person, firm, corporation, Proposer or potential Proposer to the amount of this Proposal or the terms or conditions of this Proposal.
 - b. paid or agreed to pay any other person, firm, corporation Proposer or potential Proposer 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 Proposal or the Proposal of any other Proposer.
3. That we have 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, we have 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 Proposers, so as to have an unfair advantage over other Proposers, provided that we may have provided relevant product or process information to a consultant in the normal course of its business.
4. That we have not participated in the evaluation of Proposals or other decision making process for this Solicitation and, if we are awarded a Contract, no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with us, 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 we may have provided relevant product or process information to a consultant in the normal course of its business.
5. In accordance with Chapter 176 of the Texas Local Government Code, that we:
 - a. do 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
 - b. have 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. do 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.
6. That we have and will continue to comply with the City's Anti-Lobbying Ordinance, Chapter 2-7, Article 6.
- No Lobbying Period.** The No-Lobbying Period begins on the date this Solicitation was initially published and continues through the earlier of (i) 60-days following Council authorization of any contracts resulting from this Solicitation, (ii) the date the last resulting contract is signed, (iii) the date this Solicitation is cancelled.
- Prohibited Communications.** During the No Lobbying Period, Respondents to this Solicitation or their Agents, shall not make prohibited communications to City officials or City employees.
- Ordinance.** https://www.austintexas.gov/financeonline/afo_content.cfm?s=15&p=145
- Rules.** https://www.austintexas.gov/financeonline/afo_content.cfm?s=16&p=77
7. Pursuant to City Council Resolution No. 20191114-056, we 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. If the City determines in its sole discretion that we have, during the term of the resulting Contract, engaged in any such practices, the City may terminate this Contract without penalty to the City.
8. Pursuant to Texas Government Code §2271.002, we verify that we do not boycott Israel and will not boycott Israel during the term of the resulting contract.
9. Pursuant to Texas Government Code Chapter 2274, we verify that if we have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of any City contract, that we are not owned by or the majority of stock or other ownership interest of our firm is not held or controlled by:
- a. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - c. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.
10. Pursuant to Texas Government Code Chapter 2274, we verify that, if we have 10 or more full-time employees: (1) we do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the resulting contract against a firearm entity or firearm trade association.
11. Pursuant to Texas Government Code Chapter 2274, we certify that, if we have 10 or more full-time employees: (1) we do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Company Name: New Resources Group, Inc.

Company Address: PO Box 320049

City, State, Zip: Fairfield, CT 06825

City Vendor Registration No. : CT Sales and Use Tax Resale # 8552317-000

Printed Name of Officer or Authorized Representative: William Wales

Title: President

Signature of Officer or Authorized Representative: William Wales Digitally signed by William Wales
DN: cn=William Wales, o=New Resources Group, Inc.,
ou=Corporation, email=bill@nrgideas.com, c=US
Date: 2023.01.03 10:59:02 -05'00'

Date: January 3, 2023

Email Address: bill@nrgideas.com

Phone Number: (203) 366-1000

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 GA230000028

Printed Name of City's Authorized Procurement Staff: Sandy Wirtanen

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

Signature: Sandy Wirtanen Digitally signed by Sandy Wirtanen
Date: 2023.01.30 13:56:36 -06'00'

Date: 1/30/2023

Email: sandy.wirtanen@austintexas.gov

Phone: 512-974-7711

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

**CITY OF AUSTIN
PRICE SHEET
SHOWERHEADS, AERATORS, AND SOIL MOISTURE METERS
SOLICITATION NUMBER: IFB 2200 SLW1076**

Special Instructions: Be advised that exceptions taken to any portion of the solicitations may jeopardize acceptance of the bid.

ITEM NO.	ITEM DESCRIPTION/STOCK NUMBER	ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	Low Flow Showerhead 1.5 gpm w/ soap-up valve; Niagara N2915 or Buyer Approved Equal New Resources Group ES-740W-1.5 Manuf: _____ Product #: _____ 	2,000	ea	\$4.80	\$9600.00
2	Low Flow Showerhead, 1.5 gpm; Niagara N2915-V or Buyer Approved Equal New Resources Group ES-735W-1.5 Manuf: _____ Product #: _____ 	1,000	ea	\$3.37	\$3370.00
3	Low Flow Bathroom Faucet Aerator, 0.5 gpm; Niagara N3205N or Buyer Approved Equal New Resources Group TS-005T Manuf: _____ Product #: _____ 	5,000	ea	\$.62	\$3100.00
4	Low Flow Kitchen Faucet Aerator, 1.5 gpm; Niagara N3104-PC or Buyer Approved Equal Neoperl 10-6200-4 Manuf: _____ Product #: _____ 	2,500	ea	\$.92	\$2300.00
5	Low Flow Kitchen Faucet Aerator Swivel Spray/Stream, 1.5 gpm; Niagara N3115P or Buyer Approved Equal New Resources Group TS-420C-1.5 Manuf: _____ Product #: _____ 	2,500	ea	\$1.68	\$4200.00
6	Soil Moisture Meter, Shall be AM Conservation Group MM071-F or Buyer Approved Equal. New Resources Group MS-810 Manuf: _____ Product #: _____ 	750	ea	\$3.72	\$2790.00
7	Soil Moisture Meter, Shall be AM Conservation Group MM071-L or Buyer Approved Equal. New Resources Group MS-810 Manuf: _____ Product #: _____ 	750	ea	\$3.72	\$2790.00
TOTAL EXTENDED PRICE					\$ \$28,150.00 -
COMPANY NAME: New Resources Group, Inc. PO Box 320049 Fairfield, CT 06825					
COMPANY EMAIL: bill@nrgideas.com					

CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS
SHOWERHEADS, AERATORS, AND SOIL MOISTURE METERS
SOLICITATION NUMBER: IFB 2200 SLW1076

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, unless specified otherwise in the Scope of Work, 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 or 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.

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- 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.

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SHOWERHEADS, AERATORS, AND SOIL MOISTURE METERS
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- 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 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, including security audits, 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.

1.7 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.

1.8 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. 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.

1.9 STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

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1.10 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (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.

1.11 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. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.12 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.

1.13 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. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

1.14 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.

1.15 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,

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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.

1.16 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.

1.17 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) 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:
 - i. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
 - ii. 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;
 - iii. 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;
 - iv. 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
 - v. 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.

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- B. 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.
- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE 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.
- D. 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.
- E. 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.

1.18 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.

1.19 CONFIDENTIALITY:

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (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 disclosing Party, 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 receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective

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measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (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, and (iii) to promptly notify the disclosing Party 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 disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. 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.
- E. 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.

1.20 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. 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.

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1.21 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.

1.22 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.

1.23 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.

1.24 GRATUITIES:

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

1.25 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.

1.26 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.

1.27 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

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not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

1.28 WAIVER:

The claim or right arising out of a breach of the Contract cannot 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.

1.29 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.

1.30 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.

1.31 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

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participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

1.32 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.

1.33 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.

1.34 HOLIDAYS:

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/department/official-city-holidays>. 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.

1.35 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.

1.36 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.

1.37 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

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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.

1.38 ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the Contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the Solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed 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%

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Database Name: Bureau of Labor Statistics	
Series ID: PCU3314--3314--	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Industry: Nonferrous (exc alum) production and processing	
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.

1.39 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.

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- 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.

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- (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 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance:** 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.

Note: If shipment is made by common carrier, insurance is not required. The Contractor shall provide confirmation with their offer if a common carrier will be used.

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

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- 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 Contract, 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.

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- 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.
- i. Contractor warrants that all Equipment shall be at current engineering change levels and shall be eligible for the manufacturer's standard prime shift maintenance contract upon delivery.

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.

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3 DEFINITIONS

1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data , and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.
7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.
11. **"Confidential Information"** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **"City Confidential Information"** is a subsets of Confidential Information.
12. **"Contract"** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **"Contract Price"** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **"Contractor"** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **"Contractor Information"** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.

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16. **“Contractor Software”** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **“Data Breach”** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City’s or City’s customers’ unencrypted Personally Identifiable Information or City Confidential Information.
18. **“Documentation”** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.
23. **“Infrastructure-as-a-Service” (IaaS)** – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).
24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
29. **“Party” or “Parties”** – the City and Contractor, individually or together, as applicable.
30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
31. **“Platform-as-a-Service” (PaaS)** – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying

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cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.

- 32. **"Purchase Order"** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
- 33. **"SaaS Software Application"** and **"SaaS Software"** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
- 34. **"SaaS Subscription Schedule"** – the document, part of the Contract, executed by both Parties that sets out the Parties' rights and obligations with respect to City's access to and use of the SaaS Software Application.
- 35. **"Security Incident"** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
- 36. **"Service Level Agreement" (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
- 37. **"Service Levels"** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
- 38. **"Services"** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
- 39. **"Software"** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.
- 40. **"Software-as-a-Service" (SaaS)** – the Services provided to the City to use the Contractor's offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- 41. **"Specifications"** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
- 42. **"Statement/Scope of Work"** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City's Service needs and expectations.
- 43. **"Subscription Services"** – City's access to and use of and Contractor's provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
- 44. **"Third Party"** – any natural person or legal entity other than Contractor and City.
- 45. **"Transition Date"** – the date upon which it is established to City's satisfaction that the SaaS Software Application is stable enough to support City's production processing.

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- 46. **“User Information”** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.
- 47. **“User”** – City’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
- 48. **“Work Product”** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor’s Software.

**CITY OF AUSTIN
SPECIFICATION
SHOWERHEADS, AERATORS, AND SOIL MOISTURE METERS
SOLICITATION NUMBER: IFB 2200 SLW1076**

1. PURPOSE:

The Contractor shall provide low flow showerheads, low flow showerheads with soap-up valve, low flow aerators, and soil moisture meters.

The contract will be used by the Austin Water (AW) Water Conservation Division. The City reserves the right to add or remove locations, services, or adjust frequency as deemed necessary throughout the contract term. Other City departments and locations may be added as necessary.

Any items or services that have been omitted from this scope of work that are clearly necessary or in conformance of services/goods shall be considered a requirement although not directly specified or called for in the scope of work.

2. TERM OF CONTRACT:

The term of the contract shall commence upon execution and remain in effect for an term of 60 months.

3. DELIVERY REQUIREMENTS:

Location:	Days:
Austin Water	Monday – Friday 8AM – 5PM
Water Conservation	
625 E. 10 th Street Ste. 615	
Austin, TX 78701	

3.1. Delivery is to be made within 15 calendar days after the order is placed (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.

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

3.3. The Contractor shall confirm the quantity to be shipped on all orders within 24 hours of notification from the City in writing and/or in a method and manner as mutually agreed to by the Contractor and the Contract Manger or designee.

4. INVOICE AND PAYMENT ADDRESS:

The Contractor shall email invoices to brandy.witt@austintexas.gov. For questions regarding your invoice/payment, please contact the City Contract Manager.

5. DESIGNATION OF KEY PERSONNEL:

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual(s) having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain written approval for the replacement. Such approval shall not be unreasonably withheld. The City's key personnel are identified as follows:

	Name	Phone Number	Email
Contract Manager	Georgia Billela	512-972-0094	Georgia.billela@austintexas.gov
Contract Monitor	Darrell Richmond	512-972-0313	Darrell.richmond@austintexas.gov
Operational Monitor	Brandy Witt	512-972-0429	Brandy.witt@austintexas.gov
Procurement Specialist	Sandy Wirtanen	512-974-7711	Sandy.wirtanen@austintexas.gov

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SPECIFICATION
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6. SINGLE POINT OF CONTACT:

The Contractor shall:

6.1 Designate a Single Point of Contact (SPOC) who shall be available for emergency request that shall be available 24 hours a day 7 days a week.

6.1.1 During times the SPOC is unavailable (due to vacation, travel, etc., for example), the Contractor shall provide a designee for the SPOC. The designee shall meet the same requirements as specified for the SPOC within this Scope of Work and shall have the same authority as the SPOC.

7. APPLICABLE SPECIFICATIONS:

7.1 The Contractor shall ensure the goods and/or services complies with Federal, State and Local Laws, regulations, policies, and ordinances.

7.2 The Contractor shall comply with American National Standards Institute/American Water Works Association Standards: <https://www.awwa.org/Publications/Standards>

7.3 The Contractor shall comply with:

7.3.1 Environmental Protection Agency (EPA). <https://www.epa.gov/>

7.3.2 Texas Commission on Environmental Quality (TCEQ): <https://www.tceq.texas.gov/>

7.3.3 City of Austin Ordinances and regulations:
https://library.municode.com/tx/austin/codes/code_of_ordinances

8. CONTRACTOR REQUIREMENTS:

8.1 Contractor Qualifications:

8.1.1 The Contractor shall be an authorized dealer/reseller of the products offered.

8.1.2 The Contractor shall have and operate a full-time, permanent business address with the ability to be reached by email and telephone.

8.2 Contractor's Responsibilities

8.2.1 The Contractor shall guarantee the showerheads and aerators free from defects for a period of one year from date of installation.

8.2.2 The Contractor shall replace any defective or failed devices during this one-year period. The Contractor shall replace defective devices with new ones within 14 business days of notification by the Contract Manager, at no additional cost to the City and without requiring that the failed device be shipped back to the Contractor.

9. MATERIAL SPECIFICATION:

The Contractor shall provide:

9.1 Low Flow Showerhead, 1.5 gallons per minute, flow rate, WaterSense certified, shall be a brand Niagara N2915 or Buyer Approved Equal.

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- 9.2 Low Flow Showerhead with a soap-up valve, 1.5 gallons per minute, flow rate, WaterSense certified, shall be brand Niagara N2915-V or Buyer Approved Equal.
- 9.3 Bathroom Faucet Low Flow Aerator, 0.5 gallon per minute and flow rate, shall be brand Niagara N3205N or Buyer Approved Equal.
- 9.4 Kitchen Faucet Low Flow Aerator, 1.5 gallons per minute and flow rate, shall be brand Niagara N3104-PC or Buyer Approved Equal.
- 9.5 Kitchen Faucet Low Flow Aerator Swivel Spray/Stream, 1.5 gallons per minute and flow rate, shall be brand Niagara N3115P or Buyer Approved Equal.
- 9.6 Low Flow Showerhead: Showerhead shall provide dispersed water flow of 1.5 gpm and contain a built-in mechanism to reduce the amount of water allowed to flow when operating.
- 9.7 Showerhead shall be capable of automatically clearing debris, such as mineral deposits, rust, scale, or other impurities from the water channels or pores located in the showerhead without disassembly or the use of special tools.
- 9.8 Soil Moisture Meter: Display soil moisture with no batteries or assembly needed, length of soil probe, shape of meter housing, legibility of meter display, shall be AM Conservation Group MM071 or Buyer Approved Equal.
- 9.9 Showerhead shall have a pressure-compensating feature that provides consistent flow at various pressures.
 - 9.9.1 The showerhead shall be equipped with a spray adjustment mechanism for adjusting the coarseness of the spray, from fine to coarse. Showerhead shall have a minimum 9-jet turbo massage with settings from forceful to gentle.
 - 9.9.2 Maximum flow rate shall be the measured flow rate when the adjustable spray is in the fully opened position.
 - 9.9.3 The flow rate shall be a minimum 1.40 gallons per minute at an inlet water pressure of 40 (\pm 10) psi, and a maximum 1.50 gallons per minute at an inlet water pressure of 80 (\pm 10) psi when tested in accordance with the American National Standards Institute (ANSI) testing procedures (ASME A 112, 18, 1).
 - 9.9.4 The showerheads shall be structurally sound so no damage is caused during use up to and including 125 psi and/or at temperatures up to and including 160°F.
 - 9.9.5 The water cone spread shall be less than 30' and shall not be wider than 42' in a 6 1/2' vertical drop.
- 9.10 Showerhead shall be compatible with ball joint shower arm adapters. The showerhead connection diameter shall be 1/2" thread and the standard ball joint arm connection is a diameter of 1 1/8" Iron Pipe (IP) thread.
- 9.11 Showerhead Housing shall be corrosion resistant, high impact plastic. Brass coupling nut shall be chrome plated. Each showerhead shall be furnished with 1/2" IP thread to fit most standard shower arms.

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- 9.12 Showerheads and aerators shall be new. Used, remanufactured, or refurbished are not acceptable.
- 9.13 Showerheads and aerators shall be on the most current list of manufacturers of plumbing fixtures approved for sale in the State of Texas, maintained by the Texas Commission and Environmental Quality.
- 9.14 Each showerhead and aerator shall be individually wrapped with bubble, wrap, tissue paper, and/or plastic, shipped loose and packaged to prevent disassembly.
- 9.15 Low Flow Showerhead with a soap-up valve: Requirements shall be the same as above in addition to being equipped with a soap-up valve capable of reducing the 1.50 gallons per minute soak mode to a 1.00 gallon per minute soap mode with an inlet water pressure of 80 (+/-10) psi when tested.
- 9.16 Low Flow Aerators:
 - 9.16.1 Aerator shall include housing, flow control (steel screen for the 1.5 GPM model) and components required for proper installation and operation.
 - 9.16.2 Aerator housing shall be constructed of solid brass with a highly polished chrome finish. Components shall be at least brass plated.
 - 9.16.3 Inlet construction shall be both internally and externally threaded with 15/16" x 27 threads outside diameter and 55/74" x 27 threads inside diameter.
 - 9.16.4 Aerator shall provide an even spray pattern and have a flow rate not exceeding 0.5 and 1.5 gallons per minute at 80 psi for the Niagara N3205N and the Niagara N31 04-PC, respectively. No damage shall be caused to the aerator by use of 150 dynamic psi at a maximum temperature of 160°F.

10. CITY REQUIREMENTS:

The City will:

- 10.1 Provide a Contract Manager or designee.
- 10.2 Schedule a contract kick-off meeting within five business days of contract execution to discuss the project.



**ADDENDUM
SHOWERHEADS, AERATORS, AND SOIL MOISTURE METERS
CITY OF AUSTIN, TEXAS**

Solicitation: IFB 2200 SLW1076

Addendum No: 1

Date of Addendum: 12/7/2022

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

I. Questions and Answers:

Q1: Are we able to NO BID lines, or do you have to bid all line items?

A1: Yes, you can no bid line items.

Q2: For the item estimated quantities, is the intent to purchase that quantity over the period of the contract, or would the estimated quantity be purchased as one time?

A2: The estimated quantities are annual. Quantities will be as needed and specified by the City for each order. There are no minimum order quantities.

Q3: Is there a specific finish the City is looking for? It is usually white or chrome.

A3: The low-flow aerator's finish is specified in Section 9.16.2 of the Scope of Work. The City does not have a preference for the finish of the showerheads. Award will be to the lowest responsive bid. Soil moisture sensors will also be awarded to the lowest responsive bid.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

ACKNOWLEDGED BY:

William Wales

Name

Authorized Signature

January 3, 2023

Date

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