

**AMENDED AND RESTATED CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
InterCare Corporation  
For  
Management and Operation of City Owned Cemeteries**

This Amended and Restated Contract ("Contract") dated October 1, 2006 by and between the City of Austin ("City"), a home-rule municipal corporation by the State of Texas, and InterCare Corporation ("Contractor") ("Superintendent"), having offices at 625 Pioneer Trail, San Marcos, TX 78666-4418.

**RECITALS**

On March 31, 2006, the City entered into a Management and Operations of City Owned Cemeteries Service Agreement No. S060220 with the Contractor ("Original Service Agreement"). This agreement was the contract awarded for City Solicitation No. SA05300054 for a vendor to provide management and operations services at City owned cemeteries—Austin Memorial Park (AMP), Evergreen, Oakwood & Oakwood Annex, and Plummers. The parties have agreed to amend and restate the Original Service Agreement entitled Management and Operations of City Owned Cemeteries as set forth in this Contract.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Gene Bagwell, Phone: (512) 517-3542. The City's Contract Manager for the engagement shall be the Park and Recreation Department's Contract Compliance Manager, (512) 974-6700. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having qualifications and competence in executing projects such as the one described herein.

**SECTION 2. SCOPE OF WORK.**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described in Exhibit A, Scope of Work in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION:**

3.1 **Contract Amount.** The Contractor will be compensated as indicated in Exhibit B, Fees and Payments in an estimated amount not to exceed \$14,141,987 for the initial term with two five year extension

options in amounts not to exceed \$11,295,543 for the first extension option and \$16,090,600 for the second extension option for a total not to exceed amount of \$41,528,130.

3.2 **Invoices.** Within 30 days after the close of each quarter, the Contractor may submit to the City invoices based on the accounting of the quarterly activity, including a comparison of Net Revenues Retained (NRR) and Retained Revenues Estimate (RRE) as defined in Exhibit B, Fees and Payment – and an invoice for the payment, if applicable.

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 as defined in Exhibit A, Paragraph III. F. 1. 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.

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Parks and Recreation
Attn:	Contract Manager
Address:	200 South Lamar Blvd.
City, State, Zip Code	Austin, TX 78704

3.2.2 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.

### 3.3 **Payment**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of non-conforming deliverables by the Contractor, after notice and given 10 days for opportunity to cure;

3.3.3.2 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;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, attributable to Contractor's action or inaction related to the performance of this Contract, which is not covered by insurance required to be provided.

3.3.3.5 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;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 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.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

### 3.5 **Final Payment and Close-Out**

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to time sales, indemnity and warranty obligations, or (5) arising under the City's right to audit; and

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

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of ten (10) years effective October 1, 2006 and may be extended thereafter for up to two (2) additional five (5) year periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee. Either party shall be entitled to request notice from the other of intent to extend or terminate the contract at least 180 days before the expiration date.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 180 calendar days unless mutually agreed on in writing). Contractor shall receive no less than the amounts due under the provisions of Exhibit B, Fees and Payment.

4.2 **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.

4.3 **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 the “Right to Assurance” paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor’s Offer, submitted in response to the City’s Solicitation No. SA05300054, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause**: In the event of a default by either party, the other party shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the other party’s reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the respective party shall be entitled to recover all actual damages, costs, losses and expenses, incurred as a result of the default, including, without limitation, cost of cover, 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.

4.4.1 Should the 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 Exhibit B, Fees and Payments, Contractor shall have the right to terminate the contract according to the following:

4.4.1.1 Contractor shall continue to perform for an additional 180 days after the Resolution Date;

4.4.1.2 Contractor shall receive all payments otherwise due Contractor for such performance;

4.4.1.3 City shall also pay Contractor an additional amount equal to Contractor’s Non-controllable Costs, as defined under Exhibit B, Fees and Payments, for the last 180 days of Contractor’s performance under the Contract; and,

4.4.1.4 Contractor’s obligation for further performance of the Contract shall cease 180 days after the Resolution Date.

4.5 **Termination Without Cause**: Either Party shall have the right to terminate the Contract, in whole or in part, without cause any time upon 180 calendar days’ prior written notice. 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. Should either Party terminate this agreement for convenience after the first 30 months but prior to the last 12 months of the initial term, the terminating Party agrees to pay other Party as liquidated damages \$1,625 for each month remaining to be performed during the initial term of the contract. Either Party may terminate this Contract for convenience at any time during the last twelve months of the Contract without payment of liquidated damages.

4.6 At the end of the Contract and any term extension, or any portion there of, the following shall govern the accounting of receipts.

4.6.1 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.

4.6.2 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.

4.6.3 Following the reconciliation of the Annual RRE or portion thereof, the Contractor agrees to remit and or make payable to the City all remaining revenues and accounts receivable including time sales collected.

4.6.4 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.

4.6.4.1 The transition:

4.6.4.1.1 The Contractor will send two (2) written notifications to all accounts receivable customers by general mailing.

4.6.4.1.2 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.

4.6.4.1.3 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.

4.6.4.1.4 The effective date of the transition will be the term of the contract or earlier as provided for in the agreement.

4.6.5 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 written agreement and be negotiated as an additional service for a fee.

4.7 **Fraud:** Fraudulent statements by the Contractor on any Offer submitted to the City in response to a City solicitation or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirement applies.

### **5.1.1 General Requirements**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 5.1.2, Specific Insurance Requirements for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 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.

5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor must obtain certificates of insurance from third parties hired by plot owners, and coordinated through the Contractor, in the types and amounts specified in Section 5.1.2 herein, naming Contractor and the City as additional insured.

5.1.1.7 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.

5.1.1.8 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 / contract number, the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

Attn: Steve Aden  
Solicitation / Contract No.  
S060220

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

5.1.1.9 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.

5.1.1.10 If insurance policies are not written for amounts specified in Section 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.11 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.

5.1.1.12 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.

5.1.1.13 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.

5.1.1.14 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.

5.1.1.15 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and

hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Independent Contractor's Coverage.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **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. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.1.2.3 **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. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

5.1.2.4 **Cemetery Professional Liability.** Coverage shall be within minimum limit of \$250,000 to include errors and omissions in connection with the sale and transfer of Cemetery lots.

5.1.2.5 **Commercial Crime Insurance.** Coverage for all losses emanating from the handling of money and/or securities, including but not limited to losses resulting from dishonest or criminal acts, fraud, embezzlement, forgery, misappropriation or loss of funds and errors in the processing or reporting of funds. This policy shall be written for a minimum limit of \$1,000,000.

5.1.2.6 **Property Insurance.** Contractor shall acquire an All Risk Property Insurance policy. This policy shall provide all risk coverage for all real and personal property owned by the City of Austin and in the care, custody and control of the Contractor. The limit of liability shall be written in the amount of the deductible as shown on the City Property Insurance policy. Coverage should be provided on an annual basis with the coverage term to be concurrent with the City property policy within the first 2 years of the effective date of the Contract. The City shall be a mortgagee on the policy.

5.1.2.7 **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.

5.1.2.8 **Certificate:** The following statement must be shown on the Certificate of Insurance.

The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies.

## 5.2 **Equal Opportunity**

5.2.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification and has submitted a copy of the Contractor's employment non-discrimination policy. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C and shall provide the policy within 14 calendar days after written request from the City. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

## 5.3 **Delays:**

5.3.1 Force Majeure. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.3.2 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.



5.4 **Ownership And Use Of Deliverables**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.4.1 **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.

5.4.2 **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 Section 5.6 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.

5.4.3 **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 Section 5.6 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 this Contract.

5.5 **Rights to 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. The Contractor and Subcontractor 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. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.5.1 Contractor acknowledges that City is required to comply with Chapter 552 of the Texas Government Code ("Public Information Act" or "Act") and this Agreement is subject to the Act. Under the Act, this Agreement, and documents related to this Agreement, which are in City's possession or to which City has access, are presumed to be public and the City may release these records to the public, unless an exception described in the Act applies to a document.

5.5.2 At the time of submittal to the City, Contractor will mark the page(s) of its confidential information with a restrictive legend such as "Contractor Proprietary" or "Contractor Confidential", as applicable.

5.5.3 If the City receives a written public information request for the Contractor's confidential or proprietary information, the City will notify the Texas Attorney General of the request and send a

written statement with a copy of the request to the Contractor in accordance with the Act. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.

5.6 **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.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty - Price**

6.1.1 The Contractor warrants the prices quoted in his Offer submitted in response to the City's Solicitation No. SA05300054, are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 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.

6.1.3 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.

6.2 **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.

6.2.1 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.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 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.

## **SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work**: The City shall provide the Contractor access and use of the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner. 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.

## 7.2 **Workforce**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 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:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except if otherwise authorized by law.

7.2.2.2 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.

7.2.3 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.

7.3 **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.

## 7.4 **Right To Audit**

7.4.1 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. 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. 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.

7.4.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.5 **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.

**7.6 Indemnity:**

**7.6.1 Definitions:**

7.6.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.6.1.2 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;

7.6.1.3 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),

7.6.1.4 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**7.6.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**7.7 Claims:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the 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's Contract Manager and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

**7.8 Notices:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:  
City of Austin, Purchasing Office  
ATTN: Contract Administration  
P O Box 1088

To the Contractor:  
Contractor's Name  
ATTN: Gene Bagwell, Contract Manager  
625 Pioneer Trail

7.9 **Confidentiality**: In order to provide the deliverables to the City, either Party may require access to certain of the other Party's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Contractor, City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor and City acknowledges and agrees that the Confidential Information is the valuable property of the Contractor, City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the Contractor, City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) and the City agree 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 respective Party or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the respective Party promptly notifies the other Party before disclosing such information so as to permit the other Party reasonable time to seek an appropriate protective order. Each Party agrees to use protective measures no less stringent than the other Party 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.

7.10 **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.

7.11 **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.

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

7.13 **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 void able by the City.

7.14 **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.

7.15 **Assignment-Delegation**: The Contract shall be binding upon and inure 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. The City agrees to permit assignment of this contract to a duly formed corporation created and controlled by Contractor.

7.16 **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.

7.17 **Modifications**: The Contract can be modified or amended only by a written agreement signed by both parties. No pre-printed or similar terms on any of the Contractor or City's invoice, orders or other documents shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.18 **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.

7.19 **Dispute Resolution**:

7.19.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

7.20 **Subcontractors**:

7.20.1 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 City's Contract Manager and the Purchasing Office's Contract Compliance Manager no later than the tenth calendar day of each month.

7.20.2 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:

7.20.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.20.2.2 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;

7.20.2.3 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;

7.20.2.4 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

7.20.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.20.3 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.

7.20.4 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.

## 7.21 **Living Wages and Benefits:**

7.21.1 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 minimum wage is required for any Contractor employee directly 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 contracts in order to assure quality and continuity of service.

7.21.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractor must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

7.21.3 The City requires Contractors to provide a signed certification within five (5) calendar days of contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$10.00 per hour and are offered a health care plan (see Exhibit E, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as requested by the City's Contract Manager throughout the term of the Contract.

7.21.4 The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.21.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.21.4.2 time and date of week when employee's pay period begins;

7.21.4.3 hours worked each day and total hours worked each pay period;

7.21.4.4 basis on which employee's wages are paid;

7.21.4.5 regular hourly pay rate;

7.21.4.6 total daily or weekly straight-time earnings;

7.21.4.7 total overtime earnings for the workweek;

7.21.4.8 all additions to or deductions from the employee's wages;

7.21.4.9 total wages paid each pay period; and

7.21.4.10 date of payment and the pay period covered by the payment.

7.21.5 The Contractor shall provide, as requested by the Department's Contract Manager, individual Employee Certifications for all employees directly assigned to the contract containing (see Exhibit F, Living Wages and Benefits Employee Certification):

7.21.5.1 the employee's name and job title;

7.21.5.2 a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$10.00 per hour;

7.21.5.3 a statement certifying that the employee is offered a health care plan with optional family coverage.



7.21.6 The employee certifications shall be signed by each employee directly assigned to the contract.

7.21.7 The Department's Contract Compliance Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

## 7.22 **Workforce Security Clearance and Identification (ID)**

7.22.1 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, personnel (for convenience referred to as "Contractor's personnel").

7.22.2 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).

7.22.2.1 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;

7.22.2.2 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

7.22.2.3 A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.

7.22.3 Contractor shall obtain the reports 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.

7.22.4 Contractor shall provide to the City the Certified Criminal Background Report affirming that Contractor has conducted required 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.

7.22.5 Contractor's personnel will be required to wear ID badges or uniforms identifying them as Contractor's employees at all times while on the work site. Failure to wear a uniform or produce an ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule.

7.22.6 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 or uniform .

7.22.7 The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference Section 7.4, entitled Right to Audit).

7.23 **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.

7.24 **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.

**7.25 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.

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

**7.27 Incorporation of Documents:** Exhibit H, **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract.

**IN WITNESS WHEREOF**, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

**INTERCARE CORPORATION**

**CITY OF AUSTIN**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**List of Exhibits & Attachments**

- Exhibit A Scope of Work
- Attachment I Cemetery Maps
- Attachment II Capital and Non-Capital Equipment and Portable Structures List
- Exhibit B Fees and Payment
- Exhibit C Non Discrimination Certification
- Exhibit D Non-Suspension or Debarment Certification
- Exhibit E Living Wages and Benefits Contractor Certification
- Exhibit F Living Wages and Benefits Employee Certification
- Exhibit G City Cemetery Rules and Regulations
- Exhibit H Section 0100, Standard Purchase Definitions

Exhibit A  
Scope of Work  
Cemetery Management and Operations  
City of Austin Cemeteries

- I. Purpose. 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. 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' services, including interments for spaces sold prior to and following the date of Contract. Such fees and requirements shall be approved by the City.
- II. Background.
- A. 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:
1. Oakwood,
  2. Oakwood Annex,
  3. Evergreen,
  4. Plummers, and
  5. Austin Memorial Park (AMP).
- B. Attachment I includes a map of each Cemetery depicting the authorized uses including boundaries for burial grounds, business office, maintenance facilities and other ancillary buildings, authorized boundaries for staff maintenance and equipment storage and grounds, and authorized limits to onsite spoils storage , where it applies.
- C. The cemetery operation includes, but is not limited to, the following five services:
1. Administration. Includes the execution and recording of all deeds of sale with the County and the management of information for property owners and interment location information.
  2. Sales. Space sales and associated products. 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.
  3. Interments services. Includes space opening and closing, funeral set-up, grave liner sales and installation and associated administrative services.
  4. Grounds maintenance. Includes 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 response to property owner requests. Tree maintenance includes trimming and removal when necessary for safety concerns as specified in the Scope of Work, Section III.A.4.d.
  5. Monument installation. Monument installation includes site designation, layout and installation.
- III. Scope of Work.
- A. Cemetery operation
1. Administration. Contractor shall develop and maintain operating policies and procedures in compliance with industry standards and regulating laws. Upon request by the City's Contract Manager, Contractor shall submit the policies and procedures to include applicable revisions. Contractor shall routinely review administrative practices and shall provide systems improvement where indicated to meet legal and management information requirements on a timely basis. Any changes to the policies and procedures shall be forwarded to the City.  
Administrative duties include:

- a. Record City approved deeds of sale with the County where property is located. To include the management of information for property owners and interment location. The Contractor shall include the recording fees in the purchase price of the lot or burial space.
- b. Maintain a map of each cemetery and a cemetery record book that records the date remains are received, the date remains are interred; the name and age of the person interred if those facts can be conveniently obtained; the name of the owner of the cemetery plot; and the name of the portion of land, numbers of a block, all or part of a lot, or space for a single interment.
- c. Make records available to the City and the public as permitted by law.
- d. Coordinate with the City to create cemetery service information and educational packets for the public and patrons.
- e. Flying Flag. Where applicable, a United States flag shall be raised on the following days (weather permitting): President's Day, Independence Day, Mother's Day, Labor Day, Memorial Day, Columbus Day, Flag Day, Veteran's Day, Father's Day.
- f. The City and the Contractor shall conduct routine cemetery inspections at least twice per month, documented with maintenance check sheets available for review by the City's Contract Manager.
- g. Prepare and submit progress reports.
  - i. 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.
  - ii. 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.
- h. Contractor agrees to comply with records retention schedule provided by the City and maintain records in accordance with the schedule.
- i. Independent Audit. Contractor's records will be audited annually. Contractor shall make all records pertaining to this contract available for audit each year of the Contract. The City will select which Auditor(s) to use in each instance. Audits will be approved by a Certified Public Accountant. Cost of each audit will not exceed \$15,000. The audit report/statements will be submitted to the City directly by the Auditor. A copy of the audit report/statements will be provided to the Contractor directly by the Auditor.
  - i. The City may require the Contractor to furnish to the City an annual report on agreed-upon procedures for the Contractor's calculation of payments owed by the City to the Contractor, and all of the components included in the calculation, as described in Exhibit B, for which the City shall determine the agreed-upon procedures.
  - ii. The engagement letter from the independent firm of certified public accountants shall contain a statement that the City shall receive a copy of the agreed-upon procedures report and all audit work papers produced either by the Contractor or the accounting firm during the agreed-upon procedures engagement, submitted to the City directly by the Auditor.

2. Sales

- a. Sale of interment spaces.
  - i. To include sale of interment spaces at Austin Memorial Park (AMP) and Evergreen Cemetery to the general public and funeral homes

acting on behalf of the general public. Contractor shall not unlawfully discriminate in the sale of lots.

- ii. The Contractor will be responsible for showing cemetery lots for sale to citizens visiting the cemetery and assume the administrative responsibilities associated with sales of lots and burial services.
  - iii. 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. 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.
  - iv. Contractor is responsible for entering into a finance agreement on behalf of the City whereby the City agrees to sell to the customer and customer agrees to purchase from the City real property situated in the County of Travis and State of Texas for purposes of interment. The customer promises to pay to the City the purchase price for the property, payable as agreed upon by both parties until the full amount of the purchase price has been paid for a period of no longer than one (1) year. There is no penalty for prepayment of the balance.
    - 1) 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.
    - 2) 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.
    - 3) Contractor agrees to submit to the City's Contract Manager requisite documentation of non-payment and evidence of Contractor's attempt to collect. Contractor agrees to be available to testify as to his actions should a lawsuit result. Contractor shall not be responsible for any claim, suits, and damages arising out of City activities concerning financing of sales and collection of past due accounts.
    - 4) The City Clerk shall not execute a deed to the customer until the Contractor receives full payment for the cemetery lot or burial space. No burial will occur in a space that has not been paid for in full.
  - v. Contractor agrees to coordinate with the City in the development and platting of new sections.
    - 1) The City will conduct public and stakeholder meetings regarding expansion.
    - 2) A section shall be dedicated for infant burials at AMP and Evergreen.
- b. Liner Sales will be administered in accordance with City approved fees.
  - c. Contractor shall provide to customers an information packet to include a copy of the cemetery rules and regulations (Exhibit G) and other pertinent information. Revised rules and regulations will be provided to the Contractor by the City as needed.
3. Interment Services

- a. Interments in City cemeteries shall be conducted in compliance with City code, Chapter 10-1-3.
  - b. Contractor is responsible for verifying ownership through existing cemetery ownership records ownership of the plot prior to burial.
  - c. Funeral set-up. Contractor shall retain ultimate responsibility for the performance of this Contract even if performance under subcontract. Funeral set-up includes:
    - i. Locating grave plots and marking the plots for excavation, avoiding tree root zones when possible.
    - ii. Clearing of gravesites. 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.
    - iii. Space opening and closing. Opening of gravesites will be accomplished in a timely fashion sufficient to accommodate scheduled burial service.
    - iv. Grave liner sales and installation as referenced in 2.b. above.
    - v. Tent set-ups, removals and storage.
    - vi. Coordinating burial schedules with funeral home and families.
    - vii. The Contractor shall:
      - 1) bury the dead body of a person presented for interment in the appropriate place;
      - 2) timely prepare the ground to receive a body without covering or damaging other graves, whenever possible;
      - 3) repair any graves covered or damaged;
      - 4) ensure that the depth of each grave complies with State regulations and City Code;
      - 5) superintend the burial of the body; and,
      - 6) refill and properly finish a grave after burial.
  - d. Monuments.
    - i. Contractor is responsible for monument installation including site designation and layout for; and
    - ii. Contractor is responsible for leveling or straightening markers or memorials that endanger the public health, safety, comfort or welfare as determined and negotiated in good faith by the City and the Contractor.
    - iii. At a minimum, in January and June of each year the City, with cooperation from the Contractor, will conduct an assessment of monuments to identify those that pose a public safety concern.
    - iv. Following the assessment, the City and Contractor will develop a plan to address any issue identified with the monuments.
    - v. Two piece monuments that are tilted 30 degrees or more on a vertical axis constitute a public safety concern and shall be releveled by the Contractor subject to \$200 minor repair provision in Section III. C.3. herein.
    - vi. The Contractor is responsible for repairing any damage to monuments caused by Contractor or Subcontractors.
4. Grounds Maintenance. With the exception of Plummers Cemetery, the boundaries of the 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 Attachment I. Contractor is responsible for maintaining the cemetery grounds to the extent necessary to protect public health, safety, comfort, and welfare. Contractor may serve notice, in writing, of anticipated

delays complying with the time frames established below. These responsibilities shall include, but are not limited to:

- a. 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. The activities are to include but are not limited to mowing, edging, fertilizing, irrigating, and controlling insects, and planting grass and vegetation as required. 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 an average 7-14 day cycle adjusted for seasonal demands. Line trim every cycle. Aerification done twice per year in areas where possible. Reseeding or sodding over non-shaded bare spots in late spring; recommend hulled Bermuda 3 lbs per 1,000 sq ft. and 6 lbs winter rye per 1,000 sq ft in fall.
- b. Grave sinking and leveling of sunken graves. Gravesites where funeral services have been held are to be cleared, sunk and leveled within 10 calendar days of services. Within twenty (20) calendar days following initial leveling, perform a follow-up leveling and re-vegetate. Re-vegetation consists of either over seeding, using existing turf or new sod. Contractor shall be responsible for monitoring and releveling sunken graves as needed throughout the cemeteries.
- c. Re-vegetate areas as needed and as feasible to maintain consistent turf coverage.
- d. Tree maintenance: From ground level to 8 feet, trim and prune at least twice a year to remove diseased or dead material and to raise canopies adhering to standard industry practices and as prescribed in writing by the City's Forestry Division of the Parks and Recreation Department. Contractor shall monitor trees for limbs that pose a safety threat and eliminate unsafe conditions or for those conditions outside the scope of the Contractor's responsibility, contact the City within 5 working days of discovery.
- e. Plants and shrubs planted and maintained. Contractor agrees to participate in the installation and maintenance of annual and/or perennial plant material at the entrance of Evergreen and AMP cemeteries. Emphasis on planting and development of perennial plant materials, i.e., trees, shrubs and bedding plants. Minimize planting of annual plant material. Remove non-native and volunteer growth adjacent to monuments and fence lines. Contractor is responsible for plant and shrub maintenance in accordance with the City's Cemetery Rules and Regulations (Exhibit G).
- f. Fertilizing – Apply high nitrogen ratio fertilizer to turf once a year 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.
- g. Watering – Contractor shall irrigate all cemeteries in compliance with the following adopted watering and conservation program and install drought tolerant turf.
  - i. General irrigation requirements
    - 1) Schedule - Contractor shall irrigate all cemeteries where existing irrigation systems exist as necessary to sustain established and new turf, plants, shrubs and other vegetation in accordance with the Cemetery Irrigation Plan developed by the City. The Cemetery Irrigation Plan will take into consideration the existing irrigation system.

- 2) Conservation - Contractor shall perform regular irrigation in compliance with the City's water conservation program and City shall provide Contractor with a written copy of the current City of Austin water conservation policy.
- 3) Annual Water Budget - Contractor shall be responsible for the first \$50,000.00 of annual water fees billed for cemetery irrigation, with the same adjustment made annually to the RRE per Exhibit B, Section 2.A. City shall reimburse Contractor monthly for water fees billed in excess of the first \$50,000.00 annually, beginning Fiscal Year 2011. Contractor shall maintain financial responsibility for all other utilities.
- 4) Maintenance - Contractor shall notify City of any material issues with the irrigation system that reasonably inhibit the Contractor's ability to conduct irrigation as required. City shall work with Contractor to address any material issues promptly. City and Contractor agree to replace irrigation components as individually required in Exhibit A, Section III. C. 3. Contractor agrees to maintain irrigation systems in working condition for the duration of this agreement, normal wear and tear excepted. Contractor shall provide annually, a status report of the condition of the irrigation system and a list of repairs and improvements necessary to maintain the system in a reasonable operating condition.
- 5) Watering by the public - The general public may hand water individual plots to supplement watering done by contractor and any watering done by the general public does not replace the contractor's responsibility to irrigate as per this requirement.

ii. Turf and vegetation

- 1) Types of acceptable turf - Beginning October 1, 2012, Contractor agrees to sod with drought resistant turf. Acceptable turf is Zoysia, Bermuda and Buffalo.
  - 2) Types of acceptable vegetation - Contractor agrees to work with the City and the general public to create and maintain a list of native and drought tolerant vegetation that the general public can plant to enhance memorials and plots. Contractor shall ensure that plants, shrubs and new vegetation shall be located in areas that do not negatively impact the Contractor's ability to maintain the cemeteries and existing infrastructure, including but not limited to irrigation systems, roads, sidewalks and memorials.
- h. Insect and disease control – Inspection for insect / disease problems every 1-2 weeks. Maintain a corrective posture in application of fungicides and insecticides. Always treat for damaging, heavy insect infestations.
- i. Litter control. Collect ground litter and maintain trash cans at strategic points in all cemeteries. Collect and dispose of trash as needed, but no less than weekly.



- j. Removal of unsightly flowers and deteriorated plastic ornaments on graves during semi-annual cleanup campaigns as posted at each cemetery.
  - k. When possible, respond to property owner's requests.
  - l. Clearing of dead vegetation. Fallen trees or tree limbs, and dead vegetation are to be removed within fourteen (14) calendar days of falling or being reported. Safety hazards shall be immediately corrected upon discovery or notice to the Contractor.
  - m. Clearing live vegetation. All small trees (2 inch caliper or less), overgrown shrubs and other plants growing near headstones, curbs or other objects that could be damaged shall be removed in accordance with the City's tree preservation statues and the City's Rules and Regulations (Exhibit G). The City will promptly provide all necessary permits required by Contractor in order to perform these responsibilities. Undesirable vegetation in or near headstones, curbs, fence lines, and other objects shall be cleared as needed but no less than quarterly, by chemical or mechanical means. Safety hazards shall be immediately corrected.
  - n. Weeds. 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.
  - o. Brush and debris removal. All brush and debris shall be stockpiled in an inconspicuous area until it can be removed by Contractor to Hornsby Bend or other location as designated by the City and mutually agreed to by Contractor. Clearing and removal shall be done within fourteen (14) calendar days of cutting. Safety hazards shall be immediately corrected.
  - p. Spoils sites shall be in inconspicuous areas with a visual barrier to be approved by the City. Spoils shall be removed, at Contractor's expense, at least twice a year.
  - q. Restriction on Use of Cemetery Land per City Code, Chapter 10-1. Contractor may not engage in temporary construction staging or other construction related activities within a designated City cemetery unless approved by City.
- B. Customer Service and Complaints Resolution. Contractor will staff and maintain the two offices at Austin Memorial Park and Oakwood .
1. Cemetery office business days and hours of operation. The hours and days of operation shall be as follows:
    - a. The Austin Memorial Park office is open Monday thru Saturday between 8:00 am and 4:30 pm. The Oakwood office is open Monday thru Friday between 8:00 am and 11:00 am and between 1:30 pm to 4:30 pm. The cemetery offices are closed on Sundays and the following major holidays:
      - i. Thanksgiving
      - ii. Christmas
      - iii. New Year
      - iv. July 4<sup>th</sup>
    - b. New Customer Information Packet. Within 30 days of execution of this Contract, Contractor and City shall develop, and Contractor shall begin distributing at the point of sale, a customer information packet that clearly outlines the following:
      - i. Cemetery Rules and Regulations
      - ii. Requirements for headstone purchase, delivery and installation
      - iii. Instructions on how to update customer contact information.
      - iv. Frequently asked questions and answers
      - v. Information on notices of routine cemetery clean-up and typical schedule
      - vi. Complaint intake and resolution process

- vii. Cemetery website address
  - viii. How to make suggestions and recommendations
  - ix. Contact information for volunteer groups serving the City's cemeteries.
- c. Opening and closing of cemeteries: Cemetery gates are to be opened at 8 a.m. and locked at 7p.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 gates are open 365 days a year.
  - d. At closing time, Contractor shall tour the grounds to ensure that all citizens are out of the cemetery before entrances are locked.
  - e. Hours of operation to be subject to change by the City and shall be reviewed quarterly to ensure citizen satisfaction. Changes may be considered non-controllable cost as referenced in Paragraph F.1. below.
2. Specialized services. The Contractor agrees to be responsive to reasonable requests from private citizens for services that are above and beyond those services routinely provided.
  3. Complaints Intake. Contractor is responsible for providing to customers a process for communicating needs and complaints through a system approved by the City. At a minimum, Contractor shall:
    - a. maintain a website with sufficient email accounts and phone numbers to facilitate public information and access to information and requests for assistance;
    - b. document and track the timely resolution of all complaints received from the City through its 311 public information program, the 311 case tracking systems;
    - c. report to the City, as a part of the semi-monthly City inspections per Section III.A.1.f herein, the status and resolution of all 311 assigned cases.
    - d. assign an individual case number for complaints of concerns received onsite or informally outside of the 311 public information program and include the status and resolution of each case as specified in 3.c above. The City may amend, replace or substitute the 311 public information program and Contractor agrees to use such program.
  4. Notices. Contractor shall display in a conspicuous location in all business offices a customer complaints phone number and contact name.
  5. Customer Complaint Process. Contractor will address customer complaints within 24-48 hours providing a recommended solution and timeline. Contractor will
    - a. treat everyone with respect and dignity;
    - b. interact with customers one-on-one to develop a clear understanding as to whom they will communicate with and once a decision is made, stick to it;
    - c. follow through until the complaint has been resolved, and
    - d. maintain a record of all complaints received and the resolution or final disposition per City records retention schedules.
- C. Major Infrastructure Development or Improvements. The City of Austin shall be responsible for new major infrastructure development to include roadway development; installation of complete new irrigation systems; platting, surveying and laying out of new sections of cemetery land and major landscaping installations of new section development. Such improvements shall be undertaken at the City's sole discretion.
- D. Facility Repair, Maintenance, Improvements, Insurance. The Contractor shall provide the following routine maintenance:
1. Maintenance and upkeep of facilities in good repair, normal wear and tear excepted, but shall not be responsible for major repairs. The Contractor shall cooperate in developing and implementing plans for improving the appearance of the cemeteries.

2. Contractor's obligations shall be subject to Paragraph 4.B of Exhibit B, Fees and Payment. Except as agreed to under the provisions of Exhibit B, Fees and Payment, Paragraph 4.B., Contractor shall be responsible for the maintenance and operation of any new additions to and continuing maintenance and minor repair, as defined in Item 3 below, of all cemetery facilities, properties, fixtures, plantings, furniture and related equipment, irrigation, plumbing, electrical, lighting, fence, drainage and water flow systems in compliance with city code.
3. Major improvements to the cemeteries and changes to physical properties shall be approved in advance by the City Manager or designee.
4. The Contractor shall be responsible for the replacement of any portion of existing facilities or future improvements which are stolen, lost, damaged or worn beyond repair of useful life in accordance with the limits as defined in item 6 below
5. 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 in accordance with Section G.1 herein.
6. The Contractor is responsible for minor repairs and maintenance which are defined as those repairs and maintenance that are less than \$200 per repair. For repairs that exceed \$200, Contractor will submit to the City's Contract Manager an Operator Action Request (OAR) for consideration and written approval. If approved by the City's Contract Manager, Contractor will proceed with approved repairs and upon completion submit to the City an Operator Request for Reimbursement (ORR) which will include an invoice for payment with attached proof of payment for repair. Contractor's responsibilities include, but are not limited to, the following:
  - a. Minor repairs to irrigation systems and adjust irrigation systems to avoid damage to fragile monuments, if possible.
  - b. Daily building inspections and routine building repair and maintenance including, but not limited to, the following:
    - i. Walls, roof fascia and siding repaired and painted.
    - ii. Interior renovations
    - iii. Minor plumbing repair and maintenance
    - iv. Restrooms. Contractor agrees to clean and sanitize restrooms daily unless demand dictates a higher frequency. This function will receive highest level of attention. Contractor will provide contact information in the restrooms to allow citizens to alert the Contractor when the restrooms need attention.
  - c. Fence, wall, and gate repair and replacement to keep functional.
  - d. Sidewalks. Contractor shall provide sidewalk repair for all cemeteries.
  - e. Bench locations. Contractor will enforce placement of benches as approved by the City and consistent with City's Cemetery Rules and Regulations (Exhibit G).
  - f. Signs City will provide street signs, if applicable, and section signs to assist family members in locating grave sites. Contractor will install and maintain signs and repair damaged signs.
  - g. All necessary repairs will comply with City code.
7. Contractor is responsible for repairing or replacing any property damaged by the Contractor or any Subcontractor.
8. Cemetery roads and walkways. Contractor shall provide routine pothole and minor road and walkway repair for all cemeteries.
9. Utilities. All utility expenses including water, in accordance with Section III.A.4.g (i)(3) Annual Water Budget, electrical, gas, sewer, and waste disposal required to operate the cemeteries will be borne by the Contractor.
10. Upon termination or expiration 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, normal wear and tear excepted.

11. Contractor is responsible for acquiring and maintaining property insurance in the amount of the deductible of the City's property insurance policy. Property shall be effective October 1 of each year. See specific insurance requirements in Section 5.1.2.6 of the Contract.

E. 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. 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. City owned equipment in use at the facilities which is not permanently installed is not available to the Contractor and should not be included in the inventory.

1. Contractor shall acquire and own all equipment and portable structures necessary for the performance of this Contract and shall have such equipment available for the performance of the Contract. Equipment and structures to be available are listed in Attachment II.
2. Contractor is responsible for maintenance and replacement of equipment.
3. Equipment included in Attachment II of this Contract are authorized by the City to be stored on cemetery property.

F. Recordkeeping

1. All daily burial and ownership records are to be maintained by the Contractor and shall comply with this agreement, state law, current documented City policies and standards, and any other applicable regulations.
2. The Contractor shall prepare, maintain and preserve proper, accurate and complete books, records and accounts, separate from other Contractor records, 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 Contract, including but not limited to:
  - a. Location of burials
  - b. Names and ages of people interred, if available
  - c. Number of burials
  - d. Date of receipt of remains and of burials
  - e. Performance measures in coordination with the City.
  - f. Number of customer complaints, type of complaint and resolution
  - g. Contractor's subcontractor files
  - h. Code violations and corrective actions
  - i. Repair and improvements log
  - j. Date and description of non-cemetery related events and activities authorized and conducted on cemetery property
  - k. Sales receipts
  - l. Accounts receivable
  - m. Expenses
  - n. Adjustments to RRE
3. Contractor agrees to work with the City to implement a computer based cemetery management system to transition cemetery operations from a manual documentation system to a computer based system by September 30, 2013.

G. Accounting and Reporting Systems

1. Accounting. 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 (Controllable Costs); and those costs that may occur during the term of this Contract which are attributable to the action of third parties (Non-controllable Costs), such as
  - a. items attributable to change in law,
  - b. legal costs where Contractor is joined because of this Contract,
  - c. a change in the City mandated standard of care for cemeteries,
  - d. force majeure;
  - e. changes in social security tax rates and worker's compensation insurance rates, and
  - f. City utility rate increases in excess of Consumer Price Index.
2. Taxes. 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. Any newly legislated tax imposed by the City that substantially affects the Contractor's new revenues retained entitle Contractor to an equitable adjustment.

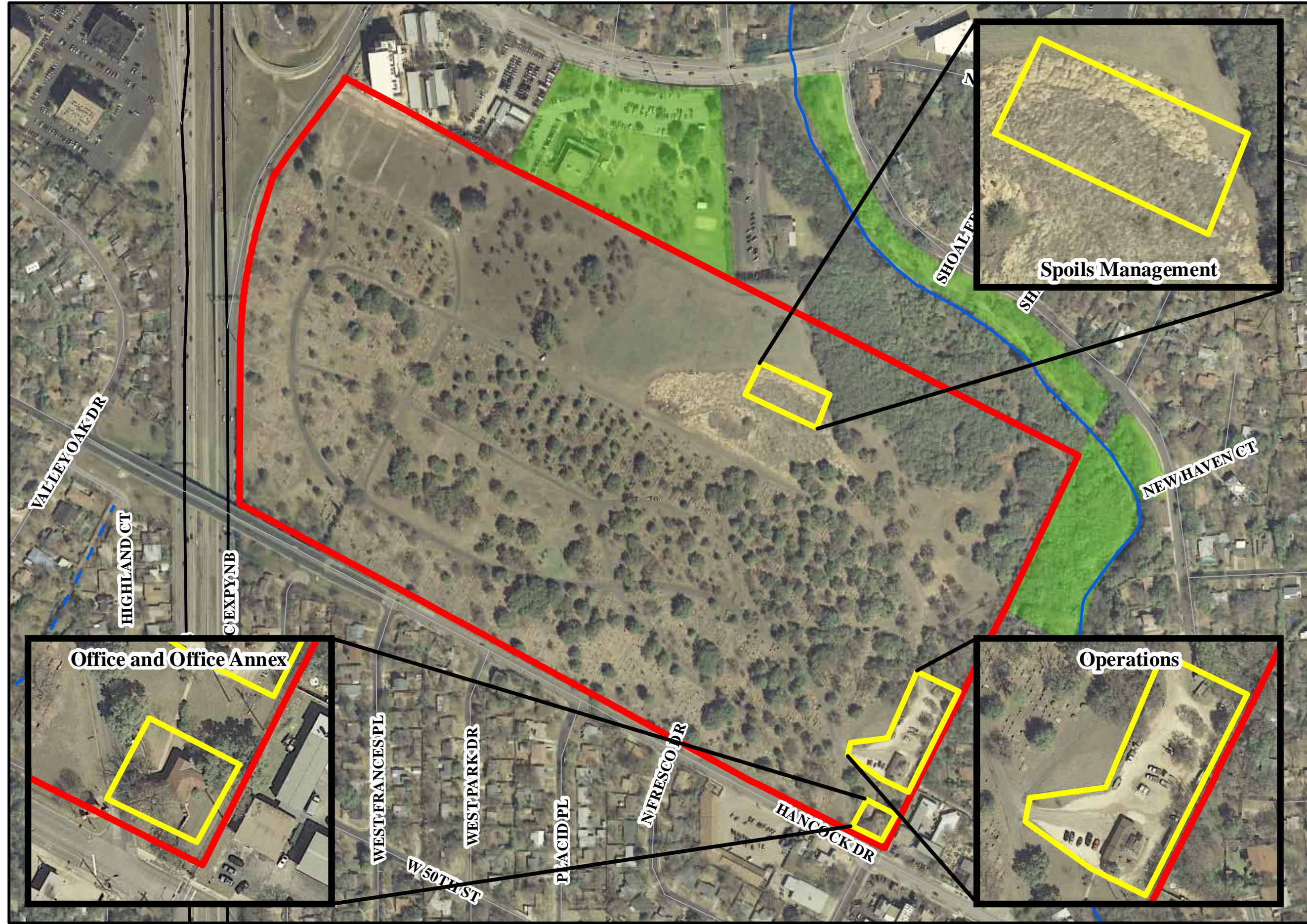
#### H. Staffing

1. Caretaker Services. Contractor will maintain at least one full time on-site administrator at Austin Memorial Park and Oakwood Cemeteries during established business days and hours of operation as specified in Section III. B.1. herein.
  2. Contractor agrees to employ skilled and competent workers in the performance of this Contract and comply with the requirements pertaining to criminal background checks as described in Section 7.22 of the Contract.
  3. Contractor may adjust and or rotate staff to ensure adequate manpower and operations and to accommodate customer service needs.
  4. Groundskeepers. Contractor shall employ a full-time grounds maintenance crew consisting of sufficient number of employees to comply with the terms of the contract.
- I. Laws, statutes and other governmental requirements. Contractor agrees to comply with all laws, statutes, and other governmental provisions prevailing during the term of this Contract, including but not limited to the following:
1. Health and Safety Code, Chapter 711
  2. Health and Safety Code, Section 713.011
  3. City of Austin Land Development Code as it pertains to onsite spoils management and other provisions relevant to daily operations
  4. Compliance with tree preservation statutes
  5. Compliance with applicable water conservation guidelines .
  6. Historic preservation regulations including those found in the Antiquities Code of Texas and the City of Austin Land Development Code.
  7. Response to theft and vandalism.
    - a. Contractor shall report to 911 if theft or vandalism is in progress
    - b. Contractor shall report 311 if theft, burglary or vandalism has already occurred
  8. Compliance with Austin City Code, Chapter 10-1, Cemeteries
  9. City of Austin Cemetery Rules and Regulations
    - a. Contractor shall maintain and distribute copies of the rules and regulations at the point of sale and upon request.
    - b. Contractor shall enforce cemetery rules and regulations . The City reserves the right at any time and from time to time to change, amend, alter, repeal, rescind, or add to the rules and regulations or any part thereof to adopt any new rule or regulation or any temporary exception with respect to said cemetery or anything pertaining thereto.

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**Legend**

- Special Areas
- Cemeteries
- Creeks and Drainage
- City of Austin Parks



**Spoils Management**

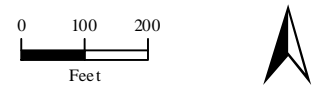
**Office and Office Annex**

**Operations**





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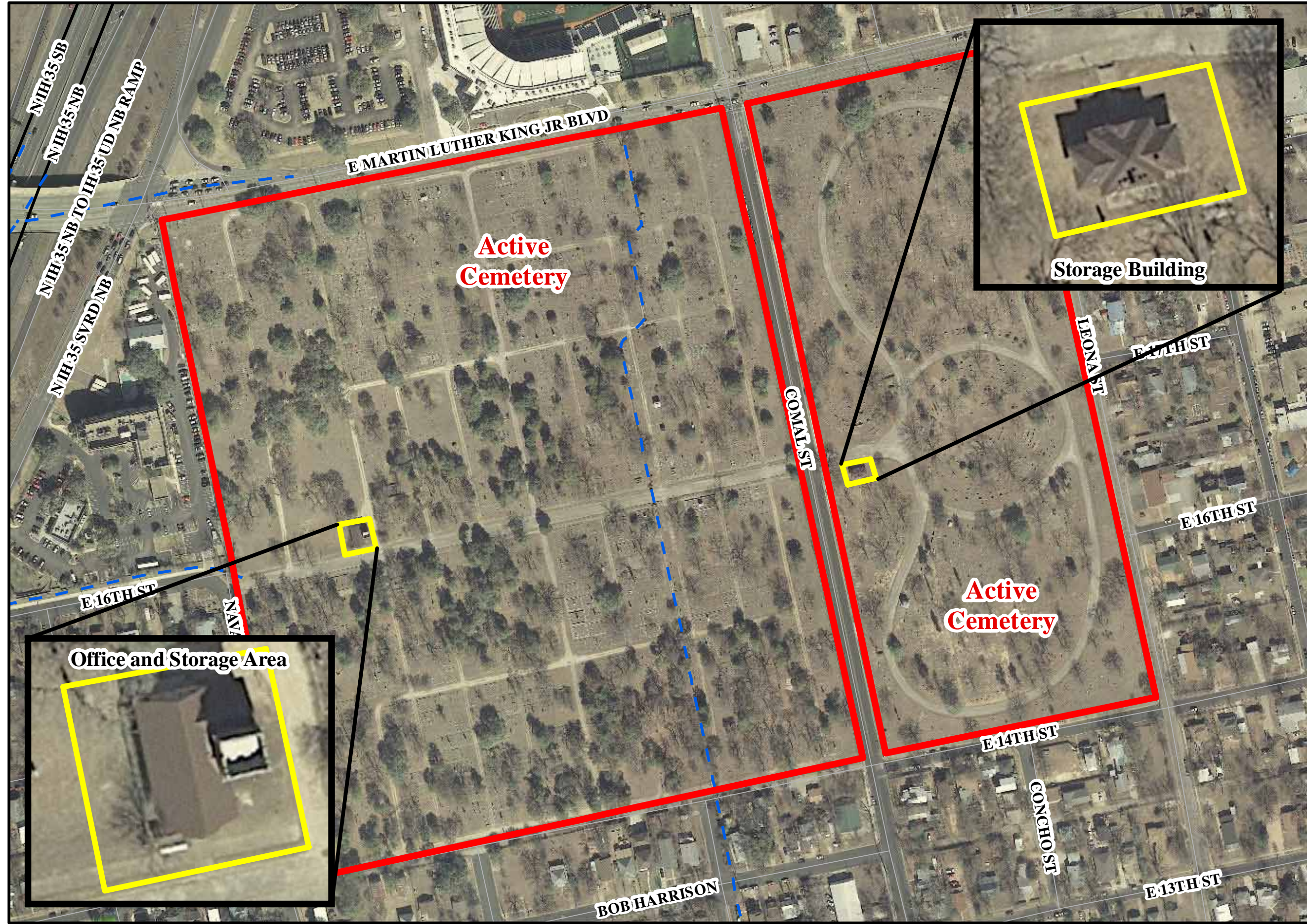
10 October 2011 AH

**Cemeteries: Austin Memorial Park**

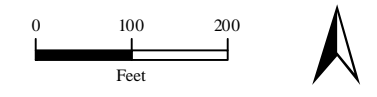


**Legend**

-  Special Areas
-  Cemeteries
-  Creeks and Drainage
-  City of Austin Parks







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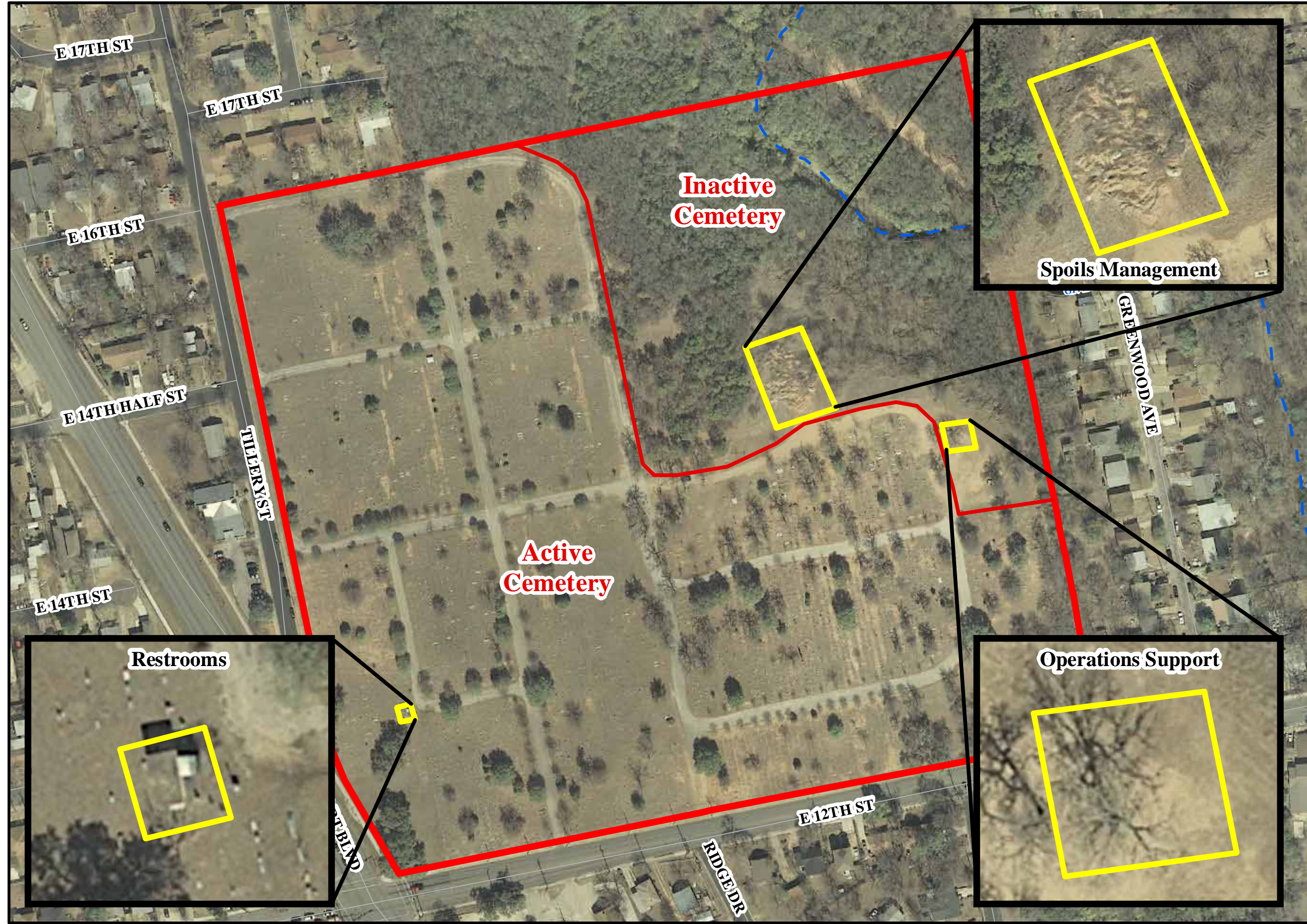


**Cemeteries:** Oakwood and Oakwood Annex



**Legend**

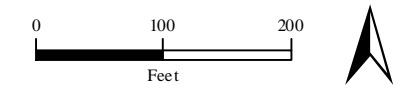
-  Special Areas
-  Cemeteries
-  Creeks and Drainage
-  City of Austin Parks



**Cemeteries: Evergreen**

10 October 2011 AH

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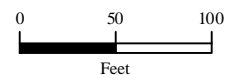


**Legend**

- Special Areas
- Cemeteries
- Creeks and Drainage
- City of Austin Parks

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10 October 2011 AH



## Attachment II

### Capital and Non-Capital Equipment and Portable Structures List

#### 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) ½ ton extended cab truck
- (2) Kubota 4 wheel drive utility vehicles with dump bed
- (1) Ford 2810 tractor with 917 H 72 inch flail mower and 5 ft Rhino heavy duty shredder
- (1) Ford 1910 Tractor
- (1) 18ft utility trailer
- (2) Scag commercial walk behind 52 inch mowers
- (4) scag commercial riding mowers (3-52 inch/1-61 inch)
- (5) Dane commercial riding mowers(3-52 inch/2-61 inch)
- (1) 21 inch commercial self propelled mowers
- (7) echo commercial string line trimmers
- (3) echo backpack air blowers
- (2) echo commercial hand held hedge trimmers
- (2) echo chainsaws
- (3) Commercial chainsaw
- (1) echo gasoline powered pole saw
- (1) 4 cylinder gas powered heavy duty air compressor with 90lb jackhammer and soil compacter
- (\*) 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, copiers
- (1) Morgan Building-12X20 mechanics shop
- (2) 1000 gal portable self contained fuel systems (Convault)
- (1) Shave Ice Maker-Hoshicaki
- (1) Magnum gooseneck trailer 25 ft
- (1) Magnum utility trailer 14 ft
- (1) Nissan Crew Cab Truck
- (1) Honda hand held tiller
- (1) Esrick concrete mixer

#### Interment Services Inc (ISI)

- (2) GMC Dump Trucks
- (3) 1 ton flat bed trucks
- (1) Crew Cab truck
- (1) Kubota 4 wheel drive utility vehicle with dump bed
- (4) Bobcat X331 excavators with hydraulic rock breakers(1-2 ft ,1-18in,1-16 inch bucket)
- (2) Bobcat 753 skid steer loaders
- (1) Bobcat 773 skid steer loader
- (6) all wheel drive with dump beds

- (5) 22ft tilt bed heavy duty trailers with custom fabricated burial equipment boxes
- (10) Burial Service set-ups: lowering devices, chairs with covers, artificial grass and sidewalks
- (2) Cremains and infant burial service set-ups: lowering device and stand with skirts
- (3) Portable trash/water pumps
- (\*) Assorted hand tools and materials: mechanic, lawn care, excavation, soil tampering, plywood sheeting
- (\*) Communication equipment: Nextel 2 way radio/phone units
- (1) John Deere Pressure washer

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Exhibit B  
Cemetery Management and Operations  
Fees and Payment

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, special service requests and time payments from previous period Accounts Receivables. The City will provide a list of services and prices, effective on Contract date.
  - B. Adjusted GOR: The Adjusted GOR is the sum of Gross Operating Receipts less Accounts Receivable (AR) associated with Space Sale Time Payments and Cemetery Maintenance Surcharge which is a surcharge added to each plot sold.
  - C. 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 percentage annually negotiated to be effective in October of each year. The percentage rate shall not be less than 80% nor greater than 93%.
  - D. Net Revenues Retained (NRR): NRR is an amount derived by subtracting SCP from the Adjusted GOR as adjusted for time sales, and is computed and reported quarterly,
  - E. 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 Paragraph 6 below, entitled Adjustments.
2. Retained Revenue Estimate Calculations: It is agreed that:
  - A. for each year of the Contract, 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 3.3% 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 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, 2005 as the base index.
  - B. 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 Paragraph 6 below). Should the CPI be discontinued, the parties agree to substitute a similar index.
3. Payments to Contractor. The Contractor will be paid a Contractor's Fee calculated as follows:
  - A. The Contractor will collect all cash revenues generated by the operations of the cemeteries, referred to herein as the Gross Operating Receipts (GOR) and will deposit the receipts into a separate account specifically for City cemetery operations. After adjusting these revenues for accounts receivables (AR) and Cemetery Maintenance Surcharges the Contractor will:
    - i. Pay the Subcontractor the SCP payments, leaving the Contractor with the NRR;
    - ii. From the NRR the Contractor pays all its costs of operating and maintaining cemeteries.

- B. 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 RRE (with such adjustments as may have been made pursuant to Paragraph 6 below entitled Adjustments).

4. Budgets – RRE Estimate.

- A. The Contractor will participate in City's review of the Cemetery budget annually in sufficient time to contribute and facilitate the City's budget process. The review will discuss capital improvements, lot expansion, gross and net revenues, operational mode and expense, subcontractor 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. Contractor shall not be liable for cost of cemetery expansion betterments or capital improvements that materially extend the life of the facilities. 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. 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 within 60 days of the end of each Contract year.

6. Adjustments.

- A. If the Contractor experiences an increase in Non-controllable Costs (Exhibit A, III, F. 1), the Contractor 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 Paragraph 3 above.
- B. Pursuant to Paragraph 3 above, the Contractor may, as set forth in Section 3.2 of the Contract entitled Invoices, submit one or more quarterly invoices for a deficit between the NRR and the RRE, based on quarterly comparison of NRR and RRE. However, an annual restatement and accounting for any payment paid or claimed, will occur at the end of the fiscal year or prorated portion thereof. Provisions of Paragraph 3 above shall govern this accounting with appropriate adjustment made to bring the quarterly payments into agreement with this governing annual amount agreement.

Exhibit C

**City of Austin, Texas  
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE  
NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas  
Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

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

**City of Austin  
Minimum Standard Non-Discrimination in Employment Policy:**

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

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment*

advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

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

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

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

**Sanctions:**

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

**Term:**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_



**Exhibit D**  
**City of Austin, Texas**  
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

---

Signature of Officer or

Authorized Representative:

Date:

Printed Name:

Title

**Exhibit E**  
**CITY OF AUSTIN, TEXAS**  
**LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION**  
*(Please duplicate as needed)*

Pursuant to the Living Wages and Benefits provision the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$10.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$10.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$10.00 per hour and offered a health care plan with optional family coverage.

- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name: \_\_\_\_\_

Signature of Officer or

Authorized \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title \_\_\_\_\_

**Exhibit F  
CITY OF AUSTIN, TEXAS  
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number: S060220	Description of Services: Management and Operation of City Cemetery
Contractor Name: InterCare Corporation	

Pursuant to the Living Wages and Benefits provision of the contract, the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$10.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (5) compensated at wage rates equal to or greater than \$10.00 per hour; and
- (6) offered a health care plan with optional family coverage.

Employee's Title:	
Signature of Employee	Date
Type or Print Name	

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Printed Name)

## **Exhibit G**

### **City Cemetery Rules and Regulations**

#### **Definitions**

1. The term "Cemeteries" as used in these rules and regulations is hereby defined to mean cemeteries owned and operated by the City of Austin.
2. The term "Superintendent" shall mean the person contracted by the City of Austin for the purpose of supervising and administering cemetery functions.
3. The term "Owner" shall mean the owner as indicated by deed.
4. The term "Interment" shall mean entombment or burial of the remains of a deceased person.
5. The term "Memorial" shall mean any marker, monument, headstone, tablet, or other structure upon or in any lot or niche, placed thereupon or partially therein for identification or in memory of the interred.
6. The term "Space" shall mean the area normally designated for a single Interment.

#### **Admission to Cemeteries**

1. No person shall be permitted to enter or leave the cemeteries except by the public gates. The cemeteries will be open to the public during reasonable hours as established by the Superintendent.
2. The admission of motorcycles to the cemeteries may be refused on the basis of noise or disruption of services.
3. Any unauthorized person found on the cemetery grounds after dark will be considered a trespasser.
4. The use of any cemetery equipment or facilities may be refused at any time to any person or persons as the rules, judgment and custom may indicate.

#### **Arrangements for Interments**

1. Written authorization from the owner of record of a burial space, or his designated representative or successor in interest, or other proper legal authority will be required for interment.
2. The Superintendent shall have the right to schedule the time when interments or disinterment may be conducted.
3. A minimum of twelve (12) working hours before the announced times of the funeral will be required for the preparation of the grave.
4. In making a request for interment, the casket or vault, if of unusual size, must be particularly indicated.
5. The Superintendent shall not be responsible when an error occurs from an order placed by telephone regarding grave location or container size to be used. The Superintendent reserves the right to make an equitable charge whenever additional labor costs result from such mistake.
6. The Superintendent shall not be liable for any delay in the interment of a body when a protest to the interment has been made, or where the rules and regulations have not been complied with.

#### **Interment, Disinterment and Re-interment Procedures**

1. Proper authorization as required by local government or public authority having jurisdiction in the matter must be presented to the Cemetery office at the time of interment or disinterment is effected. The Superintendent shall not be liable for the accuracy of the data contained in said authorization or for the identity of the person to be interred or disinterred.

2. All interments, disinterment and re-interments shall be performed by a funeral director or other person as provided for by the State and local laws. The Cemetery personnel will be responsible only for the opening and closing of the grave.

#### **Instructions for Space holders and Space Holder's Rights**

1. Burial vaults either partially or entirely above ground are prohibited.
2. A permanent type container such as a concrete liner or burial vault is required for all adult interments. Sections 9, 9A and 10 at Memorial Park and Sections D and E at Evergreen are exempt from this provision.
3. Construction or installation of slabs, curbing, steps, fencing, hedging, or enclosures of any kind will not be permitted on or around any space or lot. Cement, iron, wooden, glass, plastic, paper, or other miscellaneous statues or objects as well as objects of a temporary nature will not be permitted. The City of Austin reserves the right to remove any objects which are erected, planted, or placed in violation of this rule.
4. Only one casket will be permitted in each grave. In the event cremation is utilized, a maximum of four (4) interments will be permitted in one (1) space.
5. The use of a space is for the owner or such other person as the owner may designate.
6. In the event of the death of an owner, any and all privileges of the owner shall pass according to the laws of the State of Texas.

### **Service Charges and Payments**

1. The City of Austin shall have the right to establish a charge and time of payment for each interment and disinterment.
2. The City of Austin reserves the right to specify the amounts and terms of purchase of all spaces to the original purchaser.
3. In the event an owner sells a space or spaces, a record of such sale must be provided to the City of Austin.
4. When a disinterment is accomplished for the purpose of re-interment within the same cemetery, the current price of the vacated space, less 25%, shall be allowed as payment toward the new purchase. The established charge for opening and closing each space will be in addition to the price of the new space.

### **Memorials**

1. All memorials shall be installed and maintained at the expense of the owner.
2. Only one memorial will be permitted on one grave space. A companion or family memorial may be placed upon two or more grave spaces. Memorials will be placed in alignment with adjacent memorials and centered at the head of the grave space. The actual location for memorials will be determined by cemetery personnel.
3. Space or lot corner markers will be set flush with the turf.
4. Flush type Memorials--
  - a. The marking of each space or grave in areas designated for flush type memorials is restricted and limited to memorials set flush with the turf, and of such dimensions, materials, design, finish and construction as indicated in this section.
  - b. Flush type memorials shall be made of granite marble or cast bronze installed on a granite, marble or concrete base. Granite and marble memorials and bases shall have smooth sides and bottoms and a minimum thickness of four inches (4"), concrete bases shall have a minimum thickness of six inches (6") and shall be smooth on all sides.
  - c. All flush memorials shall be set on a minimum of two inches (2") of sand for cushioning and leveling
  - d. The length of flush type memorials shall be at least ten inches (10") less than the grave space width.
5. Above Ground Materials
  - a. In areas of the cemetery not specifically designated for flush type memorials either an above ground or flush type memorial may be used.
  - b. All above ground memorials shall be of marble, granite or similar permanent type stone.
  - c. Memorials used above the ground level to mark a grave shall not exceed the following dimensions:
    - 1) The base shall not exceed 18 inches in width
    - 2) The overall height shall not exceed 42 inches.
    - 3) The length shall be at least ten inches less than the grave space width.
6. Should any existing memorial or mausoleum become unsightly, dilapidated, or a menace to the safety of persons within the cemeteries, the Superintendent shall have the right to correct the condition or to remove same. The expense of such removal or repair may be charged to the space owner.

### **Memorial Foundations**

1. The size of concrete foundations for all above ground memorials shall be 1" larger in length and width than the size of the base.
2. The top of concrete foundations shall be from 1" to 2" below the top of the ground to allow for adding cement grout to level the memorial base.
3. Concrete foundations shall be a minimum of 8" thick and have perpendicular sides and flat bottom.
4. Excavations for foundations for above ground memorials shall be a minimum of 10" deep from the top of the ground. If the memorial base is two feet or more in length, there shall be one 6" diameter round hole dug 18" deep (or to rock) below the bottom of the excavation at each end of the excavation.
5. Concrete for all memorial foundations shall be 1 part cement, 2 parts sand and 4 parts gravel.

### **Rules for Memorial Park**

1. Memorial dealers shall abide by all the rules and regulations of the Cemeteries.
2. The Superintendent reserves the right to approve the size, craftsmanship, quality, inscriptions, and foundations of memorials placed or to be placed in the cemeteries.
3. Memorial dealers engaged in placing or erecting memorials or other structures are prohibited from scattering their material over adjoining spaces, or from blocking roads or walks, or from leaving their material on the grounds longer than is necessary. Damage done to spaces, walks, drives, trees, shrubs or other property shall be repaired at their expense to the satisfaction of the Superintendent.

4. Work of any nature may be stopped if proper preparations have not been made; or when work is being done in such a manner as to endanger life or property; or when there is evidence of misrepresentation; or when work is not being executed according to specifications; or when any reasonable request on the part of the Superintendent is disregarded; or when any person employed in the work violates any rule of the cemeteries.

### **General Regulations**

1. Visitors or workers shall use only the avenues, walkways, and roads, unless it becomes necessary to walk across other spaces or graves to gain access to a space or grave.
2. Automobiles, trucks and other vehicles shall not be driven through the cemetery grounds at a speed greater than fifteen (15) miles per hour. Unauthorized vehicles may not be driven or parked off the designated roadways or parking areas.
3. Pets shall not be allowed in the cemetery.
4. The use of intoxicating beverages within the cemeteries is strictly forbidden.
5. No person will be permitted to use profane or boisterous language or in any way disturb the quiet and good order of the cemetery.
6. No boxes, shells, toys, discarded glassware, sprinkler cans, water, hoses, or similar articles will be permitted to remain on any grave, walkway or street.
7. The Superintendent has the authority to enter upon any space and to remove any objectionable thing that may have been placed there contrary to the regulations, and he may remove any dead or damaged flowers, trees, shrubs or vines.
8. All persons are strictly forbidden to break or injure any tree or shrub, or mar any landmark, marker or memorial or in any way deface the grounds of the cemetery.
9. No person or persons (except peace officers or a military guard of honor) shall be permitted to bring or carry firearms within the Cemetery.
10. No signs other than those installed by City personnel will be permitted on the cemetery grounds.
11. The City of Austin is not responsible for vandalism or theft of any memorial or other personal property.
12. The construction, installation or placing of any wooden, concrete or cast iron bench, chair or table, or any wooden or wire trellis, shall not be permitted on the cemetery grounds.
13. The construction of additional mounds over graves shall not be permitted.
14. Holders such as clay or plastic pots, wire, frames, etc., containing flowers or other decorations may be removed as soon as the flowers fade or wither and the right is reserved by the Cemetery to make such removal.
15. Placing of potted plants, cut flowers, or baskets is permitted on graves in all cemeteries; however, to improve the appearance and to aid in maintenance, all potted plants, cut flowers, and baskets may be removed each month. Funeral designs or floral pieces will be removed from the graves when they become wilted or unsightly. Persons desiring to retain same must remove them within 72 hours. Artificial flowers may be placed on graves for holidays with the understanding that they will be removed thirty days after the holiday. The digging of holes for placement of plants or flowers is strictly prohibited.
16. In sections designated for flush type memorials, plants, cut flowers, shall be placed only in the invertible type bronze vases provided for that purpose.
17. In the interest of maintenance, planting of ivy, flowers, shrubs, or bushes is prohibited. Long lived hardwood trees such as live oak, Spanish oak, American elm, and cedar elm may be planted with the approval of the Superintendent.
18. If any trees or shrubs situated on any space shall become detrimental, unsightly, or impede access to adjacent spaces, walks, or roads, they may be pruned or removed in whole or in part as determined necessary by the Superintendent.
19. Personnel employed by the cemeteries are not permitted to solicit or accept money or other compensation from any person or persons for maintenance performed within the Cemetery. All inquiries or complaints shall be made at the Cemetery office.
20. The grounds are sacredly devoted to the burial of the dead and the provisions and penalties of the law, as provided by statute, will be strictly enforced in all cases of wanton inquiry, disturbance, and disregard of the rules.
21. There shall be a strict observance of all the properties due the Cemetery, whether embraced in the foregoing regulations or not, as no impropriety will be tolerated.

### **Care of Cemeteries**

1. Care shall be furnished for all cemeteries owned and operated by the City of Austin. Care is to be understood as the maintenance of buildings and grounds required to preserve the pleasing appearance of the Cemetery.

2. The term “care” shall in no case mean the maintenance, repair, or replacement of any memorial or curbing placed or erected upon any grave or space; nor the placement of flowers or ornamental plants or shrubs or trees; nor the performing of any special or unusual work for any individual owners.
3. Special care by cemetery employees of any grave or space located within the cemetery is prohibited.

### **Reservations of the City of Austin**

1. The City of Austin reserves the right to correct errors made by them associated with interments or conveyance of property. In the event such error shall involve Interment, the City reserves the right to remove and re-inter the remains to such other property of equal value and similar location as may be substituted and conveyed in lieu thereof. Should an error develop in the conveyance of property, the City may correct such error by conveying property of equal value in a similar location insofar as possible.
2. The right to revise and/or add to Cemeteries (a section of sections) from time to time, including the right to modify or change the location of or any part thereof or remove or regrade roads, drives and walks is expressly reserved. The right to lay, maintain and operate, or alter or change pipe lines or gutters for water sprinkling systems and drainage, is also expressly reserved, as is the right to use cemetery property, not sold to individual owners, for cemetery purposes, including the interring and preparation for interment, or for anything necessary, incidental or convenient thereto. The cemetery reserves to itself and to those lawfully entitled thereto, a perpetual right of ingress and egress over spaces for the purpose of passage to and from other spaces.
3. No easement is granted to any owner in any road, drive or walk within the cemeteries, but such road, drive or walk may be used as a means of access to the cemeteries and its buildings as long as the City of Austin devotes such road, drive or walk to that purpose.
4. The City of Austin disclaims responsibility to owners, their personal representatives or successors in interest for the loss or damage to cemetery spaces or memorials by any cause, natural or otherwise, direct or indirect, beyond reasonable control of the City of Austin.
5. The statement of any employee of the cemeteries shall not be binding upon the City of Austin except as such statement agrees with the document conveying the right of interment and these rules and regulations.
6. The City of Austin reserves the right at any time and from time to time to change, amend, alter, repeal, rescind, or add to these rules and regulations or any part thereof to adopt any new rule or regulation or any temporary exception with respect to said cemetery or anything pertaining thereto.
7. In all matters not specifically covered by these rules and regulations, the City of Austin reserves the right to do anything which in its judgment is deemed reasonable pertaining to the cemeteries, and such determination shall be binding upon the space owner and all parties concerned.

## Exhibit H – Standard Purchase Definitions

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** – a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted.
11. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
12. **City** - the City of Austin, a Texas home-rule municipal corporation.
13. **Compliance Plan** - is defined in chapter 2-9 of the City Code.



14. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
15. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
  - A. any exceptions to the Offer accepted in writing by the City
  - B. the Supplemental Purchase Terms and Conditions
  - C. the Standard Purchase Terms and Conditions
  - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
16. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
17. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
18. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
19. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
20. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
21. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
22. **Goods** - supplies, materials, or equipment.
23. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
24. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
25. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.

26. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
27. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
29. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
30. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
31. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
33. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
34. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
35. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
36. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
37. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.

38. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
39. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
40. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
41. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.
42. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
43. **Request for Information (RFI)** - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
44. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
45. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.
46. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
47. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
48. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
49. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
50. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the

time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.

51. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
52. **Responsive** - meeting all the requirements of a Solicitation.
53. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
54. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
55. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
56. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
57. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
58. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.