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~~Atto A~~ 3/31/06

**City of Austin, Texas
Purchasing Office**

Service Agreement No.: S060220

Date Issued: March 31, 2006

Page 1 of 3

Distribution:

PARD: Jay Stone

Distribution, Others:

- Service
- Procurement Assistant
- Office of Minority Business Affairs

Contracting Agency:

Purchasing Office

CSN/SCC, Commodity Code No.:

95214

Commodity/Service:

Management and Operation of City Owned Cemeteries

Estimated Dollar Value:

Not To Exceed \$651,230

Cash Payment Terms:

Net 30

F.O.B. Point:

Destination

Contract Period:

October 1, 2006 through September 30, 2016

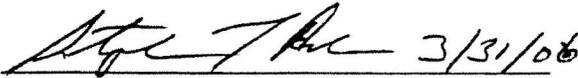
Extension Option:

Two 5-Year Extension Options

Source, Address, Phone and Source No:

InterCare Corporation
Attn: Gene Bagwell
 216 North Street
 San Marcos, TX 78666-4418
 (512) 517-3534
 INT71177801
 bagwellg@grandecom.net

Buyer Name and Signature:


 Stephen T. Aden, Supervising Senior Buyer/Date
 Purchasing Office, (512) 499-2021

REVIEWED AND APPROVED:

N/A

Rick Fudge, Date
 Deputy Purchasing Officer, (512) 974-2033

Reference File No:

860JJ002819

Solicitation No:

SA05300054

INSTRUCTIONS AND SUPPLEMENTAL PROVISIONS / CLAUSES
FOR PRICE AGREEMENT NOTICES

P.2 ?2

1.0 **RELEASE OR ORDERING METHOD:**

User department shall use the Purchase Release (PG) (form FIN9059) in releasing against and payment for goods or services covered by this Agreement. Refer to LGFS Procedures Manual, AP-05 for details. When giving a "verbal" release, provide the Supplier the Purchase Release (PG) number and assigned Price Agreement number and request that such numbers be included on his invoice. Also, require supplier to indicate name of user department on all supplier documents.

2.0 **INVOICING AND PAYMENT:**

Purchase Releases. The Supplier shall furnish the user Department a copy of invoice. The Purchase Release (PG) shall then be processed in accordance with AP-07, Processing Payments forwarded to Accounts Payable within two (2) working days after user receipt of invoice.

3.0 **TIMELY DELIVERY:**

Orders for delivery shall be placed with the supplier by the user department or Purchasing Office. Supplier shall make delivery of the units or services requested in the time specified in the terms of the contract. If the order for delivery is not met, the user department is to contact the applicable buyer by memorandum for disposition, citing details and forward a copy of the Purchase Release transmitted to the Supplier.

4.0 **UNSATISFACTORY PERFORMANCE:**

Departments incurring consistent unsatisfactory performance under an Agreement shall notify the appropriate Buyer in writing, outlining all the facts in such cases. Only by such notice can the Buyer remedy unsatisfactory performance.

5.0 **MATERIAL DISCREPANCY RESOLUTION AND REPORTING:**

The user department by this Notice is hereby delegated responsibility and authority to administer the resolution of significant material discrepancies as may be encountered. Reference Procedure P-8.3, Receiving and Inspecting Materials. Two copies of completed form PSD 5186, Material Discrepancy Report are to be forwarded to the affected Buyer.

6.0 **CHANGES TO AGREEMENT:**

P.2 ?#1

Any and all changes to this Agreement are subject to review and advance approval of the Purchasing Office prior to any commitments including, but not necessarily limited to the addition of associated equipment, scope of work, increased services, upgrading, exercising of extensions or price changes. The user department shall institute no changes without the prior written approval of the Purchasing Office.

7.0 **CONTRACT ADMINISTRATION:**

Administration of this contract for the City shall be the responsibility of the Contract Administrator; Purchasing's involvement with the source shall occur only on an exception basis as may become necessary.

The Requisitioner shall be the Contract Administrator unless Purchasing is notified otherwise by the user department.

(If applicable, the Contract Administrator shall establish milestones enabling him to determine if the source is working on schedule.)

All communications between the Contract Administrator and the source shall be in writing with a copy sent to the Purchasing Office. A.D. ? A.D.

If substandard performance should occur (or milestones are not met) the source shall be advised in writing to correct the problem; a copy of this communication shall be sent to the Purchasing Office.

Should substandard performance not be corrected within a reasonable amount of time after the source has been made aware of the problem, the Contract Administrator shall withhold payment and advise the Purchasing Office of the situation.



**SERVICE AGREEMENT NO. S060220
MANAGEMENT AND OPERATION OF CITY OWNED CEMETERIES**

City of Austin, Texas

And

Intercare Corporation

THIS AGREEMENT is made and entered into by and between the City of Austin, Texas, a Texas municipal corporation (hereinafter referred to as the City), and Gene Bagwell dba Intercare Corporation a corporation in the State of Texas, Contractor, (hereinafter referred to as the Contractor), to provide consulting services as described herein.



City of Austin

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March 29, 2006

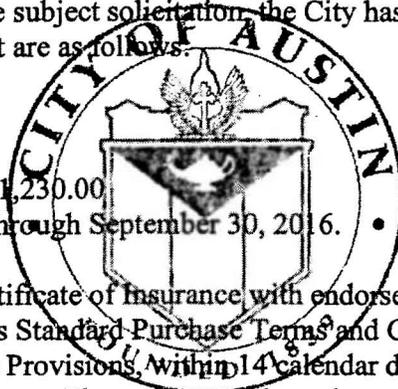
Intercare Corporation
Attn: Gene Bagwell
216 North Street
San Marcos, TX 78666-4418

Re: Notice of Award, Solicitation No. SA05300054
Solicitation Description "Operations of City Owned Cemeteries"
Contract No. S060220

Mr. Bagwell

As a result of your response to the subject solicitation, the City has awarded the subject contract to your firm. The terms of this agreement are as follows:

Date of Award: March 29, 2006
Contract No.: S060220
Dollar Value: Not to Exceed \$651,230.00
Contract Term: October 1, 2006 through September 30, 2016.



You are required to provide a Certificate of Insurance with endorsements as required by Section 0300, paragraph 32 (A) (ii), of the City's Standard Purchase Terms and Conditions, Section 0400 paragraph 3 (A) of the Supplemental Purchase Provisions, within 14 calendar days after this notice and prior to beginning work under this agreement. Please forward these documents to:

Purchasing Office
Attn: Stephen T. Aden (Contract No. S060220)
P.O. Box 1088
Austin, TX 78767

Attached is for your review and signature are the following documents:

Cover Sheet – 1 page
Request for Proposal Offer Sheet – 1 page
Addendum 1 thru 3 – 4 pages
Section 0300 "Standard Purchase Terms and Conditions – 14 pages
Section 0400 "Supplemental Purchase Provisions – 4 pages
Section 0500 "Scope of Work" – 4 pages
Contractor's Proposal – 27 pages
Signature Page – 1 page

Upon review and approval, please return three signed copies of this contract to me at the address above. If you have any questions, please don't hesitate to contact me, at (512) 974-2021 or via e-mail at steve.aden@ci.austin.tx.us.

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SERVICE AGREEMENT NO, S060220

MANAGEMENT AND OPERATIONS OF CITY OWNED CEMETERIES

SIGNATURE PAGE

1.0 ENTIRE CONTRACT

The above constitutes the entire contract and is not subject to modification by parol or course of dealing or practice and shall be modified only in accordance with Standard Purchase Terms & Conditions, Paragraph 47.0, MODIFICATIONS.

BY THE SIGNATURES affixed below, the above contract, which includes the Contractor's proposal, hereby incorporated by reference as part of the terms of this document, is hereby accepted as to all the terms and conditions.

CONTRACTOR:

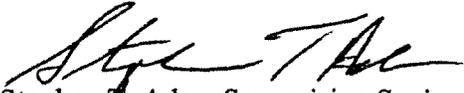
CITY OF AUSTIN:

BY: Gene Bagwell
Gene Bagwell, President/Owner
InterCare Corporation
216 North Street
San Marcos, TX 78666-4418

BY: Stephen T. Aden
Stephen T. Aden
Supervising Senior Buyer
Purchasing Office
Finance and Administration
Service Department

DATE: 3/31/06

DATE: 3/31/06



Stephen A. Aden, Supervising Senior Buyer
Purchasing Office
Finance and Administrative
Services Department

Enclosure: Contract Documents
Cc: Jay Stone, PARD

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS (RFP)
CONTRACT NO. S060220**

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

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

**CITY OF AUSTIN
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CONTRACT NO. S060220**

timely and efficient manner. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE.

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

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

12. INVOICES.

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

**CITY OF AUSTIN
PURCHASING OFFICE**

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13. PAYMENT.

- A. All proper invoices received by the City will be paid within 30 days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. If payment is not timely made (per paragraph A), interest shall accrue on the unpaid balance at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The City's payment obligations are payable only and solely from funds Appropriated and available for the purpose of this purchase. 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.

- 14. TRAVEL EXPENSES.** All travel and lodging expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy and the Current Runzheimer Meal-Lodging Index (the "Index"). No amounts in excess of the Travel Policy or Index shall be paid. All invoices must be accompanied by copies of receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL CLOSE-OUT.

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Contract Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after

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PURCHASING OFFICE**
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final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

- ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. **RIGHT TO AUDIT.**

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

18. **SUBCONTRACTORS.**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation and the Contractor has identified Subcontractors, the Contractor shall comply with the provisions of Chapter 2-9 of the Austin City Code and the terms of the Compliance Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapter 2-9. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

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- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten days after receipt of payment from the City.

19. WARRANTY-PRICE.

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

20. WARRANTY - TITLE. The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY - DELIVERABLES. The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
- C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
- D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
- E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the

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Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

Year 2000. The Contractor further represents and warrants that the occurrence in or use by the deliverables containing computer code of dates on or after January 1, 2000 (which shall be inputted and stored in four digit format) ("Millennial Dates"), will not adversely affect the performance of such deliverables with respect to date-dependent data, computations, output, or other functions, (including, without limitation, calculating, comparing, translating, interfacing, inquiry, leap year recognition, and sequencing) and that such deliverables will create, store, process, translate, and output information related to or including Millennial Dates, pre-Millennial Dates, or combinations of Millennial Dates and pre-Millennial Dates (whether such pre-Millennial Dates are stored in two digit or four digit format) without error, omissions, the need for human intervention, or experiencing delays and at no additional cost to the City. At the City's request, the Contractor shall provide sufficient and credible evidence satisfactory to the City to demonstrate that such deliverables meet the foregoing warranty. In addition, the Contractor hereby agrees that the City may (in its sole discretion) withhold, as a reserve or retainage, up to five percent (5%) of each Contractor invoiced amount under the Contract. The cumulative amount of such reserve or retainage shall be held by the City and shall become due and payable to the Contractor once the City is reasonably convinced by sufficient and credible evidence that the computer code (whether or not developed, provided in a software package or as part of any hardware or firmware) provided by the Contractor complies with the warranty in this section.

22. **WARRANTY - SERVICES**. The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from acceptance of the services. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES**. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE**. Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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25. **STOP WORK NOTICE.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
27. **TERMINATION FOR CAUSE.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS.** The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
31. **INDEMNITY.**
- A. Definitions:
- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or

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- (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE. (reference Section 0400 for specific coverage requirements). The following Insurance requirement applies (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract and during any warranty period.
- ii. The Contractor shall forward Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage within 14 calendar days after notification of award, unless otherwise specified.
- iii. The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

Attn: (Add Buyer's Name)

City of Austin
Purchasing Office
P. O. Box 1088

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- vii. 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.
- viii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. 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.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. 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.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

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- A. **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **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.
40. **ADVERTISING.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **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.
42. **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

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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.

43. **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.
44. **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.
45. **ASSIGNMENT-DELEGATION.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **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.
49. **DISPUTE RESOLUTION.**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The

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purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

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

51. **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.

52. **HOLIDAYS.** The following holidays are observed by the City:

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

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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.

53. **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.

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SCOPE OF WORK (RFP)
SOLICITATION NUMBER: SA05300054**

**The Management and Operations
of
City of Austin Cemeteries**

1. PURPOSE

The City of Austin, hereafter referred to as City, seeks proposals in response to this Request for Proposal (RFP) from individuals, firms, etc. qualified and experienced in Cemetery Management including but not limited to Grounds Maintenance, Tree Maintenance and Burial Operations to manage and operate the City's cemeteries and provide grounds maintenance, tree maintenance and burial operations. It is the City's intent to make award to one contractor.

2. BACKGROUND

The City has operated cemeteries since receiving what is known as the Oakwood Cemetery from the State of Texas in 1856. Five cemeteries are currently operated under the auspices of the city: Oakwood, Oakwood Annex, Evergreen, Plummers, and Austin Memorial Park. The Cemetery operation provides four services: administration, space sales, interments, and grounds maintenance. Administration includes the recording of all deeds of sale with the County and the management of information for property owners and interment location information. Spaces in Austin Memorial Park and Evergreen are available for purchase by the general public and funeral homes. The other three cemeteries no longer have spaces available, although many of the spaces are not yet occupied. Interment Services include space opening and closing. Concrete grave liner sales and funeral setups have been eliminated as a cost containment measure. Grounds maintenance includes regular mowing, grave sinking, leveling of sunken graves, grass planting, litter control, repairs to irrigation systems, building maintenance, placement and removal of flowers, and response (when possible) to property owner requests. Tree maintenance includes trimming, removal when necessary for safety concerns.

Revenue is generated by space sales and interment charges (see list of charges in Exhibit A). The City's revenue summary for 2000 - 2004 is listed in Exhibit B.

Interments are performed at each of the City-owned cemeteries at the following yearly average rates:

Austin Memorial Park - 400 2800 Hancock Drive	Evergreen - 175 3304 E. 12 th
Oakwood & Oakwood Annex - 60 1600 Comal Street	Plummers - 2 12 th and Springdale

If this rate continues, the City of Austin will be able to meet demand for space at Evergreen 5 years and at Austin Memorial Park for 60 years. Development of the land, however, would be necessary at both Evergreen and Austin Memorial Park prior to sale.

3. SCOPE OF WORK

3.1 Title of Program

Cemetery Management Including: Grounds Maintenance, Tree Maintenance, and Burial Operations.

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3.2 Objective

To provide the most efficient and economical cemetery service to the general public.

3.3 Implementation

3.3.1 Financial Capability

Prospective contractor must demonstrate financial capability to provide the proposed services and make improvements as necessary. The availability of both investment and operational capital will be important factors in determining financial capability.

3.3.2 Operational Capability

A minimum of **10 years** experience in managing and operating a municipal cemetery including grounds maintenance and burial operations will be reviewed with respect to the following:

- A. Administration – To include the recording of all deeds of sale with the County and the management of information for property owners and interment location; and maintain a Records Retention System as required by the State of Texas Retention Schedule for Local Governments.
- B. Interment Activities – To include space opening and closing, funeral set-up, and grave liner installations.
- C. Grounds Maintenance – To include regular mowing, grave sinking, leveling of sunken graves and when a safety matter headstones, grass planting, litter control, minor repairs to irrigation systems, building maintenance, placement and removal of flowers, and when possible, response to property owner requests.
- D. Sales Activities – To include sale of interment spaces at Austin Memorial Park and Evergreen Cemetery to the general public and funeral homes.
- E. Tree Maintenance – To include trimming and removal when needed for safety of the public.

3.3.3 Competitive Pricing

The City is committed to a pricing policy that allows a profit factor but which maintains a competitive and reasonable structure approved and allocated by City Council which allows Austin citizens affordable access to cemetery spaces and services.

3.3.4 Facilities and Equipment

Equipment that has been permanently installed at each cemetery (i.e. buildings, irrigation systems) will remain available for use by cemetery operator, but remains the property of the City of Austin.

The contractor shall replace any portion of existing facilities or future improvements which are stolen, lost, damaged or worn beyond repair or useful life.

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Upon termination of this contract, all structures and/or equipment furnished by the City and/or their replacement or improvements to the cemetery facilities shall become City property and shall be returned to the City in reasonable operating condition.

3.3.5 Maintenance Specifications

At a minimum, maintenance standards which call for mowing and trimming to keep grounds in an aesthetically pleasant and safe condition shall be met. Such mowing and trimming shall be accomplished on a 14 day cycle in order to maintain the grass in accordance with the species and varieties to a height between 1 ½ to 3 inches but not more than 4 inches.

The boundaries of cemeteries are fenced, with maintenance of right of way being the responsibility of the contractor (from fence to street). The Plummers Cemetery boundary is indicated on the map in Exhibit C.

All equipment necessary to accomplish the maintenance shall be obtained by the contractor. The contractor shall submit a list of types and quantities of all equipment, and number of pieces of each, planned for use on the cemeteries. Equipment currently in use at the facilities which is not permanently installed will not be available to the contractor and should not be included in the inventory.

3.3.6 Utilities

All utility expenses including water, electrical, gas, sewer, and waste disposal required to operate the cemetery program will be borne by the contractor.

3.3.7 Fees

All service and sales fees and any other fees associated with the cemetery program are subject to approval by the City Council on an annual basis. Approved fees will be valid for the period of October 1 through September 30 of the next calendar year.

3.3.8 Taxes

3.3.8.1 The contractor shall be responsible for all possessory interest taxes and all other licenses required for the operation of the cemeteries, fees and taxes which shall not be deducted from gross revenues.

3.3.9 Additions and Maintenance

3.3.9.1 The contractor shall be responsible for, at their cost, any new additions to and continuing maintenance and repair of all cemetery facilities, properties, fixtures, plantings, furniture and related equipment, irrigation, plumbing, electrical, lighting, drainage and water flow systems. Any changes in physical properties must be approved in advance by the City Manager or City Manager's designee.

3.3.10 Subcontracting

3.3.10.1 The contractor shall not subcontract any portion of the operation without written consent of the City of Austin.

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3.3.11 Contract Bond

3.3.11.1 The Contractor shall provide the City with a contract bond written by an insurance company authorized to do business in the State of Texas, in the amount of \$60,000. The bond shall be conditioned that the obligor therein will pay to the extent of the face amount of such bond all judgments, which may be recovered against contractor by reason of default, failure, or refusal of contractor to do and perform each and every, all and singular, at the time and in the manner specified, the promises, matters and obligations in this contract and shall pay over and make good and reimburse the City of Austin all expenses, losses and damages which said City may sustain by reason of any failure or default on the part of contractor, which bond shall be submitted to the City for approval within fifteen (15) days from the date of notification of award of contract.

3.3.12 Hours and Days of Operation

The current hours and days of operation are Monday thru Saturday daylight hours. Official City of Austin Holidays and Sundays the cemetery office is closed.

3.3.13 Repairs

The contractor shall be responsible for the maintenance and repairs of all damages caused by acts of God, including but not limited to erosion, damage by winds, rain, flood, lightning or earthquake.

3.3.14 Term of Contract

The initial term of this agreement shall be for a ten year period with an option for two five year extensions. These options will only be exercised if both parties are in agreement. The Contractor is required to state the desired number of years in addition to the initial contract period he/she proposes for extension options. Give information to support the length of the extended contract period being proposed

D. Acceptance of Work

Acceptance will be based upon the contractor's successfully providing all services as proposed in response to this Request for Proposal.

4. PROGRESS REPORTS

The Contractor shall submit monthly and quarterly, or as otherwise agreed upon by the City and Contractor, reports to the Contract Administrator appointed by the City. The reports shall describe significant achievements and problems which have potential effect on schedule or costs. They should be sufficiently detailed to assure that directions being pursued are in compliance with established City of Austin policies and procedures.

CITY OF AUSTIN, TEXAS

Purchasing Office

REQUEST FOR PROPOSAL (RFP)

Offer Sheet

SOLICITATION NO: SA05300054

COMMODITY/SERVICE DESCRIPTION: MANAGEMENT AND OPERATIONS OF CITY OWNED CEMETERIES

DATE ISSUED: JUNE 8, 2005

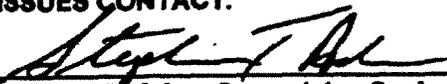
PRE-PROPOSAL CONFERENCE TIME AND DATE:
10:00 AM; JUNE 15, 2005

REQUISITION NO.: 860JJ002819

LOCATION: MUNICIPAL BUILDING, 124 W. 8TH STREET, ROOM 308, AUSTIN, TEXAS 78701

FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT:

PROPOSAL DUE PRIOR TO: 2:00 PM; JUNE 29, 2005


Stephen T. Aden, Supervising Senior Buyer

COMPLIANCE PLAN DUE PRIOR TO: N/A

Phone: (512) 974-2021

PROPOSAL CLOSING TIME AND DATE: 2:00 PM; JUNE 29, 2005

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

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this solicitation are contained in Section 0900.

All Contractors and Subcontractors must be registered to do business with the City prior to award of a contract. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto <https://waller.ci.austin.tx.us/austin/main.cfm?type=reg> and follow the directions.

******* SUBMIT 1 ORIGINAL AND 1 SIGNED COPY OF ALL REQUIRED DOCUMENTS*******

SOLICITATION TO:

Intercare Corp.
ATTN: Gene Bagwell
216 North St.
San Marcos, TX 78666-4418


Signature of Person Authorized to Sign PROPOSAL

Gene Bagwell President/owner
Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. 74-2578177

Date: 7-5-2005

Company Name: Inter Care Corporation

Address: 216 North Street

City, State, Zip Code San Marcos, Texas 78666-4418

Phone No. (512) 517-3542 **Fax No. (512)** 396-4857

Email Address bagwellg@sanmarcos.net



**REQUEST FOR PROPOSAL ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN**

MANAGEMENT AND OPERATIONS OF CITY OWNED CEMETERIES

RFP No. SA05300054 Addendum No. 1 Date: June 7, 2005

- 1.0** Reference Offer Sheet of the solicitation, under the Pre-Proposal Conference scheduled for 10:00 AM; June 15, 2005 is **MANDATORY**.
- 2.0** All other provisions of this solicitation remain unchanged.

BY THE SIGNATURES affixed below Addendum No. 1 is hereby incorporated into and made a part of the above-referenced Request for Proposal.

Approved By: _____
Stephen T. Aden Sr.
Supervising Senior Buyer

Acknowledged By:

InterCare Corporation
Bidder's Name

Gene Bagwell
Authorized Signatory

Return one (1) copy to the Purchasing Office, City of Austin, prior to closing or with sealed bid. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.



**REQUEST FOR PROPOSAL ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN**

MANAGEMENT AND OPERATIONS OF CITY OWNED CEMETERIES

RFP No. SA05300054 Addendum No. 2 Date: June 17, 2005

- 1.0 Reference Section 0500 "Scope of Work", paragraph 2. "Background", add the following:
Estimated yearly space sales at each of the cemeteries are as follows:**

Austin Memorial Park(AMP -300 per year.

Evergreen – 100 per year.

Time Sales are approximately 75 per year at AMP and 38 per year at Evergreen.

- 2.0 Reference Section 0500, add the following paragraph as item 4.**

4. AUDITS

Contractors records will be audited annually. Contractor shall make all records pertaining to this contract available for Audit each year of the contract. The City of Austin will select which Auditor(s) to use in each instance. Audits will be approved by a CPA. Cost of each Audit will not exceed \$15,000.00.

- 3.0 Reference Section 0600 "Proposal Preparation Instruction and Evaluation Factors", paragraph K (ix), change to read as follows:**

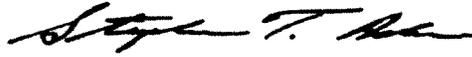
ix. Details of all estimated expenses for each year of the first five years of operation. Inflation assumptions should be based on the December 2004 dollar and a Consumer Price Index (CPI) of 3.3 percent for each year projected.

- 4.0 Reference Section 0600, paragraph B (4) of the Evaluation Factors, change to read as follows:**

4. Complaint resolution procedures to address citizens concerns. (15 pts).

- 5.0 All other provisions of this solicitation remain unchanged.**

BY THE SIGNATURES affixed below Addendum No. 2 is hereby incorporated into and made a part of the above-referenced Request for Proposal.



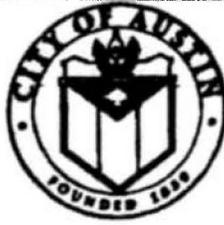
Approved By: _____
Stephen T. Aden Sr.
Supervising Senior Buyer

Acknowledged By:

InterCare Corporation
Bidder's Name


Authorized Signature

Return one (1) copy to the Purchasing Office, City of Austin, prior to closing or with sealed bid. **FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.**



**REQUEST FOR PROPOSAL ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN**

MANAGEMENT AND OPERATIONS OF CITY OWNED CEMETERIES

RFP No. SA05300054 Addendum No. 3 Date: June 21, 2005

- 1.0** Reference Offer Sheet of the solicitation, under the change the Proposal Due Prior To:
- FROM:** 2:00 PM; JUNE 29, 2005
TO: 3:00 PM; JULY 6, 2005
- 2.0** Reference Section 0600 add the following requirements under **PART XI – Cost Proposal:**
- x.** Contractor must provide a 5 year cost for headstone leveling at each cemetery.
 - xi.** Contractor must provide a 5 year cost for treatment and removal of ball moss from trees for each cemetery.
- 3.0** All other provisions of this solicitation remain unchanged.

BY THE SIGNATURES affixed below Addendum No. 3 is hereby incorporated into and made a part of the above-referenced Request for Proposal.

Approved By: _____
Stephen T. Aden Sr.
Supervising Senior Buyer

Acknowledged By:

Inter Care Corporation
Bidder's Name

Gene Bagwell
Authorized Signature

Return one (1) copy to the Purchasing Office, City of Austin, prior to closing or with sealed bid. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.

MANAGEMENT AND OPERATION OF CITY OWNED CEMETERIES

REQUEST FOR PROPOSAL NO. SA05300054

Introduction and Operation Summary

InterCare Corporation has been providing for the management and operation of the City owned cemeteries since September of 1990. During those 15 years of service, InterCare as a business along with its owner and staff have nurtured a positive working relationship with the local funeral industry, have developed a personal relationship with numerous families and users of the cemeteries, have an in depth understanding of the needs of the cemeteries and have developed and implemented all necessary operational, administrative and management systems to assure a successful outcome for InterCare, the City of Austin and most importantly its Citizens.

From the onset of the contractual relationship InterCare and its affiliate company Interment Services Inc. have quickly responded to the changing and often unpredictable influences that drive revenues, expenses, work demands and customer satisfaction.

InterCare along with its affiliate companies have all necessary staff, capital equipment and expertise to continue to meet the current level of service. Included in this RFP response are recommended strategies and associated expenses for enhanced levels of service to include tree maintenance, monument leveling and employee salary adjustments associated with the City's "Living Wage and Health Care policies.

InterCare stands ready and looks forward to meeting the opportunities and challenges of the next 10 years.

1. Proposal

A. Part I – Business Organization:

(Items 1-5) Specifics of business organization)

In 1974 Mr. Bagwell formed the Maintenance Management Company to provide custodial services to municipal and corporate entities. Having done this for 3 years he expanded his services to include grounds maintenance and horticultural services.

In 1980 Maintenance Management expanded services to include cemetery grounds maintenance with the acquisition of the City of San Marcos Cemetery Maintenance contract. In 1985 the City of San Marcos expanded the scope of the Cemetery Maintenance Contract with Maintenance Management to include administrative duties including but not limited to on site meetings with families to select and designate burial property and coordinate burial services. In 1990 the City of San Marcos further expanded the scope of the Cemetery Maintenance Contract with Maintenance Management to include "turn key" administrative services.

In 1990 upon successful response to a Request for Proposal from the City of Austin, Texas for the Management and Operation of its five (5) cemeteries Mr. Bagwell created InterCare Corporation.

In 1995 in response to the need for quality burial services in Austin and the surrounding area he created Interment Services Incorporated. This corporation provides interment and related graveside services for InterCare Corp. in Austin as well as burial service needs of surrounding municipalities and private cemeteries.

In 2005 upon successful response to a Request for Proposal from the State of Texas Veteran's Land Board for the Management and Operation of the Central Texas State Veteran's Cemetery (CTSVC) in Killeen Texas Mr. Bagwell created Premier Cemetery Service Corporation. (CTSVC) is the first of 7 proposed State Veteran's cemeteries in Texas. This is the first Texas State Veteran's cemetery to be operated by the private sector. Texas is the first state in the US to elect to partner with the private sector in providing cemetery services for its veterans.

Presently the combined companies have 95-100 employees with annual projected sales of over \$3.2 million.

Company	Office Address	Mailing Address	Contact/Phone	Business Structure	Annual Receipts	Employees
Maintenance Management	825 Pioneer Trail San Marcos, Texas 78666	216 North Street San Marcos, Texas 78666	Gene Bagwell 1-512-517-3542	Sole Proprietorship 100% Owned 1974-Texas	\$1,000,000	25-FTE 30-PT
InterCare Corporation	825 Pioneer Trail San Marcos, Texas 78666	216 North Street San Marcos, Texas 78666	Gene Bagwell 1-512-517-3542	Sub S Corporation 100% Owned 1989-Texas	\$1,000,000	20-FTE 1-PT
Interment Services Inc.	825 Pioneer Trail San Marcos, Texas 78666	216 North Street San Marcos, Texas 78666	Gene Bagwell 1-512-517-3542	Sub S Corporation 100% Owned 1995-Texas	\$500,000	8-FTE
Premier Cemetery Service Corporation	826 Pioneer Trail San Marcos, Texas 78666	217 North Street San Marcos, Texas 78666	Gene Bagwell 1-512-517-3543	Sub S Corporation 100% Owned 2005-Texas	\$700,000	12-FTE 4-PT

(Item 6) Financial Statements

Financial statements of Mr. & Mrs. Gene Bagwell, InterCare Corporation, Interment Services Inc. and Maintenance Management for calendar years 2002, 2003 and 2004 are attached. (See Exhibits 1 & 2.)

(Item 7) Management Experience

See E. Prior Experience.

B. Part II – System Concept and Solution:

The City's stated objective:

“To provide the most efficient and economical cemetery service to the general public.”

- 1. It has been a priority of InterCare to operate and negotiate with the City in a manner that guides the cemetery program towards a self-funding operation.**

InterCare developed and implemented additional revenue generating activities to include:

- liner sales and monument setting**
- included revenues from maintenance fees in (GOR) associated with the Oakwood, Beth Israel section burial grounds**
- a 12 month, interest free, space sale time payment program was initiated in 1993 to provide citizens the opportunity to purchase pre-need burial property**

InterCare consistently negotiated favorable terms and conditions to mitigate or lessen subsidies:

- elected to reduce or waive annual RRE increase 6 of the 15 contract years averaging 2.5 % rather than the 3.5 % minimum as stipulated in the current contract**
- absorbed significant operating expense increases associated with fuel costs, utility costs (water, elect and drainage fee) and employee insurance costs.**
- contributed assistance, oversight and facilitated numerous onsite construction and enhancement projects (see specialized maintenance services below)**

These efforts have resulted in significantly lower annual subsidies and avoided a constant reduction of the Cemetery Perpetual Care Fund. The Fund has been able to consistently grow from interest accrual thus providing a funding source for future operational demands and perpetual care maintenance.

Subsidies by the COA for the 5 years prior to contracting with InterCare totaled \$1,501,799 as compared to \$136,138 for the 14 years under the InterCare contract. Its important to note that the subsidy total for the COA does not include expenses associated with other city department support such as equipment maintenance, facility maintenance, capital equipment purchases and city wide administrative support. InterCare costs include all management and operational costs.

While striving to keep costs down InterCare has contributed to a number of cemetery improvements and enhancements. See Specialized Services C. Part III-Program 1 below.

For expense / revenue details (See Exhibits 3 & 4.)

2. InterCare continually strives to provide and improve upon the quality of services provided to the City of Austin and its citizens. To that end InterCare has developed philosophies and created management and operational systems that are sensitive to and focused on Customer Service.

Mission

To be the premier provider of cemetery management services.

Our philosophy to business and the people we serve is simple...do what you say you'll do...do it when you say you'll do it...and do it to the best of your ability. Treat everyone with dignity and respect, recognizing we live in a diverse world.

Our approach to business is to create an option oriented, "turn key" operation, tailored specifically to the need of our customers. We recognize we serve both internal and external customers.

3. The importance of customer satisfaction is never more apparent than in times of conflict. The ability and willingness to deal with conflict is essential and best begun with a clear understanding of sound principles to guide interactions and decisions. To that end InterCare has adopted the following principles:

Conflict Resolution

Prompt-----address customer requests within 24-48 hours providing a recommended solution and timeline.

Professional--treat everyone with respect and dignity.

Personal-----interact with customers one-on-one developing a clear understanding as to whom they will communicate.

Binding-----once a decision is made, stick to it and follow through until resolution.

C. Part III – Program:

1. Basic and Specialized Maintenance Services

In addition to the provision of basic services (administration, sales activities, interment activities, grounds maintenance and monument setting) the contractor will continue to participate in the implementation of specialized services such as those done in the past. Projects and services include:

- Cemetery expansion projects i.e. Block. K Evergreen Cemetery, Block 6 Austin Memorial Park Cemetery and Temple Beth Shalom Austin Memorial Park Cemetery.
- Supervise, oversee, coordinate and assist with the abatement of lead based paint and asbestos flooring at Austin Memorial Park Cemetery headquarters and maintenance building including the replacement of deteriorated exterior siding, doors and windows. Construct and landscape an ADA compliant concrete ramp and walks to the public/administration office.
- Supervise, oversee, coordinate and assist in: reconstruction and landscaping 300' of a primary, concrete drainage channel at Oakwood Cemetery, installation of a 600' ground water collection drainage system on the western boundary of Austin Memorial Park Cemetery as well as installation of a ground water collection and conveyance channel in Block 4.
- Design and install a vegetative screen barrier for the equipment and maintenance compound at Austin Memorial Park Cemetery.
- Coordinate and assist with the removal and environmental cleanup of the City's onsite fueling station and installed Contractor's self-contained fueling equipment (Convault System).
- Supervise, oversee, coordinate and assisted with the removal of 30,000-cu.yds.of grave spoils accumulated by the City's Cemetery operation from the previous 40+ years.
- Trim ball moss from trees at Austin Memorial Park Cemetery during the dormant season (winter) 1990 to 1998.

2. Capital and Non-Capital Equipment List

InterCare Corporation and its affiliate companies, Interment Services Inc. and Maintenance Management have a combined Capital and Non-Capital Equipment inventory valued at over \$1,000,000. Equipment specifically assigned to accomplish this proposal include:

InterCare Corporation (ICC):

- (2) 1 ton crew cab trucks
- (1) 1 ton flat bed monument setting truck with 6,000 lb. capacity crane and outriggers
- (1) 1/2 ton extended cab truck
- (2) Kawasaki 4-wheel drive utility vehicles with dump bed
- (1) Ford 2810 Tractor with 917 H-72-inch flail mower & 5-ft. Rhino heavy-duty shredder
- (1) 20 ft. utility trailer
- (2) Scag commercial walk behind 52-inch mowers
- (4) Scag / Dane 52-inch / 61-inch commercial riding mowers
- (2) 21-inch commercial self-propelled mowers
- (6) Echo commercial string-line trimmers
- (3) Echo commercial backpack air blowers
- (3) Echo commercial hand held hedge trimmers
- (3) Echo chain saws
- (1) Echo gasoline powered pole saw
- (1) 4-cylinder gas powered heavy-duty air compressor with 90 lb. jackhammer and soil compactor
- (*) Assorted hand tools: mechanic, lawn care, building maintenance and house keeping
- (*) Communication equipment: Nextel 2 way radio/phone units
- (*) Office equipment: telephones, desktop computers, fax and copiers

Interment Services Inc. (ISI):

- (1) C6H10 GMC heavy-duty dump truck
- (4) 1 ton flatbed trucks
- (1) 1/2 ton extended cab truck
- (1) Kawasaki 4-wheel drive utility vehicle with dump bed
- (3) Bobcat X331 excavators with hydraulic rock breakers
- (2) Bobcat 753 skid steer loaders
- (1) Bobcat 773-T skid steer loader
- (3) Mustang/Amida 200series materials handlers, all wheel drive with dump beds
- (3) 22-ft. tilt bed heavy-duty trailers with custom fabricated burial equipment boxes
- (7) Burial Service Setups: tents, lowering devices, chairs w/covers, artificial grass and sidewalks
- (2) Cremain and Infant Burial Service Setups: lowering device and stands with skirts
- (3) Portable trash/water pumps
- (*) Assorted hand tools and materials: mechanic, lawn care, excavation, soil tamping, plywood sheeting
- (*) Communication equipment: Nextel 2 way radio/phone units

3. 5 Yr. Expense / Revenue Projection

Cemetery Operations Expense / Revenue Projection						
		Projected				
		2006	2007	2008	2009	2010
Expenses						
	Salaries	649,697	672,402	695,812	719,994	744,975
	Contracturals	444,234	447,894	451,719	455,670	459,751
	Commodities	95,794	98,955	102,221	105,594	109,079
	Total	\$1,189,725	\$1,219,251	\$1,249,751	\$1,281,258	\$1,313,805
Revenues						
	Space Sales	503,380	503,380	503,380	503,380	503,380
	All Open/Close	292,700	292,700	292,700	292,700	292,700
	Tent Set Ups	46,400	46,400	46,400	46,400	46,400
	Monument Settings	62,710	62,710	62,710	62,710	62,710
	Liner Sales	44,000	44,000	44,000	44,000	44,000
	Admin. Fees	23,445	23,445	23,445	23,445	23,445
	Other Services	4,305	4,305	4,305	4,305	4,305
	GOR	976,940	976,940	976,940	976,940	976,940
	Time Sales (AR)	(\$70,425)	(\$70,425)	(\$70,425)	(\$70,425)	(\$70,425)
	Adjusted GOR	\$906,515	\$906,515	\$906,515	\$906,515	\$906,515
	(Subsidy) / Rev. to COA	(\$283,210)	(\$312,736)	(\$343,236)	(\$374,743)	(\$407,290)

Expense Assumptions:

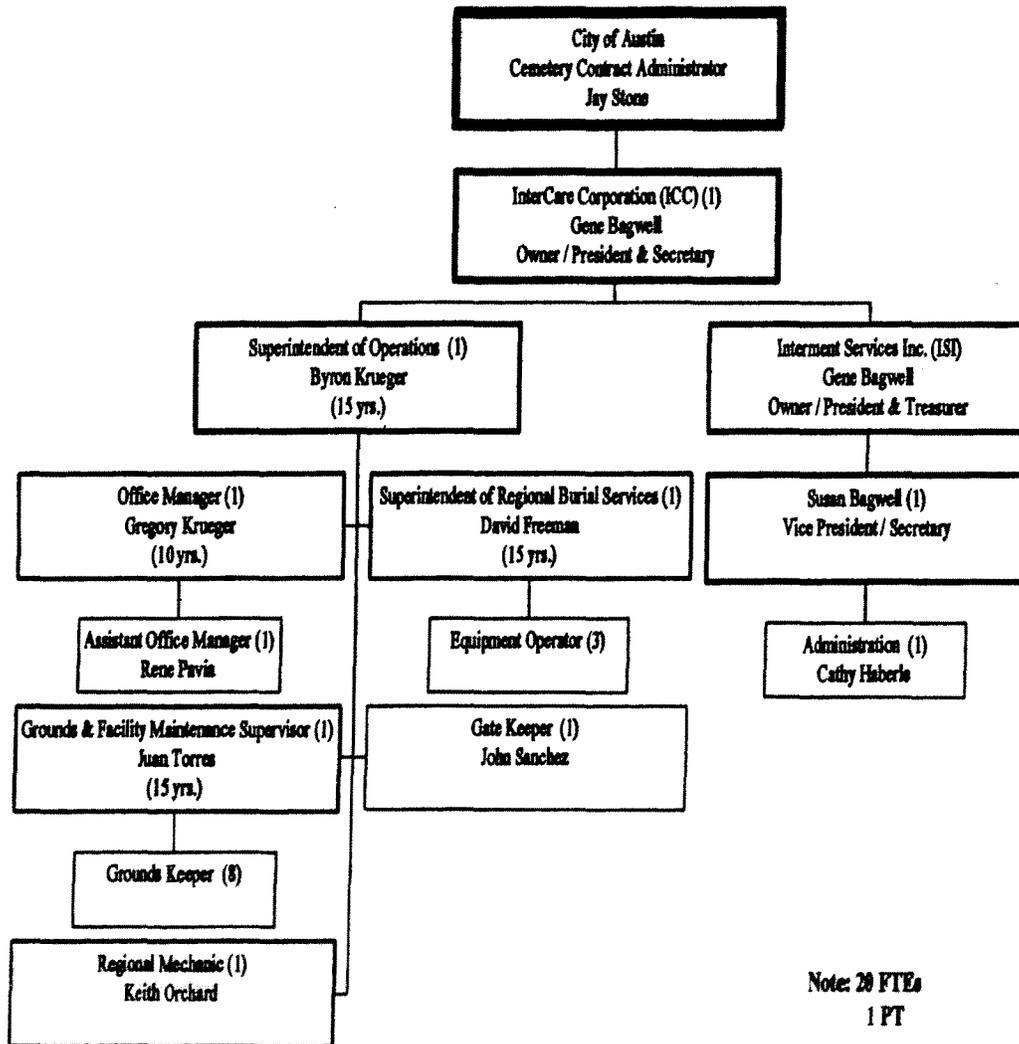
- (1) Per Adm. No. 2, Inflation based on Dec. 04 dollars and a CPI of 3.3 of the RRE.
- (2) Per direction at Pre-Proposal Conference Mtg., fees and charges for 2006-2010 are fixed at 2004 levels.
- (3) Salaries include Living Wage and Insurance Increases.
- (4) Contracturals include payment to subcontractor (SCP) and audit cost.

Revenue Assumptions:

- (1) Based on review of 2001-2004 actuals.
- (2) Based on approved 2004-05 Fees and Charges.

D. Part IV – Project Management Structure:

Leadership and Reporting Responsibilities InterCare Corporation Interment Services Inc.



E. Part V – Prior Experience:

We are in a unique position as a respondent in that each aspect of operations requested in the RFP is in service areas in which we have a long history of proven performance with in-house staff.

1. 25 years experience in managing Texas, Municipal cemetery operations.
2. Knowledge of laws and regulations that apply.
3. Existing resources (staff and equipment) available to support where needed any and all areas of operations.
4. Proven track record to recruit, train and manage staff.
5. Solid understanding of equipment needed to perform the tasks properly.

The following outlines experience related to cemetery operations for the past 25 years.

Management and Operational Experience:

Cemetery Operations:

City of Austin	15 years
City of San Marcos	25 years
City of New Braunfels	13 years
City of Lockhart	5 years
Hays County	8 years
Texas State Cemetery (Open & Closing Only)	5 years
Funeral Homes	25 years

Burial Services: 15 years

Municipalities
County (Hays)
Funeral Homes
Private Cemeteries

Grounds Maintenance: 25 years

Cemeteries
Industrial Complexes
Bank/Office Complexes
San Marcos ISD

Janitorial Services: 30 years

Industrial Complexes
Bank/Office Complexes
City of San Marcos Municipal Buildings

Public Relations: 25 years

City of San Marcos Cemetery Commission
City of New Braunfels Parks Advisory Board
City of Austin Parks and Recreation Advisory Board
Hays County Commissioners Court.

- Daily interaction with families, relatives and their outside service providers.
- Regular and as needed interaction with boards, commissions and citizen groups.
- Periodically coordinate and facilitate activities and programs involving radio, television and film, volunteer projects, ceremonial events and high profile interments.

Cemeteries operated in the last 25 years:

San Marcos City Cemetery (1)

San Marcos City Cemetery
Administrator: Rodney Cobb, Director, PARD
Mailing Address: 630 East Hopkins 78666 512-393-8400
Turn Key Operation
120 burials, 45 acres, currently active, 25 years of operation

City of Austin Municipal Cemeteries (5)

Austin Memorial Park, Oak wood, Oakwood Annex,
Evergreen and Plummers Cemeteries
Administrator: Jay Stone, Financial Services Division
Manager, PARD
Mailing Address: PO Box 1088 Austin Texas 78704
512-974-6712
Turn Key Operation
700 burials, 170 acres, currently active, 15 years of operation

City of New Braunfels (2)

Comal and New Braunfels Cemeteries
Admin: Stacy Laird, Director PARD
Mailing Address: 424 South Castell NB 78130
830-608-2160
Turn Key Operation
100 burials, 35 acres, currently active, 13 years of operation

City of Lockhart City Cemetery (1)

Lockhart City Cemetery

Admin. Vance Rodgers, Director Public W2243orks/Asst
City Manager

Bernie Rangel, Parks and Recreation/Maintenance Manager

Mailing Address: PO Box 239 Lockhart Tx 78644

512-398-6452

Grounds Maintenance Only

60 burials, 30 acres, currently active, 6 years of operation

Hays County Cemeteries (5)

San Pedro, San Marcos/Blanco, Guadalupe, Cementerio Del
Rio, Old Kyle Slave Cemetery

Admin: Cindy Maiorka, County Purchasing Agent

Mailing: County Court House 111 E San Antonio Street

512-393-2273

Debbie Gonzales Inglesby, Hays County Commissioner

512-333-2243

Mailing: County Court House 111 E San Antonio Street

(Grounds Maintenance Only)

30 acres, currently active, 10 years of operation

60 or more Private Cemeteries within a 50-mile radius of Austin

Burial Service requests from various Funeral Homes: Weed Corley
Fish, Cook Walden, Harrell, Mission, Beck, Austin Peel & Son,
Thomason

F. Part VI – Personnel:

Mr. & Mrs. Bagwell and the key staff of InterCare and Interment Services each have more than 10 years of actual experience in cemetery management and operations. Mr. Bagwell is actively involved in day-to-day operations of all the businesses. Mrs. Bagwell serves as the Chief Financial Officer responsible for administrative and accounting functions for all business concerns. Mr. Byron Krueger is responsible for managing and overseeing all on-site operations. Mr. Greg Krueger is responsible for all on-site office operations. Mr. David Freeman is responsible for all aspects of burial services. Mr. Juan Torres is responsible for all aspects of grounds and facility maintenance. Specific prior experience can be found in E. Part V-Prior Experience and as shown in the organization chart Section D Part IV.

G. Part VII – Non-Collusion, Non-Conflict of Interest, and Anti Lobbying:

1. Non-Discrimination Certification (See Exhibit 6)
2. Non-Suspension or Debarment Certification (See Exhibit 7)
3. Affidavit of Non-Collusion, Non-Conflict of Interest and Anti-Lobbying (See Exhibit 8)

H. Part VIII – Proposal Acceptance Period:

Contractor acknowledges that all terms and conditions of the proposal are valid for one hundred and twenty (120) days subsequent to the RFP closing date.

I. Part IX – Proprietary Information:

Contractor considers all personal and business financial information as proprietary, including but not limited to personal financial statements and corporate profit and loss statements.

J. Part X – Authorized Negotiator:

Gene Bagwell, 216 North Street, San Marcos, Texas 78666, 512-517-3542 is authorized to negotiate contract terms and render binding decisions on contract matters.

K. Part XI – Cost Proposal:

1. Financing:

InterCare Corporation and its affiliate companies, Interment Services Inc. and Maintenance Management have adequate and necessary Capital and Non-Capital Equipment, financial resources and staff to meet or exceed the needs of the contract.

2. Contract Payment and Retainage:

As outlined below, Contractor proposes to continue to apply existing Fees and Payment terms and conditions consistent with his existing management and operations agreement with the City of Austin. As shown below, Contractor proposes beginning October 1, 2005 the RRE will be \$894,725.

5.0 FEES AND PAYMENT

5.1 Definitions

- A. Gross Operating Receipts (GOR): The GOR for any accounting period is the sum of receipts received by Contractor for grounds maintenance and burial management services including, but not limited to, lot sales, interments and special service requests. The City will provide a list of services and prices, effective on Contract date.

-
1. **Adjusted (GOR):** The Adjusted (GOR) is the sum of Gross Operating Receipts less Accounts Receivable (AR) associated with Space Sale Time Payments.
-
- B. **Subcontractor payments (SCP):** The SCP is the payment Contractor makes to subcontractor calculated as a percentage of the sum receipts for each contract year for services related to interment activities. The SCP payment is set at 80% beginning October 1 2005 and will be annually negotiated. The percentage rate shall not be less that 80% nor greater than 93% during the initial term.
 - C. **Net Revenues Retained (NRR):** NRR is an amount derived by subtracting SCP from the Adjusted GOR, and is computed and reported quarterly.
 - D. **Retained Revenue Estimate (RRE):** The RRE is a negotiated forecast of NRR developed by the Contractor and approved by the City, determined for the ensuing 12 months, subject to the adjustment provided in Part 5.6 of this Contract. It is agreed that:
 1. for the fiscal year commencing October 1, 2005, the RRE will be developed and provided herein, but in any event, shall not be less than \$894,725; and
 2. thereafter, for each of the ensuing years of the Contract, RRE will be developed as provided herein, but for each year of the nine years period, the minimum RRE shall be an amount not less than the previous year's RRE (with such adjustments as may have been made) with adjustment by the current consumer Price Index (CPI); provided however, that such adjustment shall not be less than 3.3% nor more than 8%. The parties agree to negotiate in good faith concerning inflation adjustments in those years in which the CPI is less than 3.3% or greater than 8%. The CPI shall be the "Revised Consumers' Price Index" for all Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor and shall be calculated using October 1, 2005 as the base index.
 3. the parties may agree to no adjustments in the RRE so long as the amount is not less that the previous year's RRE (with such adjustments as may have

been made). Should the CPI be discontinued, the parties agree to substitute a similar index.

5.2 Payments to Contractor

The Contractor will be paid as follows:

A. The Contractor will be paid a Contractor's Fee calculated as follows:

1. The Contractor will collect all cash revenues generated by the operations of the cemeteries, referred to herein as the Gross Operating Receipts (GOR). After adjusting these revenues for accounts receivable (AR) the Contractor will:

(i) Pay the Sub-contractor the SCP payments, leaving the Contractor with the NRR:

(ii) From the NRR the Contractor pays all its cost of operating and maintaining cemeteries.

2. In the event that NRR is less than the Retained Revenue Estimate (RRE), an adjustment, in the form of a City payment to Contractor will be made calculated as follows:

(i) The City shall pay to the Contractor at the end of each contract year 100% of the deficit between the NRR and the RRE (with such adjustments as may have been made pursuant to Part 5.6 of this contract).

The amount will be paid to Contractor in accordance with the provisions of Section 32.1 of this Contract.

5.3 Budgets - RRE Estimates

A. Coinciding with the City's annual budget process, the Contractor will prepare for the City's review and action annual budget estimates in sufficient detail to facilitate the City's inquiry and consultation. The review will discuss capital improvements, lot expansion, gross and net revenues, operational mode and expense, sub-contractor payments, improvement plans and cemetery rules. The operating forecast will focus on development of the fiscal year's Retained Revenue Estimate (RRE),

projected for each quarter of the coming fiscal year. The budget will be (i) furnished in a timely fashion and (ii) in writing, with assumptions and comments accompanying the budget figures.

B. A final approved budget will be agreed upon on or before September 1, of each year.

*C. Contractor shall not be liable for cost of cemetery expansion, betterments or capital improvements that materially extend the life of the facilities. To the extent that such improvements have the potential to appreciably increase Contractor's net revenue, Contractor agrees to negotiate in good faith concerning participation in the cost of such improvements.

5.4 Contractor's Accounting

A. The Contractor shall prepare and maintain proper, accurate and complete books, records and accounts regarding the operation, financial and other transactions related to the cemeteries to the extent necessary to report on the operation and enable the City to verify data with respect to any aspect of the operation in which the City has a material interest under this agreement.

The Contractor shall prepare and submit to the City periodic reports of the operation with respect to receipts, disbursements, lot sales, lot inventory, interments and capital improvements on a frequency and in such detail as the City may reasonably request. Contractor shall report on revenues and all accountable items on a quarterly and annual basis. The Contractor will provide the City and its auditors, during normal business hours, and upon reasonable prior notice, access to the records to substantiate the Contractor's reporting and budgets.

B. The accounting and reporting system of the Contractor shall provide, in addition to traditional line item classification, a capability to separate the cost of operating and maintaining the cemeteries between those recurring costs known to be necessary to operate in 2005 (Controllable Costs); and, those costs (Non controllable Costs) that may occur during the term of this contract which are attributable to the action of third parties, such as (i) items attributable to change in law, (ii) force majeure items, (iii) legal costs where Contractor is joined because of this Contract, (iv) a change in the City-mandated standard of care for cemeteries, (v) changes in social security tax rates and worker compensation insurance rates, and (vi) City-controllable utility rate increases in excess of CPI.

5.5 Payments to City

Contractor shall pay to the City at the end of each contract year 100% of the excess revenues (NRR minus the RRE). No payment shall be made for any year in which the RRE is equal to or is less than the NRR.

5.6 Adjustments

A. If the Contractor experiences an increase in Non-controllable Cost, he may request an adjustment in the current year's RRE adequate to cover the entire year's cost increase. The City agrees to promptly confer with the Contractor and to negotiate in good faith to afford the Contractor an appropriate adjustment in the Contractor's Fee for the preceding quarter and for the remainder of the Contract year. The agreed-upon adjusted RRE will replace the RRE for the payment computation described in Section 5.2 (B).

B. Pursuant to Sec. 5.2 (B) the Contractor may, as set forth in Sec. 32.1, submit one or more quarterly invoices for a deficit in NRR (Net Revenues Retained), based on quarterly comparison of RRE and NRR. However, an annual re-statement and accounting for any payment paid or claimed, will occur at the end of the fiscal year or prorated portion thereof. Provisions of Section 5.2 (B) shall govern this accounting with appropriate adjustment made to bring the quarterly payments into agreement with this governing annual amount agreement.

3 Refer to 5 Year Expense / Revenue Chart, C. Part III-Program, Item #3.

4. 5 year Headstone Leveling Program

Oakwood and Oakwood Annex:

It was determined that due to the extent of need and the historic nature of restoration needed at the Oakwood and Oakwood Annex Cemeteries it is not feasible nor recommended that this type of work proceed without an extensive assessment by qualified historic preservationists. While restoration of this nature will be extremely expensive and time consuming, InterCare is willing to assist in long-range improvements of this type at these sites.

Austin Memorial Park, Evergreen and Plummers:

To establish a benchmark for computing scope of work, InterCare performed an assessment of Block 2 at Austin Memorial Park Cemetery, Section DB1 at Evergreen Cemetery and all of Plummers Cemetery to determine the extent of need to re-level and re-align existing grave markers throughout these 3 cemeteries.

- Assessment of the 3 sites (AMP, Evergreen & Plummers) indicates that approximately 70% of the existing grave markers are in need of attention.
- Taking into consideration marker size, type and condition and applying the current City approved fees it was determined that it would cost an average of \$168.25 per marker.
- Applying this rate to all the markers needing attention in the Austin Memorial Park Cemetery, re-leveling costs at AMP alone would be approximately \$2,114,030.

InterCare proposes to hire and train staff dedicated solely to re-leveling monuments at Austin Memorial, Evergreen and Plummers for an **annual fee of \$125,000 year one** (with subsequent years subject to an annual fee adjustment consistent with the base contract terms). Based on our assessed projected productivity rate of approximately 20 markers per day we believe we could complete all re-leveling needs at these 3 cemeteries in a 5 year period.

5. 5 year Ball Moss Removal Program

It is Mr. Bagwell's opinion that the ball moss removal process would be best achieved through the employment of a professional tree care company. Although InterCare is willing to perform the task in-house we believe because of the special needs of this work (specialty equipment, experienced staff, and brush disposal capabilities) the City would be better served by having the work done by a professional tree care company, especially if the City's objective is to have the project completed short term.

We suggest four possible options in descending order of recommendation:

- City of Austin contract directly and pay for this service with a professional tree care company. (InterCare will provide oversight and coordination at no expense to the City.) For your review is a proposal from Davey Tree Experts proposing costs per your format. (See Exhibit 5.)
- InterCare contract directly and pay for this service with a professional tree care company for an additional service fee of 10% of contractor's fee.
- InterCare continues to address the ball moss issue incrementally with available staff during winter dormancy (conditioned that the City assumes responsibility for removal of brush) at no additional cost to the City of Austin.
- InterCare Corporation hire, train and equip staff dedicated solely to ball moss removal and tree trimming for an **annual fee of \$171,600 year one** (with subsequent years subject to an annual fee adjustment consistent with the base contract terms).

L. Part XII - Supplemental Purchase Provisions

1. Insurance:

Contractor will provide all insurance in accordance with the stated specifications, 0400 Section 2.

2. Term of Contract:

It is the Contractors intent to fulfill the initial term and the two additional extension terms.

3. Living Wages and Benefits:

Contractor understands that he will be required to comply with the mandatory living wage rate and health benefits requirements as stipulated in the Supplemental Purchase Provisions 0400 Section 5.

Proposed Wages / Salaries and Benefits

Status Full-time (F) Part-time(P)	Job Title	Salary / Hourly Wage	List type of Company Health Insurance (e.g. medical, dental)	Workers' Compensatio n Insurance Coverage (yes, no)
FTE (1)	Supt. Of Operations	\$55,000 / Yr.	Health Policy Available	Yes
FTE (1)	Office Manager	\$45,000 / Yr.	Health Policy Available	Yes
FTE (1)	Assistant Office Manager	\$35,000 / Yr.	Health Policy Available	Yes
FTE (1)	Regional Mechanic	\$40,000 / Yr.	Health Policy Available	Yes
FTE (1)	Supt. of Grounds and Facilities Maintenance	\$35,000 / Yr.	Health Policy Available	Yes
FTE (8)	Grounds Keepers	\$10.00 / Hr.	Health Policy Available	Yes
PT	Gate Keeper	\$14.00 / Hr.	Not Available	Yes

4. Workforce Security Clearance and Identification (ID)

Contractor understands the need to comply with the Workforce Security Clearance and Identification (ID) as stipulated in the Supplemental Purchase Provisions 0400 Section 6.

M. Part XIII-References:

In addition to the listed references below, you will find attached letters of reference from funeral home operators. (See Attachments 1-7.)

Management and Operational References			
Client	Contact	Project Description	Project Dates
City of San Marcos	Rodney Cobb, Director, PARD 1-512-393-8400	45 acre 1-municipal cemetery	1980-Present
City of Austin	Warren Struss, Director, PARD 1-512-974-6717 Warren.Struss@ci.austin.tx.us Jay Stone, Asst. Director, PARD 1-512-974-6712 Jay.Stone@ci.austin.tx.us	170 acres 5-municipal cemeteries	1990-Present
City of New Braunfels	Stacy Laird, Director PARD 1-830-608-2160	35 acres 2-municipal cemeteries	1992-Present
Hays County	Cindy Miorka, County Purchasing Agent 1-512-393-2273 Debbie Gonzales Inglesby, County Commissioner 1-512-333-2243	30 acres 5-county cemeteries	1995-Present
City of Lockhart	Vance Rodgers Director Public Works, Asst. City Mgr. 512-388-6452	30 acres 1-municipal 1-cemetery	1999-Present
Financial References			
Wells Fargo, San Marcos Downtown Office 123 North Edward Gary Street		Don Nash Community Bank President john.d.nash@wellsfargo.com 1-512-753-3221	
Tex-Con Oil P.O.Box 18463 Austin, Texas 78760		Bob Stehling Operations Manager 1-512-444-1941	
C & M Pre-Cast Concrete Company P.O.Box 2144 Kerrville, Texas 78029		Bob Barker, Owner 1-830-367-5988	

**INTERCARE
CORPORATION**

**INCORPORATION DOCUMENTS
FINANCIAL STATEMENTS**

PROPRIETARY

**ARTICLES OF INCORPORATION
OF**

AUG 17 1990

Corporations Section

InterCare Corporation

ARTICLE ONE

The name of the corporation is **InterCare Corporation**.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the corporation is organized is the transaction of any or all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

The aggregate number of shares which the corporation shall have authority to issue is One Hundred Thousand (100,000) of the par value of One Dollar (\$1.00) each.

ARTICLE FIVE

The corporation will not commence business until it has received for the issuance of shares consideration of the value of One Thousand Dollars (\$1000.00) consisting of money, labor done or property actually received.

ARTICLE SIX

The street address of its initial registered office is 216 North Street, San Marcos, Texas 78666, and the name of its initial registered agent at such address is GENE BAGWELL.

ARTICLE SEVEN

The number of directors constituting the initial board of directors is one, and the name and address of the person who is to serve as director until the first annual meeting of the shareholders or until their successors are elected and qualified are:

GENE BAGWELL
216 North Street
San Marcos, Texas 78666

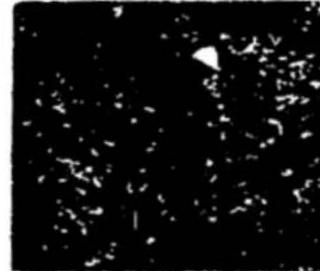
DAVEY TREE EXPERTS "Since 1880"

9224 Research Blvd.
Austin, TX 78758
(512) 451- 4986

Fax: (512) 451-6482

June 24, 2005

INTERCARE, INC.
Attn: Mr. Gene Bagwell
2800 Hancock Drive
Austin, TX 78731



RE: Tree Care Proposal- Various Cemeteries, Austin, Texas

Dear Mr. Bagwell:

I would like to thank you for the opportunity to provide our services and the inspection of the above-mentioned property. Listed in this report are tree care, *Crown Cleaning, Deadwood, (Ball Moss removal included)*, as outlined by the National Arborist Association, concerning the tree care as discussed.

NATIONAL ARBORIST ASSOCIATIONS STANDARDS...

Class II (Standard / Crown Clean) Prune: consists of the removal of deadwood down to one inch also any dying, diseased, interfering, objectionable, and weak branches, as well as pruning limbs up and away from over streets, driveways, buildings and parking areas. Deadwood up to one inch may remain only in the main leaf area, however, large Ball Moss clumps are removed and the trees' canopies are thinned to lessen wind resistance and to allow more sunlight to the ground cover...

- a.) All cut shall be made close to the trunk but also should be made without cutting into the "branch collar" and without leaving a protruding stub.
- b.) Branches should be properly undercut so there is no trunk or branch tissue splitting and peeling; where applicable there must be properly enforced "block-n- tackle" methods used.
- c.) Wounds must be treated and tools must be sprayed with disinfectant.
- d.) Insurance certificate must be mailed to the client before arriving on site; any potential hazards that are noted by crewmembers must be reviewed with client and the Davey rep.

Class II Standard Prune – all trees; Directional prune lower limbs upwards to allow natural growth upwards and to help provide a more aesthetic appearance. Remove broken, busted limbs, as well as, larger ball moss clumps, sucker growth, deadwood and declining branches...

I Austin Memorial Park, 2800 Hancock Dr.	COST: \$ 54,000.00
II Oakwood, 1601 Navasota	COST: \$123,400.00
III Oakwood Annex, 1601 Navasota	COST: \$ 94,880.00
IV Evergreen, 3304 E. 12th Street	COST: \$37,200.00
V Plummers, E. 12th and Springdale	COST: \$28,900.00

Return for yearly tree care maintenance to Prune and remove deadwood, ball moss clumps etc., as needed.

I Austin Memorial Park, 2800 Hancock Dr.	COST: \$ 18,000.00
II Oakwood, 1601 Navasota	COST: \$ 36,000.00
III Oakwood Annex, 1601 Navasota	COST: \$ 25,900.00
IV Evergreen, 3304 E. 12th Street	COST: \$ 11,770.00
V Plummers, E. 12th and Springdale	COST: \$ 8,750.00

Once again, I want to thank you for your time and the opportunity to visit the site that you are developing. I look forward towards the date in which we will work together; moreover, I am extremely impressed in the professional manner in which your staff operates. If you have any questions or comments please call me at- (512) 451-4986, or fax initialed approval to (512) 451-6482.

Sincerely,

Daniel Hunsicker,

Daniel Hunsicker, District Manager
 Certified Arborist #TX 0309
 International Society of Arboriculture
www.davey.com



CONTRACT FOR
THE MANAGEMENT AND OPERATIONS
OF
CITY OF AUSTIN CEMETERIES

SECTION I

STANDARD CONTRACT PROVISIONS

1.0 SCOPE OF WORK AND SPECIAL CONTRACT PROVISIONS

The Contractor shall conform to the Scope of Work and Special Contract Provisions as detailed herein and the Contractor's revised proposal as submitted. However, in the event any conflict should arise between the Contractor's proposal and this contract, the latter shall govern.

1.1 Title of Program

Management and Operation of City of Austin Cemeteries

1.2 Objective

The City of Austin's intent in contracting for management and operation of the cemeteries is to provide for a self-funded program, to continue or improve the quality of cemetery services available to the citizens of Austin, and to provide for the operation and maintenance of the cemeteries in perpetuity.

1.3 Scope of Work

1.3.1 Financial Capability

1.3.2 Operational Capability

Contractor's duties under this contract shall include the following:

- A. Administration - To include the execution and recording of all City-approved deeds of sale with the County and the management of information for property owners and interment location.
- B. Sales Activities - To include sale of interment spaces at Austin Memorial Park ("AMP") and Evergreen Cemetery to the general public and funeral homes. Contractor shall not unlawfully discriminate in the sale of lots.

- C. Interment Activities - To include space opening and closing, funeral set-up, and grave liner sales and installations.
- D. Grounds Maintenance - To include regular mowing, grave sinking, leveling of sunken graves, grass planting, litter control, minor repairs to irrigation systems, building maintenance, placement and removal of flowers, and, when possible, response to property owner requests.
- E. Monument Installation - To include site designation, layout, and installation.

1.4 Operation

Contractor shall diligently provide all labor, materials, superintendence, machinery, insurance, equipment, supplies and other incidentals necessary to provide general cemetery services and to assist funeral homes and oversee gravesite contractors prior to graveside services and to complete cleanup after services. Contractor shall act as cemetery caretaker and diligently and lawfully perform all duties pursuant to the existing rules and regulations established by the City of Austin for the operation of municipal cemeteries as specified in the following:

1.4.1 A. Basic Services to entail the following.

1. Opening and Closing of Cemeteries: Cemetery gates are to be opened at 8 a.m. and locked at 7 p.m. each day during daylight savings time. Gates shall be opened at 8 a.m. and locked at 6 p.m. during central standard time. The service shall be performed 365 days per year. At closing time, Contractor shall tour the grounds to ensure that all citizens are out of the cemetery before entrances are locked. Hours of operation to be subject to change by the City and shall be reviewed quarterly to ensure citizen satisfaction.
2. Caretaker Services - Contractor will maintain at least one full time on-site administrator Monday through Saturday 8 a.m. - 5 p.m. at AMP and at least one full time on-site supervisor Monday through Friday 8 a.m. - 5 p.m. at Oakwood. Contractor agrees to employ skilled and competent workers in the performance of this agreement.
3. Grave Plots - Grave plots are to be located and marked for excavation by the Contractor.

4. Showing of Lots for Sale - The Contractor will be responsible for showing cemetery lots for sale to citizens visiting the cemetery and assume the administrative responsibilities associated with cash sales of lots and burial services.
5. Clearing Gravesites - Gravesites where funeral services have been held, are to be cleared, sunk and leveled within 10 calendar days of services.
6. Clearing of Dead Vegetation - Fallen trees or tree limbs, dead vegetation and dead flowers are to be removed within fourteen (14) calendar days of their occurrence. Safety hazards shall be immediately corrected.
7. Clearing Live Vegetation - All small trees, overgrown shrubs and other plants growing near headstones, curbs or other objects that could be damaged shall be removed. Any small trees, overgrown shrubs and other plants which encroach on surrounding cemetery lots shall be cut back. The City will promptly provide all necessary permits required by contractor in order to perform these responsibilities.
 - 7a. Weeds - Weeds in gravel on gravesites shall be removed by mechanical or chemical means.
 - 7b. Brush - All brush cut by the contractor shall be stockpiled in an inconspicuous area until it can be removed by contractor. Removal shall be done within fourteen (14) calendar days of cutting.
8. Flying Flag - Where applicable, a United States flag shall be raised on the days listed below (weather permitting):

President's Day, Independence Day, Mother's Day, Labor Day, Memorial Day, Columbus Day, Flag Day, Columbus Day, Flag Day, Veterans Day, Father's Day.
9. Recordkeeping - All daily burial and ownership records are to be maintained by Contractor and shall comply minimally to current City of Austin standards.
10. Opening and Closing of Graves - Contractor shall retain ultimate responsibility for the performance of this agreement even if

performed under subcontract. All interment requests are to be completed upon 12 working hours notice, including coordinating schedules with funeral home and families.

11. Exclusivity - To the full extent allowed by law, Contractor has exclusive right to perform all services including lot sales, maintenance and interments for spaces sold after the effective date of the contract. Contractor may require reasonable fees and insurance of providers of services, including interments for spaces sold prior to and following the date of contract. Such fees and requirements shall be approved by the City.

B. Turf Care - This work shall include all labor, materials, superintendence, machinery, insurance, equipment, supplies, incidentals and services to maintain in superior condition all areas in the developed sections of the municipal cemeteries (to include sect. 6 - undeveloped - at AMP). The activities are to include but are not limited to the following: moving, edging, fertilizing, irrigating, and controlling insects, and planting of vegetation as required, and in compliance with section 1.4.7 below.

Contractor shall employ a full-time grounds maintenance crew consisting of at least nine employees as follows:

- 1 ea. Crew Supervisor
- 2 ea. Tractor and large equipment operators
- 3 ea. Medium duty equipment operators
- 3 ea. Small equipment operators

with first 3 positions all cross-trained crew to achieve turf maintenance responsibilities at all five cemeteries on a recurring cycle with anticipated frequency of not less than two complete cuttings per month.

C. Specialized Services - The Contractor agrees to be responsive to reasonable requests from private citizens with regard to attention or services requested above and beyond those provided all areas on a routine basis. Contractor will assist in the coordination of cemetery improvements and major repairs.

D. Contract Administrator - The Contractor agrees to pay 50% of the cost for a designated contract administrator for the initial four months of the

contract. Such period may be shortened or extended upon mutual agreement.

1.4.2 Contractor shall acquire all equipment necessary for the performance of this agreement and shall have such equipment available for the performance of Contractor's duties. Equipment to be acquired or available for use is listed in Attachment A.

1.4.3 Contractor shall review current administrative practices and shall provide system improvements where indicated to meet legal and management information requirements on a timely basis.

The Contractor presently administers a city-owned cemetery with a computerized records keeping system which may, in part, be adaptable to the requirements here. Examples of this system will be made available for review.

1.4.4 Beautification-Improvement-Expansion

The contractor shall cooperate in developing and implementing plans for improving the appearance of the cemeteries and expanding the space sale sections. Contractor's obligation's shall be subject to 5.3(c) below.

1.4.5 Competitive Pricing

The City is committed to a pricing policy that will allow a profit factor but which maintains a competitive and reasonable structure which allows Austin citizens affordable access to cemetery spaces and services.

1.4.6 Facilities and Equipment

Equipment and facilities permanently installed at each cemetery (i.e. buildings, irrigation systems) shall be available for use by Contractor, but shall remain the property of the City of Austin.

* The contractor shall provide routine maintenance and keep such equipment and facilities in good repair, normal wear and tear excepted, but shall not be responsible for major repairs.

Upon termination of this contract, all structures and/or equipment furnished by the City and/or their replacement improvements to the cemetery facilities shall become City property and shall be returned to the City in reasonable operating condition.

1.4.7 Maintenance Specifications

Maintenance standards shall be applied which call for moving and trimming to keep grounds in an aesthetically pleasing condition. The contractor agrees to maintain developed areas at City of Austin Mode II, except for restrooms at Mode I, and undeveloped areas at Mode III as described in the attached document (See Attachment B).

Contractor shall provide routine road repair for cemetery roads.

1.4.8 Utilities

All utility expenses including water, electrical, gas, sewer, and waste disposal required to operate the cemetery program will be borne by the contractor.

1.4.9 Fees

All changes in service and sales fees and any other fees associated with the cemetery program subsequent to this contract are subject to approval by the City Council.

1.4.10 Taxes

The contractor shall be responsible for all possessory interest taxes and all other licenses, fees and taxes which shall not be deducted from gross revenues. Any newly legislated tax imposed by the City of Austin that substantially affects the Contractor's net revenues retained entitle Contractor to an equitable adjustment.

* 1.4.11 Additions and Maintenance

The City of Austin shall be responsible for major infrastructure development to include roadway development; installation of complete new irrigation systems; platting, surveying, and laying out of new sections of cemetery land; major landscaping installations of new section development. Except as agreed to under the provisions of 5.3(c) below, Contractor shall be responsible for the maintenance and operation of any new additions to and continuing maintenance and repair of all cemetery facilities, properties, fixtures, plantings, furniture and related equipment, irrigation, plumbing, electrical, lighting, drainage and water flow systems. Major improvements to the cemeteries must be approved in advance by the City Manager or his designee.

1.4.12 Subcontracting

The contractor shall not subcontract any portion of the operation without written permission of the City of Austin.

1.4.13 Contract Bond

The contractor agrees to provide the City with a contract bond written by an insurance company authorized to do business in the State of Texas, in the amount of \$60,000 conditioned that the obligor therein will pay to the extent of the face amount of such bond all judgments, which may be recovered against contractor by reason of default, failure, or refusal of contractor to do and perform each and every, all and singular, at the time and in the manner specified, the promises, matters and obligations in this contract and shall pay over and make good and reimburse the City of Austin all expenses, losses and damages which said City may sustain by reason of any failure or default on the part of contractor, which bond shall be submitted to the City for approval within thirty (30) days from the date of notification of award of the contract.

2.0 TERM OF AGREEMENT

- 2.1 This Agreement shall be in effect from date of execution to September 30, 1995, unless terminated sooner as provided herein.
- 2.2 This Agreement may, however, be extended for two (2) five year periods, subject to written mutual agreement. Either party shall be entitled to request notice from the other of intent to extend or terminate the contract at least one-hundred-and-eighty (180) days before the expiration date hereof.
- 2.3 Upon expiration of the initial term or period of extension, Contractor agrees to hold over under the terms and conditions of this Agreement for such time as is reasonably necessary to resolicit, provided Contractor shall not be obligated to holdover more than 180 days. Contractor shall receive no less than the amounts due under the provisions of Section 3.4 below.

3.0 TERMINATION AND REMEDIES. CANCELLATION

- 3.1 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event a demand is made, and no assurance is given within 30 calendar days, the

demanding party may treat this failure as an anticipatory repudiation of the contract.

- 3.2 A party may terminate this Agreement if the other fails to cure a material breach which substantially impairs the value of the contract as a whole to the non-breaching party within 30 calendar days of receipt of written notice being given by the other party.

If more than 30 calendar days are required to cure such default or breach, a reasonable time in excess of said days may be established, provided both parties agree in writing as to the time period to be substituted. In the event such default or breach is not cured within a specified time, the Contract may be terminated upon 30 calendar days written notification.

- 3.3 In the event that the City terminates the agreement for convenience within the first 30 months of the initial term, the City agrees to pay contractor as liquidated damages \$3250.00 for each month remaining of the initial term not to exceed \$117,000. Should the City terminate this agreement for convenience after the first 30 months but prior to the last 12 months of the initial term, the City agrees to pay Contractor as liquidated damages \$1625.00 for each month remaining to be performed during the initial term of the contract. The City may terminate this agreement for convenience at any time during the last twelve months of the contract without payment of liquidated damages.

- 3.4 Should contractor and the City fail to agree on an adjustment to Retained Revenue Estimate (RRE) for Non-controllable Costs within a date (the Resolution Date) 45 days after the date contractor submits his adjustment request pursuant to Section 5.6(A) herein, contractor shall have the right to terminate the contract according to the following terms:

- A. Contractor shall continue to perform for an additional 180 days after the Resolution Date;
- B. Contractor shall receive all payments otherwise due Contractor for such performance;
- C. City shall also pay Contractor an additional amount equal to Contractor's Non-controllable Costs, as defined under Section 5.4B, for the last 180 days of Contractor's performance under the contract; and
- D. Contractor's obligations for further performance of the contract shall cease 180 days after the Resolution Date.

4.0 NEGOTIATIONS

Both parties reserve the right to have any additional terms and

conditions incorporated into the Agreement provided an authorized modification to the contract is mutually agreed upon and duly executed by both parties.

5.0 FEES AND PAYMENTS

5.1 Definitions

- A. Gross Operating Receipts (GOR): The GOR for any accounting period is the sum of receipts received by Contractor for grounds maintenance and burial management services including, but not limited to, lot sales, interments and special service requests. A list of services and prices, effective on Contract date, is appended hereto as Exhibit A.
- B. Sub-contractor Payments (SCP): The SCP is the payment Contractor makes to Sub-contractor for its services related to burials. SCP payments will not exceed 93% of the sum of receipts derived from interment services.
- C. Net Revenues Retained (NRR): NRR is an amount derived by subtracting SCP from GOR, and is computed and reported quarterly.
- D. Retained Revenue Estimate (RRE): The RRE is a negotiated forecast of NRR developed by the Contractor and approved by the City, determined for the ensuing 12 months, subject to the adjustment provided in Part 5.6 of this Contract. It is agreed that:
 - (i) from the date of this Contract through September 30, 1990, the RRE shall be \$38,667 per month or prorated portion thereof;
 - (ii) for the fiscal year commencing October 1, 1990, the RRE will be developed as provided herein, but in any event, shall not be less than \$485,000; and
 - (iii) thereafter, for each of the ensuing years of the Contract, RRE will be developed as provided herein, but for each year of the four year period, the minimum RRE shall be an amount not less than the previous year's RRE (with such adjustments as may have been made) with adjustment by the current consumer Price Index (CPI); provided however, that such adjustment shall not be less than 3.5% nor more than 8%. The parties agree to negotiate in good faith concerning inflation adjustments in those years in which the CPI is less than 3.5% or greater than 8%. The CPI shall be the "Revised Consumers' Price Index" for all Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor and shall be calculated

using October 1, 1990 as the base index.

- E. Initial Payment: \$60,000 paid by the City to the Contractor within 30 days of the date of the signing of this Contract.

5.2 Payments to Contractor

The Contractor will be paid as follows:

- A. The Contractor will receive an Initial Payment of \$60,000; and which may be conditioned for use solely for the maintenance and care of graves or lots and which expenditure shall be specially accounted for.

- B. The Contractor will be paid a Contractor's Fee calculated as follows:

- 1. The Contractor will receive all cash revenues generated by the operations of the cemeteries, referred to herein as the Gross Operating Receipts (GOR). From these revenues the Contractor will:

- (i) Pay the Sub-contractor the SCP payments, leaving the Contractor with the NRR;

- (ii) From which NRR the Contractor pays all its costs of operating and maintaining cemeteries.

- 2. In the event that NRR is less than the Retained Revenue Estimate (RRE), an adjustment, in the form of a City payment to Contractor will be made calculated as follows:

- (i) For any deficit in the RRE up to and including \$30,000 annually, the City will pay Contractor a sum equal to 50% of the deficit.

- ii) For any deficit in the RRE above \$30,000 annually, the City shall pay Contractor the difference, provided total payments by the City shall not exceed \$125,000 any one year, nor exceed \$300,000 over the course of the initial term.

The amount will be paid to Contractor in accordance with the provisions of Section 32.1 of this Contract.

5.3 Budgets - RRE Estimates

- A. Coinciding with the City's annual budget process, the Contractor will prepare for the City's review and action annual budget estimates in sufficient detail to

facilitate the City's inquiry and consultation. The review will discuss capital improvements, lot expansion, gross and net revenues, operational mode and expense, sub-contractor payments, improvement plans and cemetery rules. The operating forecast will focus on development of the fiscal year's Retained Revenue Estimate (RRE), projected for each quarter of the coming fiscal year. The budget will be (i) furnished in a timely fashion and (ii) in writing, with assumptions and comments accompanying the budget figures.

- B. A final approved budget will be agreed upon on or before September 1, of each year.
- C. Contractor shall not be liable for cost of cemetery expansions, betterments or capital improvements that materially extend the life of the facilities. To the extent that such improvements have the potential to appreciably increase Contractor's net revenue, Contractor agrees to negotiate in good faith concerning participation in the cost of such improvements.

5.4 Contractor's Accounting

- A. The Contractor shall prepare and maintain proper, accurate and complete books, records and accounts regarding the operations, financial and other transactions related to the cemeteries to the extent necessary to report on the operation and enable the City to verify data with respect to any aspect of the operation in which the City has a material interest under this agreement.

The Contractor shall prepare and submit to the City periodic reports of the operation with respect to receipts, disbursements, lot sales, lot inventory, interments and capital improvements on a frequency and in such detail as the City may reasonably request. Contractor shall report on revenues on a monthly basis for the first six (6) months, with a complete reporting of all accountable items on a quarterly and annual basis thereafter. The Contractor will provide the City and its auditors, during normal business hours, and upon reasonable prior notice, access to the records to substantiate the Contractor's reporting and budgets.

- B. The accounting and reporting system of the Contractor shall provide, in addition to traditional line item classification, a capability to separate the cost of operating and maintaining the cemeteries between those recurring costs known to be necessary to operate in 1990 (Controllable Costs); and, those costs (Non-controllable Costs) that may occur during the term of this Contract which are attributable to the action of third parties,

such as (i) items attributable to change in law, (ii) force majeure items, (iii) legal costs where Contractor is joined because of this Contract, (iv) a change in the City-mandated standard of care for cemeteries, (v) changes in social security tax rates and worker compensation insurance rates, and (vi) City-controllable utility rate increases in excess of CPI.

5.5 Payments to City

- A. Commencing October 1, 1990, the City of Austin shall be entitled to receive a portion of Excess NRR collected by the Contractor from October 1, 1990, through September 30, 1992. "Excess NRR" is defined as the amount by which the NRR for each year of said time period exceeds the adjusted RRE for each respective year. The City shall receive 40% of excess NRR for each such year, and the Contractor shall receive the other 60%. There shall be no revenue participation by the City for Revenues received before October 1, 1990, or after September 30, 1992.
- B. Commencing with the fiscal year beginning October 1, 1992, the Contractor shall pay to the City at the end of each fiscal year a payment equal to 3.5% of Gross Operating Receipts (GOR) up to annual receipts of \$1.0 million, and to 7.5% of any amount of GOR in excess of \$1.0 million annually; provided, however, that no such payment shall be made for any year in which the annual RRE is equal to or exceeds the annual NRR.

5.6 Adjustments

- A. If the Contractor experiences an increase in Non-controllable Costs, he may request an adjustment in the current year's RRE adequate to cover the entire year's cost increase. The City agrees to promptly confer with the Contractor and to negotiate in good faith to afford the Contractor an appropriate adjustment in the Contractor's Fee for the preceding quarter and for the remainder of the Contract year. The agreed-upon adjusted RRE will replace the RRE for the payment computation described in Section 5.2(B).
- B. Pursuant to Sec. 5.2(B) the Contractor may, as set forth in Sec. 32.1, submit one or more quarterly invoices for a deficit in NRR (Net Revenues Retained), based on quarterly comparison of RRE and NRR; however, an annual re-statement and accounting for any payment paid or claimed, will occur at the end of the fiscal year and the (i) initial \$30,000 and (ii) excess above \$30,000 annual amount provisions of Section 5.2(B) shall govern this accounting with appropriate adjustment made to bring the quarterly payments into agreement with this

governing annual amount agreement.

6.0 Travel Expense Review

N/A

7.0 FORCE MAJEURE

Neither party shall be held responsible for losses resulting if the fulfillment of any terms or provisions of this contract are delayed or prevented by any cause not within the control or anticipation of the party whose performance is interfered with and which said party is unable to prevent by the exercise of reasonable diligence or anticipation.

8.0 GRATUITIES

The City may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any City official or employee with a view toward securing favorable treatment with respect to the performing of this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

9.0 CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Agreement 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. The Contractor also certifies that his firm complies with the requirements of City of Austin Ordinance No. 720615-A, Non-Discriminatory Employment Requirements, adopted June 15, 1972.

10.0 INDEMNITY

Contractor undertakes to indemnify the City from any and all liability loss or damages the City may suffer as a result of claims, demands, costs, or judgments against it arising out of the Contractor's performance of this contract, for all activities which Contractor can control within the Scope of Work.

11.0 INSURANCE

The Contractor shall carry insurance in the following types and amounts for the duration of this contract and furnish

Certificates of Insurance as evidence thereof:

- 11.1 Statutory Workmen's Compensation
- 11.2 Comprehensive General Liability Insurance with minimum Bodily Injury combined single limit of \$500,000 for each occurrence and Property Damage limits of \$250,000 for each occurrence to include Premises - Operations, Broad Form Property Damage, Personal Injury and Contractual Liability coverage.
- 11.3 Automobile Liability Insurance for all owned, non-owned, and hired vehicles with limits for Bodily Injury of \$250,000 for each person and \$500,000 for each occurrence and Property Damage limits of \$250,000 for each occurrence.
- 11.4 Cemetery Professional Liability with minimum limit of \$250,000 to include errors and omissions in connection with the sale and transfer of Cemetery lots.

If the insurance policies are not written for the amount specified in 10.2 and 10.3 above, the Contractor is required to carry an Excess Liability insurance policy for any difference in the amounts specified. The Contractor shall be responsible for any deductible amounts stated in the policies.

The Contractor shall not commence work under this contract until he has obtained all required insurance and until such insurance has been reviewed by the City of Austin Purchasing Office.

The required insurance must be written by a company licensed to do business in the State of Texas at the time the policy is issued. In addition, the company must be acceptable to the City and all insurance (other than Workmen's Compensation) shall be endorsed to include the City as an additional insured thereunder.

The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled or reduced, restricted, or limited until 45 days after the City has received written notice as evidenced by return receipt of registered or certified letter. Certificates of Insurance shall contain transcripts from the proper office of the insurer, evidencing in particular those insured, the extent of the insurance, the location and the operations to which the insurance applies, the expiration date and the above-mentioned notice of cancellation clause.

The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, for the claims history of the industry as well as the Contractor.

12.0 CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the City (within two (2) working days after being notified) of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the names and addresses of the person, firm, corporation, or other entity making such claim or that instituted or threatened to institute any type of action or proceeding, the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the Legal Department and the affected City Department, P. O. Box 1088, Austin, Texas 78767.

13.0 LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

Contractor agrees that he shall be in compliance with all laws, statutes, and other governmental provisions prevailing during the term of this Agreement.

14.0 AUDITING REQUIREMENTS

Contractor shall maintain and make available during ordinary business hours for inspection, audit and/or reproduction by any authorized representative of the City or any other governmental agency, books, documents, and other evidence pertinent to the costs and expenses of this contract. This includes, to the extent such detail will properly reflect, all costs: direct and indirect costs of labor, material, equipment, supplies, and services and all other costs and expenses of whatever nature under the provisions of this contract. Facilities and operation are included as well.

15.0 ASSIGNMENT-DELEGATION

This contract shall be binding upon the parties, their successors, and assignees; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other. The City agrees to permit assignment of this contract to a duly formed corporation created and controlled by Contractor.

16.0 NOTICES

All notices under this contract shall be by registered mail. Effective date of such notice shall begin three (3) days after date of posting with the United States Postal Service with said notice being sent to last known address of recipient.

17.0 LIMITATION

18.0 CONFLICT OF INTEREST

Interest of all parties concerned: No officer, employee, or agent either elected or otherwise, of the City or of the Contractor or any other party who exercises any function or responsibility in connection with the planning or carrying out of any agreement shall have any personal financial interest, direct or indirect, in this contract, or receive any benefits accruing therefrom, other than regular employment or fee as agreed upon herein, nor shall any other person wherever connected, who has, or exercises any function or responsibility in connection with the Agreement have any personal financial interest, direct or indirect, in the contract or receive any benefits other than that accruing from compliance with this Agreement.

19.0 SEVERABILITY OF PROVISIONS

If any provision(s) of this contract is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties.

20.0 CHOICE OF LAW AND VENUE

Any causes of action arising under this Agreement shall be controlled by the laws of the State of Texas and venue shall be in District Court of Travis County, Texas.

21.0 CHANGES IN THE CONTRACT

22.0 CONTRACT ADMINISTRATOR

Manuel A. Mollinedo, Parks and Recreation Department, or his designee 1500 West Riverside Drive, Austin, Texas 78741, (512) 499-6717, will act as the contact point between the City and the Contractor and is designated the Contract Administrator.

23.0 RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

All reports, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence, and related material submitted by Contractor shall become property of the City upon receipt.

24.0 DELAYS

The City reserves the right to delay scheduled due dates if it is to the advantage of all concerned participating and at no extra cost to the Contractor.

25.0 COPYRIGHTS AND RIGHTS IN DATA

Where activities of the Contractor supported by this project produce original computer programs, writings, sound recordings, pictorial reproduction, drawings, or other graphical representation and works of any similar nature (the term computer program includes executable computer programs and supporting data in any form), the City of Austin has the right to use, and duplicate, the same for City business during the term of this Contract and any extensions thereof, but the City may not disclose same to others or allow others to use or duplicate same. If the material is copyrightable, Contractor may copyright same, but the City of Austin is granted a royalty-free, nonexclusive, and irrevocable right to reproduce and use such material, in whole or in part during the term of this contract and any extensions thereof.

26.0 PATENTS

All inventions, designs, improvements, and discoveries made or conceived by the Contractor during the term of this Agreement, which pertain or relate to the business of the City or to any experimental work carried on by the city, shall be owned exclusively by the Contractor. However, the Contractor will promptly inform and disclose to the City all such inventions, designs, improvement, and discoveries. The City shall have a nonexclusive royalty-free license to use such discoveries and inventions during the term of this contract and any extensions thereof.

27.0 MAINTENANCE OF RECORDS

All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of a project, whichever occurs first; except that records will be retained beyond the third year if an audit is in progress and/or the findings of a completed audit have not been resolved satisfactorily.

28.0 PUBLICATIONS

All published material and written reports submitted under this project must be originally developed material unless otherwise specifically provided in the contract document. When material, not originally developed, is included in a report, it shall have the source identified. This identification may be in the body of the report or by footnote. This provision is applicable when the material is in a verbatim or extensive paraphrase format.

29.0 PLACE AND CONDITIONS OF WORK

For the work that is to be performed principally at City of Austin offices, the City shall provide conference areas and other work space for Contractor employees, and shall provide data entry assistance, and special supplies, in reasonable quantities for use by Contractor personnel. Contractor personnel shall adhere to the City's established procedures relating to the use of facilities and equipment. The aforementioned contract manager shall be responsible for obtaining information for the Contractor, and shall arrange all appointments, meetings, and conferences between Contractor's staff and City personnel, and shall make available to Contractor personnel those items as are needed to acquaint Contractor's personnel with the City's established procedures.

30.0 PRIME CONTRACTOR RESPONSIBILITIES

The Contractor will be required to accept responsibility for all services set out in this contract. The City of Austin will consider the selected Contractor's named representative to be the point of contact with regard to contractual matters. The Contractor will be provided consultation time with management and operational personnel of each participating City department.

31.0 PERFORMANCE

Failure of a party to insist in any one or more instances upon performance of any of the terms and conditions of this contract shall not be construed as a waiver or relinquishment of the future performance of any terms and conditions, but the other party's obligation with respect to such performance shall continue in full force and effect.

32.0 INVOICES AND PAYMENTS

32.1 Within 15 days after the close of each quarter, the Contractor will submit to the City an accounting of the quarterly activity, including a comparison of NRR and RRE - and an invoice for the payment, if applicable. Such invoice shall be due and payable within 30 days of receipt by the City. (See Sec. 5.2(B) and 5.6(B))

32.2 Within 30 days after the close of any quarter, Contractor may submit a request for an adjusted annual RRE, based on increases in Non-controllable Cost (See Sec. 5.4 (B) and 5.6(A)). Any invoice for the prior quarter's adjustment will be paid within 30 days of receipt. The City's obligation is payable only and solely from funds available for the purpose of this contract. Lack of funds shall abate the City's payment obligation until such funds become available.

32.3 Attention is called to Section 9, Article VIII of the City Charter stating that no money shall be paid to any person, firm, or corporation who is in arrears to the City of Austin for taxes. Contractor will be notified of such delinquency.

32.4 Contractor shall mail its accounting and invoice to Accounts Payable, City of Austin, P.O. Box 2985, Austin, Texas 78765-2985. The City shall pay Contractor at 216 North Street, San Marcos, Texas 78666.

33.0 CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an 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 right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

34.0 NOTICE OF ANTI-APARTHEID ORDINANCE CITY OF AUSTIN ORDINANCE NO. 860904-S

The City of Austin (City) in accordance with its responsibilities as an equal opportunity employer to ensure that the City transacts its business with other equal opportunity employers has passed the above-captioned ordinance prohibiting contracting for the purchase of products, goods and services originating in South Africa or Namibia or from contractors who render professional services to South Africa or Namibia. Certain exceptions are noted in the ordinance and contractor is under an affirmative duty to notify City of its inability to conform with the ordinance so that an appropriate determination may be made by the City.

35.0 Contractor's role concerning collection of accounts is limited to providing personnel, location, and procedures to receive payments; provided, however, Contractor shall send an invoice and one late notice for billing purposes. For insufficient fund checks, Contractor shall only be required to deposit the check one additional time. Contractor shall have no responsibility for collection of past due accounts, for any billings after the initial billing and the one late notice to a customer, or for the charging, receiving, or calculation of any interest or late charge.

Contractor agrees to submit to the City of Austin Claims Division requisite documentation of non payment and evidence of Contractor's attempt to collect. Contractor agrees to be available to testify as to his or her actions should a lawsuit result.

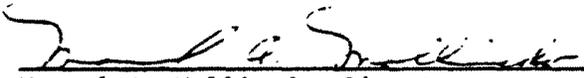
36.0 Contractor shall not be responsible for any claims, suits, and damages arising out of City activities concerning financing of

sales and collection of past due accounts.

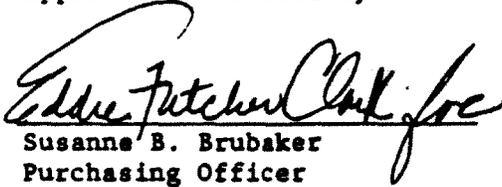
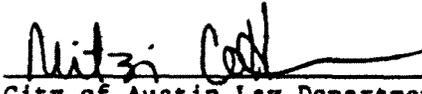
37.0 The contractor and Sub-contractor regard all financial statements as proprietary and not to be disclosed to third parties. In addition the terms of the sub-contract and service fee proposal are considered confidential and proprietary to the Contractor.

Executed August 23, 1990.

CITY OF AUSTIN

Approved By: 
Manuel A. Mollinedo, Director
Parks and Recreation Department

Approved as to Form by:

 
Susanne B. Brubaker
Purchasing Officer
City of Austin Law Department

By: 
Alicia Perez
Assistant City Manager

GENE BAGWELL (DBA MAINTENANCE MANAGEMENT)



ASSIGNMENT

For valuable consideration, I hereby assign all my rights and obligations concerning a contract (Contract for the Management and Operations of City of Austin Cemeteries) with the City of Austin signed on August 23, 1990, to manage and operate the city's cemeteries to InterCare Corporation, a Texas corporation.

SIGNED this 23rd day of August, 1990.

Gene Bagwell
GENE BAGWELL, Contractor

ACCEPTANCE

InterCare Corporation hereby accepts this assignment and all Contractor's obligations under said contract.

SIGNED this 23rd day of August, 1990.

InterCare Corporation
by Gene Bagwell
GENE BAGWELL, President

CONSENT

The City of Austin consents to the above assignment and agrees to look solely to InterCare Corporation for fulfillment of the terms of the Contract and for liability as Contractor for any breach thereof.

SIGNED this 23rd day of August, 1990.

CITY OF AUSTIN
by Alicia Perez
ALICIA PEREZ
Assistant City Manager

Attachment A

Page 1

Equipment to be acquired:

List I

\$17,375	o	Ford 2910 LCG Tractor with 917 H-74" flail mower
19,898	o	Two #1220 Ford Tractors with 60" belly mower
13,000	o	One pick-up truck

List II

13,000	o	One pick-up truck
1,200	o	Utility trailer
10,400	o	Two four Wheel ATV
9,000	o	Three Commercial Walk Behinds
3,000	o	Four 21" push mowers
2,600	o	Six Commercial Line Trimmers
2,300	o	Two Commercial Hedge Trimmers
8,000	o	Two Commercial Air Blowers
800	o	Two Commercial Chain Saws
500	o	Hand Tools

\$101,073

In addition, for unusual work conditions or emergencies, the Austin operation has access to its sister company equipment in San Marcos, Texas that comprises a more extensive listing than that detailed above, including dump truck, front end loader, various vehicles and tractors. In the event of non-renewal of this contract after the initial term, contractor agrees to donate to the City the equipment designated under List II.

Sub-Contractor Equipment:

A. Austin Memorial Park

1. Two backhoes with hydraulic ram attachments.
2. One 30 hp tractor for pulling trailer.
3. One concrete liner installation trailer.
4. Two 2 yard dirt trailers
5. Two trailers for tent setups.
6. One 1 ton truck for cemetery use.
7. One 6 yard dump truck for dirt removal from cemetery grounds.
8. One dirt compactor to settle graves.
9. One air compressor and jackhammer.
10. All necessary hand tools, such as, picks, shovels, rakes, hammers, etc. for operation.

Attachment A

Page 2

B. Oakwood Annex, Oakwood, Evergreen, Plummers

1. One backhoe.
2. One concrete liner trailer.
3. One cemetery set up trailer.
4. One 6 yard dump truck.*
* "To be used at both locations."
5. Dirt compactor to settle graves.

D & M Services will provide necessary tents, grass, chairs, and lowering devices as needed for completion of tent setups.

D & M Services also has access to the following equipment in its current fleet:

1. Seven backhoes
2. Seven dump trucks (six 6 yard and one 12 yard)
3. Seven cemetery setup trailers.
4. Seven complete cemetery tent setups.

Grounds Maintenance Standards

Written standards are necessary to establish common bench marks to assist Management in making consistent administrative decisions, Supervision in effectively directing resources and Technicians in understanding maintenance program goals and objectives.

To facilitate the implementation of a city-wide standard maintenance classification system, grounds maintenance standards are classified into four service levels or Modes.

Mode I identifies a preventive posture in approaching an overall maintenance program. This condition is ideal and preferred, but practicalities of fiscal restraints and conflicting priorities necessitate a compromise. Therefore, three additional Modes reflecting a corrective, scheduled and natural perspective are identified and considered appropriate.

It is important to note that different areas of a single site can be maintained at varying levels of quality. For example, the Austin Area Garden Center and Barton Springs Pool in Zilker Park should receive maintenance at the Mode I level, but the large open play fields around Rock Island can appropriately be maintained at Mode II. Additionally the frequencies and numeric standards identified for each maintenance activity serve as a common framework around which individual programs can be tailored.

State of the art maintenance level. This level dictates a preventive posture in scheduling grounds maintenance activities. Associated with designated areas in highly used urban locations such as public buildings, administrative offices, libraries, museums, recreation/leisure centers, swimming pools, sport complexes, and other select parkland.

1. Turfcare - Grass height maintained according to species and variety of grass, typically 1½"-3". Mowed every 5-10 calendar days, but maybe as often as 2 to 3 times per week, such as golf greens and competitive sport sites. Avoid removing more than 1/3 of top growth per mowing. Trim every cycle, deep edge every 3rd cycle. Aerification of heavily used areas 1 time every 3 months, all others twice per year. Reseeding or sodding done promptly on bare spots; recommend hulled bermuda at 3 lbs. per 1,000 sq. ft. Overseed high use areas in fall with 6 lbs. per 1,000 sq. ft. winter rye and 3 lbs. per 1,000 sq. ft. bermuda (or preferred warm season grass seed) in late spring. Weed growth controlled with pre and post emergent selective herbicides.
2. Floral Plantings - Emphasis on color displays in all seasons. Multiple plantings are typical. Maintenance ensures no diseased or dying materials exist.
3. Tree and Shrub Care - Trimming and pruning done as dictated by species and desired shape. Fertilize specimen or selected trees and shrubs individually, minimum 1 time per year. Remove diseased and damaged material immediately upon discovery.
4. Fertilizing - Apply high nitrogen ratio fertilizer in spring and balanced ratio fertilizer in fall to turf areas. For ornamental shrubs, trees and bedding plants, apply higher phosphorous ratio fertilizer at appropriate time to stimulate flowering. Application of trace elements when required.
5. Insect and Disease Control - Daily inspections for insect/disease problems. Preventive posture in application of fungicides and insecticides.
6. Watering - Irrigate all areas 1-3 times per week to maintain lush growth. Automatic sprinkler systems predominate, some manual systems where necessary.
7. Restrooms - Cleaned and sanitized daily unless demand dictates a higher frequency. This function will receive highest level of attention.
8. Litter Removal - Collected and removed daily unless demand dictates a higher frequency. Monitor odor of collection sites. Done in conjunction with restroom cleaning cycle.
9. Lighting - Inspect daily, replace inoperative bulbs and fixtures immediately. On athletic fields and sport courts provide intensity minimums of: ballfields - 30/20 foot candles, tennis courts - 30 foot candles.

10. Surfaces - All structural surfaces will be inspected daily, needed repairs will be initiated within 24 hours. Hard surfaces such as roadways, parking lots, patios, walks and sport courts will be swept, cleaned and if necessary washed so that at no time does sand, dirt, or vegetative debris accumulate. Graffiti will be removed within same day of discovery.
11. Inspection - All areas are to be inspected daily.
12. Repairs - Repairs are to be done immediately upon discovery provided needed materials and technicians are available. Emphasis to avoid disruption of intended use or function.

Mode III

Maintenance appropriate for minimally developed parkland, city owned surplus properties, alleyways, unimproved street right-of-ways and drainageways including retention/detention ponds. This level of grounds maintenance dictates a scheduled approach. Maintenance will be postponed until necessary resources are available, i.e., materials and staff.

1. Turfcare - Typically native grass species. Mowed once every 22-42 calendar days, height maintained less than 18" with consideration given to wildflower establishment. Selected trimming done every cycle. Aeration done in areas prior to wildflower seeding. Seed selected sites with wildflower mix in fall.
2. Floral Planting - Emphasis on native plant material such as wildflowers and other low maintenance varieties
3. Tree and Shrub Care - Trimming and pruning done 1 time per year. Always eliminate unsafe conditions.
4. Fertilizing - Not recommended.
5. Insect and Disease Control - Application of fungicides and insecticides to eliminate damaging insect infestations or to control serious disease pathogens.
6. Watering - Manually water selected and remote sites as necessary to establish new or introduced plantings. Rely on seasonal rainfall, typically no irrigation systems.
7. Restrooms - Typically non-existent. However self sustaining facilities may exist in primitive sites. Servicing to be done 1 time per week minimum.
8. Litter/Debris Removal - Collected and removed 1 time every 4-6 weeks. Typically these areas receive concentrated clean-up effort during scheduled winter maintenance program.
9. Lighting - Where lighting exists, effect repairs within 72 hours. Provide lighting minimums same as Mode II.
10. Surfaces - All structural surfaces will be inspected monthly. Needed repairs will be initiated when resources are available. Hard surfaces will be cleaned every 3-6 weeks. Graffiti will be removed within 4-6 weeks unless nature of graffiti dictates otherwise.
11. Inspection - Inspect areas monthly.
12. Repairs - Schedule repairs when materials and technicians are available. Typically done during winter months or non-season/program times.

Mode IV

~~Grounds maintenance appropriate for natural or undeveloped parkland, rural surplus city property and utility right-of-ways. Maintenance is very minimal and will typically be performed 1-2 times per year to address health and safety standards.~~

1. Turfcare - Native grasses predominate. Mowing limited to maintaining health and safety standards.
2. Floral Planting - Not recommended.
3. Tree and Shrub Care - Pruning and trimming done to eliminate safety concerns.
4. Fertilizing - Not recommended.
5. Insect and Disease Control - Typically not recommended.
6. Watering - Dependent upon natural rainfall.
7. Restrooms - Typically non-existent.
8. Litter/Debris Removal - Collected and removed 1-2 times per year, concentrated clean efforts during scheduled winter maintenance program.
9. Lighting - Typically non-existent.
10. Surfaces - Generally limited to gravel roads and grass covered open spaces utilized for periodic inspection and security monitoring.
11. Inspection - Inspect areas every 3-4 months and in response to citizen complaints.
12. Repairs - Development very minimal. Repairs limited to maintain integrity of security and perimeter control measures.

FIRST EXTENSION AGREEMENT

RECITALS:

The City of Austin and Intercare Corporation are parties to that certain "Contract for the Management and Operation of City of Austin Cemeteries" executed August 23, 1990 for an initial term to expire September 30, 1995.

The parties desire to extend the above-referenced agreement at this time to allow Intercare Corporation sufficient time to secure the services of a new subcontractor.

The parties having reserved the right to modify the agreement, desire to specify additional terms.

TERMS:

The City of Austin (City) and Intercare Corporation (Contractor) agree as follows:

1. The term of the agreement is extended to September 30, 2000 unless sooner terminated as provided in the agreement.
2. Part 1.4.1.A.2. ("Caretaker Services") shall read as follows:
Contractor will maintain at least one full time on-site administrator Monday through Saturday, 8a.m. -4:30 p.m., at Austin Memorial Park and at least one full-time on-site supervisor Monday through Friday, 8 a.m. - 4:30 p.m., at Oakwood Cemetery. Contractor agrees to employ skilled and competent workers in the performance of this agreement.
3. Part 1.4.1 A.5. ("Clearing Gravesites") is amended to add:
Graves are to be revegetated within 30 calendar days.
4. Part 1.4.7 ("Maintenance Specifications") shall read as follows:
Maintenance standards shall be applied which call for mowing and trimming to keep grounds in an aesthetically pleasing condition. The Contractor agrees to maintain developed areas at City of Austin Mode II, except for turf mowing, edging and trimming to be performed every 7 - 14 calendar days but no more than 36 complete cycles per contract year; restrooms maintained at Mode I; and undeveloped areas at Mode III as described in Attachment B.

Contractor shall provide routine road repair for cemetery roads.

5. Part 1.4.13 is deleted.

6. Part 5.1.B. shall read as follows:

Subcontractor payments (SCP): The SCP is the payment Contractor makes to subcontractor calculated as a percentage of the sum receipts for each contract year for services related to interment activities. The SCP payment is set at 80% beginning October 1, 1994 and will be annually negotiated. The percentage rate shall not be less than 80% nor greater than 93% during the extension term.

7. Part 5.1.D. is amended to add:

(iv) the parties may agree to no adjustment in the RRE so long as the amount is not less than the previous year's RRE (with such adjustments as may have been made). Should the CPI be discontinued, the parties agree to substitute a similar index.

8. Part 5.5.B. shall read as follows:

Effective October 1, 1995, Contractor shall pay to the City at the end of each contract year the greater of (1) 50% of excess revenues (NRR minus RRE) or (2) 3.5% of GOR up to annual receipts of \$1.0 million, and 7.5% of any amount of GOR in excess of \$1.0 million annually; provided that no payment shall be made for any year in which the RRE is equal to or exceeds the NRR.

9. Part 14. is amended to add:

The City agrees to cooperate with Contractor to protect the confidentiality of proprietary business information furnished to the City.

10. Part 18. is amended to add:

Nothing herein shall prevent any officer or employee of the Contractor from owning shares of the Contractor or any subcontractor, with all rights appurtenant thereto.

11. Part 37. shall read as follows:

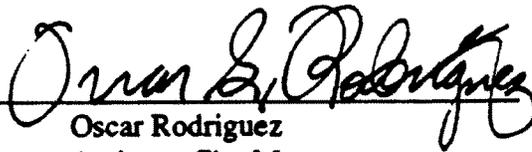
The City agrees to protect Contractor's proprietary information to the extent permitted by law and as may be determined by the Attorney General under the Texas Open Records Act (Chapter 552, Texas Government Code).

12. All other provisions of the agreement remain in effect except as modified herein.

EXECUTED March 29, 1995.

City of Austin:

By



Oscar Rodriguez
Assistant City Manager

Intercare Corporation:

By



Gene Bagwell
President

Approved as to form:


Assistant City Attorney

SECOND EXTENSION AGREEMENT

Contract for the Management and Operation of City of Austin Cemeteries

RECITALS:

The City of Austin and Intercare Corporation are parties to that certain "Contract for the Management and Operation of City of Austin Cemeteries" executed August 23, 1990 for an initial term to expire September 30, 1995 and the First Extension Agreement dated March 29, 1995 to expire September 30, 2000.

The parties desire to extend the above referenced Contract including and as amended by the First Extension Agreement for a Second Five (5) Year Extension Term to expire September 30, 2005 unless sooner terminated in the agreement.

The parties having reserved the right to modify the agreement desire to specify additional terms.

TERMS:

The City of Austin (City) and Intercare Corporation (Contractor) agree as follows:

1. The term of the agreement is extended to September 30, 2005 unless sooner terminated as provided in the agreement.
2. Part 1.4.1.A.5. shall read as follows:
Within ten (10) calendar days of initial opening and closing, graves are to be cleared, sunk and leveled. Within twenty (20) calendar days following initial leveling, perform a follow-up leveling and re-vegetate.
3. Part 1.4.1.A. 6. shall read as follows:
Dead trees and limbs, dead vegetation and dead flowers shall be cleared during each mow cycle. Clearing shall be done no less than once every fourteen (14) calendar days. Safety hazards shall be immediately corrected.
4. Part 1.4.1.A.7. is amended to add:
Undesirable vegetation in or near headstones, curbs, fence lines, and other objects shall be cleared during each mow cycle by chemical or mechanical means. Clearing shall be done no less than once every fourteen (14) calendar days. Safety hazards shall be immediately corrected.
5. Part 1.4.1.A.7.a. shall read as follows:
Weeds and other undesirable vegetative growth in gravel roads, gravel pads, walkways, sidewalks, retaining walls and fence lines shall be removed by mechanical or chemical means during each mow cycle, but no less than once every fourteen (14) calendar days.

SECOND EXTENSION AGREEMENT

Contract for the Management and Operation of City of Austin Cemeteries

6. Part 1.4.7 shall read as follows:

Maintenance standards shall be applied as specified in City of Austin Mode I, II and III. The Contractor agrees to maintain developed areas at Mode II except; turf mowing, edging and trimming to be performed once every 7-14 calendar days but no more than 36 complete cycles per contract year; restrooms maintained at Mode I; and undeveloped areas at Mode III. (See Attachment B) Contractor shall provide routine road repair for cemetery roads.

7. Part 3.0 is amended to add:

3.5 At the end of the term of the extension agreement or any portion there of, the following shall govern the accounting of receipts:

- A. Contractor shall update and provide to the City all records, receipts and other documentation related to the Cemetery Operation. Documentation shall include an accounting of all revenues generated, collected and due.
- B. Contractor shall provide to the City an accounting of all accounts receivable in sufficient detail to determine the Contractor's Annual RRE. In the event of a partial year, the accounting of the RRE shall be prorated and determined by the number of completed calendar days.
- C. Following the reconciliation of the Annual RRE or portion there of, the Contractor agrees to remit and or make payable to the City all remaining revenues and accounts receivable including time sales.
- D. Contractor agrees to cooperatively work with the City in providing for a transition transferring final revenues including accounts receivable and time sales to the City.

The transition:

- (i) The Contractor will send two (2) written notifications to all accounts receivable customers by general mailing.
 - (ii) The notifications will be made during the first and last months of the last quarter of the contract term. In the event the contract is terminated sooner than term, notification will be made the first and last month of the last ninety (90) day period.
 - (iii) The notification will state that remaining payments will be made payable to the City of Austin at an address designated by the City of Austin.
 - (iv) The effective date of the transition will be the term of the contract (September 30, 2005) or earlier as provided for in the agreement.
- E. The Parties reserve the right to negotiate in good faith the continued collection and accounting of all remaining revenues associated with accounts receivable including time sales by the Contractor. This arrangement would be by agreement and be negotiated as an additional service for a fee.

SECOND EXTENSION AGREEMENT
Contract for the Management and Operation of City of Austin Cemeteries

8. Part 5.1.B. shall read as follows:

Subcontractor payments (SCP): The SCP is the payment Contractor makes to subcontractor calculated as a percentage of the sum of receipts for each contract year for services related to interment activities. The SCP payment shall be set at 80% effective October 1, 2000 and shall be annually negotiated. The percentage rate shall not be less than 80% nor greater than 93% during the extension term.

9. Part 5.1.C. shall read as follows:

Net Revenues Retained (NRR): NRR is an amount derived by subtracting SCP from GOR as adjusted for time sales, and is computed and reported quarterly.

10. Part 5.1 D. (i) is deleted.

11. Part 5.1 D. (ii) is deleted.

12. Part 5.1 D (iii) shall read as follows:

for each of the ensuing years of the contract, the RRE will be developed as provided herein, and the minimum RRE shall be an amount not less than the previous year's RRE (with such adjustments as may have been made) with adjustment by the current Consumer Price Index (CPI); provided however that such adjustment shall not be less than 3.5% nor more than 8%. The parties agree to negotiate in good faith concerning inflation adjustments in those years in which the CPI is less than 3.5% or greater than 8%. The CPI shall be the "Revised Consumer's Price Index" for all Urban Consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor and shall be calculated using October 1, 1990 as the base index.

13. Part 5.1.D. (iv) shall read as follows:

the parties may agree to no adjustment in the RRE so long as the amount is not less than the previous year's RRE (with such adjustments as may have been made pursuant to Part 5.6 of this contract).

14. Part 5.2.B.1 (i) shall read as follows:

Commencing October 1, 2000, the City shall pay to the Contractor at the end of each contract year 100% of the deficit between the NRR and the RRE (with such adjustments as may have been made pursuant to Part 5.6 of this contract).

15. Part 5.2.B. (ii) is deleted.

16. Part 5.5.B. shall read as follows:

Commencing October 1, 2000, Contractor shall pay to the City at the end of each contract year 100% of excess revenues (NRR minus the RRE). No payment shall be made for any year in which the RRE is equal to or is less than the NRR.

SECOND EXTENSION AGREEMENT

Contract for the Management and Operation of City of Austin Cemeteries

17. Part 5.6.B. shall read as follows:

Pursuant to Sec. 5.2.B. the Contractor may, as set forth in Sec. 32.1, submit one or more quarterly invoices for a deficit between the NRR and the RRE, based on a quarterly comparison of the NRR and the RRE. However, an annual re-statement and accounting for any payment paid or claimed, will occur at the end of the fiscal year or prorated portion thereof. Provisions of Sec. 5.2.B. shall govern this accounting with appropriate adjustment made to bring the quarterly payments into agreement with this governing annual amount agreement.

18. Part 5.6. is amended to add:

D. Both parties agree that adjustments to the RRE may be made for additional services performed by the Contractor.

19. Part 22.0 shall read as follows:

The Director of the Parks and Recreation Department or his designee located at 200 South Lamar Blvd. Austin Texas, 78704, will act as the contact point between the City of Austin and the Contractor and is designated the Contract Administrator.

20. Part 32.4 shall read as follows:

Contractor shall deliver or mail its correspondence, accounting and invoice:
Attention To: Cemetery Contract Administrator
200 South Lamar Blvd.
Austin, Texas 78704.

All other provisions of the original agreement and the first extension agreement remain in effect except as modified herein.

Executed September 1, 2000

Executed by:


Jesus M. Olivares, Director
Parks and Recreation Department


Gene Bagwell, President
Intercare Corporation

Approved as to Form by:


Raul Calderon, Asst. City Attorney
Law Department

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS (RFP)**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **Explanations Or Clarifications** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office via e-mail to steve.aden@ci.austin.tx or by FAX to the buyer at (512) 974-2388 by June 16, 2005.

2. **Insurance** (reference paragraph 32 in Section 0300). Insurance is required for this proposal.

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

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

i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

(1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Form WC 420304
- (b) Thirty (30) days Notice of Cancellation, Form WC 420601

ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A and B.

(1) The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- (b) Independent Contractor's Coverage.
- (c) Products/Completed Operations Liability for the duration of the warranty/period.
- (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).

(2) The policy shall also include these endorsements in favor of the city of Austin:

- (a) Waiver of Subrogation, Endorsement CG 2404
- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205
- (c) The City of Austin listed as an additional insured, Endorsement CG 2010

iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

(1) The policy shall include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, Endorsement TE 2046A
- (b) Thirty (30) days of Notice of Cancellation, Endorsement TE 0202A

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS (RFP)**

(c) The City of Austin listed as an additional insured, Endorsement TE 9901B

iv. Endorsements: The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

C. The Contractor shall provide a Certificate of Insurance with the types and amounts of coverage and the endorsements required herein within 14 calendar days of notification of award, unless otherwise specified.

D. The Certificate of Insurance, and annual updates, shall contain the solicitation number and the Buyers name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Stephen T. Aden
P. O. Box 1088
Austin, Texas 78767

3. **Term of Contract**

A. The Contract shall be in effect for a period of 10-years and may be extended thereafter for up to two (2) additional 5-year periods, subject to the approval of the Contractor and the City Manager or his designee.

B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

4. **Invoices** (reference paragraph 12 in Section 0300)

Invoices shall contain a non-duplicated invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices" and shall be mailed to the below address. Invoices received without all required information cannot be processed and will be returned to the vendor.

	City of Austin
Department	Parks and Recreation Department
Attn:	Jay Stone
Address	200 S. Lamar Blvd.
City, State Zip Code	Austin, TX 78704-1048

5. **Living Wages and Benefits** (applicable to procurements involving the use of labor)

A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$10.00 per hour. This

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS (RFP)**

minimum wage is required for any Contractor employee assigned to this City Contract unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.

- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must provide health insurance with optional family coverage for all Contractor employees assigned to this contract.
- C. The City requires Contractors proposing on this Contract to provide the following information about wages and benefits currently provided to their employees assigned to this City Contract:

Status Full-time (F) Part-time(P)	Job Title	Hourly Wage	List type of Company Health Insurance (e.g. medical, dental)	Workers' Compensation Insurance Coverage (yes, no)

- i. Proof of the health care plan shall be provided by the Contractor prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- ii. Upon request by the City's Contract Manager, the Contractor shall verify salaries by providing copies of weekly payroll documents.

6. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.

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PURCHASING OFFICE**

SUPPLEMENTAL PURCHASE PROVISIONS (RFP)

- iv. **U.S. Immigration and Nationalization Service.** An approved I9 form issued by this agency will be accepted in lieu of one of the above items i through iii for contract personnel with foreign citizenship, newly arrived to the United States to perform work on the contract.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City an affidavit affirming that Contractor has conducted reasonable and necessary security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

7. Contract Manager

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor:

Jay Stone

Parks and Recreation Department

(512) 974-6712

High maintenance level. This level of maintenance dictates a corrective posture in scheduling grounds maintenance activities. Associated with all non-select developed parkland, street medians and triangles, service center compounds, utility substations and improved street right-of-ways.

1. Turfcare - Grass height maintained according to species and variety can be 3" to 4". Mowed once every 11 to 21 calendar days. Trim every cycle, deep edge every 8 weeks. Aerification done twice per year. Reseeding or sodding done over bare spots in late spring, recommend hulled bermuda 3 lbs. per 1000 sq. ft. and 6 lbs. winter rye per 1000 sq. ft. in fall. Weed growth can be controlled with pre and post emergent selective herbicides.
2. Floral Plantings - Emphasis on planting and development of perennial plant materials, i.e., trees, shrubs and bedding plants. Planting of annual plant material minimal.
3. Tree and Shrub Care - Trimming and pruning done 1 time every 6 months to remove diseased or dead material. Always eliminate unsafe conditions.
4. Fertilizing - Apply high nitrogen ratio fertilizer to turf in spring to encourage top growth. Trees, shrubs and ornamental plantings are fertilized once every year with a balanced ratio fertilizer. Application of trace elements can be done.
5. Insect and Disease Control - Inspection for insect or disease problems every 1-2 weeks. Corrective posture in the application of fungicides and insecticides. Always treat for damaging, heavy insect infestations.
6. Watering - Irrigate all areas weekly. Supplement with additional watering to prevent loss of plant material when necessary. Some automatic systems, predominately semi-automatic and manual systems.
7. Restrooms - All restroom facilities receive highest level of maintenance see Mode I.
8. Litter Removal - Collected and removed 3-4 times weekly. Higher use areas should receive higher frequency.
9. Lighting - Inspect daily, replace inoperative bulbs and fixtures within 24-48 hours. Provide a minimum of 20/15 foot candles on ballfields and 20 foot candles on tennis courts.
10. Surfaces - All structural surfaces will be inspected weekly, needed repairs will be initiated within 48-72 hours. Hard surfaces will be cleaned and or washed weekly. Graffiti will be removed within 7-14 days unless nature of graffiti dictates otherwise.
11. Inspection - Inspect all areas weekly.
12. Repairs - Initiate repairs within one week unless public use will be disrupted, then within 24-48 hours.