



Solicitation **COVER SHEET**

IDENTIFICATION

Number	RFP 1100 EAL3013
Title	Vegetation Management – Transmission Energized Line Clearance
Summary	Energized electric utility transmission line vegetation management services for Austin Energy's Vegetation Management Program.
Type	Request for Proposals (RFP)
Version (Addenda)	5

AUTHORIZED CONTACT PERSONS

Primary	Liz Lock, Procurement Specialist IV; (512) 322-6251; Liz.Lock@austintexas.gov
Secondary	Julia Finn, Procurement Specialist III; (512) 322-6060; Julia.Finn@austintexas.gov
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov
Notes	See Solicitation Instructions, 3.1 Authorized Contact Persons.

IMPORTANT DATES

OFFERS DUE

Date and Time	10/27/2020, 2:00pm CST
Notes	See Solicitation Instructions, 5 Offer Submission.

OFFER OPENING

Date and Time	10/27/2020, 3:00pm CST
Notes	See Solicitation Instructions, 5 Offer Submission.

QUESTIONS DUE

Date and Time	10/22/2020, 2:00pm CST
Submission Method	Email Only
Notes	See Solicitation Instructions, 3.2 Questions.

PRE-OFFER CONFERENCE

Conference (Yes/No)	Yes
Mandatory (Yes/No)	No
Date and Time	09/14/2020, 12:30pm CST
Location	Conference Call: 1-512-831-7858, Conference ID: 249 635 451# Online: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTMxYzBiOTItMGU4MC00YzMyLThkOGMtYWRhYTBiNjM2ZDY2%40thread.v2/0?context=%7b%22Tid%22%3a%225c5e19f6-a6ab-4b45-b1d0-be4608a9a67f%22%2c%22Oid%22%3a%22c67a4d00-479a-4ee5-b8af-92644dd07405%22%2c%22IsBroadcastMeeting%22%3atrue%7d
Notes	N/A

PUBLISHED

Date	09/07/2020
Available Online	https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm
Available Hardcopy	Purchasing Office; 124 W. 8 th Street, Suite 300; Austin, TX 78701

SOLICITATION DOCUMENTS

Document name	Pages	Date
Solicitation Packet – RFP 1100 EAL3013 Includes the following:		
<u>Solicitation Cover Sheet</u>	3	10/08/2020
<u>Solicitation Instructions</u>	12	09/07/2020
<u>Terms and Conditions</u>	23	09/24/2020
<u>Scope of Work</u>	17	09/07/2020
<u>Exhibit A (FACTA Affidavit) – Complete and return</u>	1	09/07/2020
<u>Exhibit B (Austin Energy Data Handling Controls)</u>	11	09/07/2020
<u>Exhibit C (Network Connection Agreement)</u>	11	09/07/2020
<u>Exhibit D (Labor Descriptions)</u>	3	09/07/2020
<u>Exhibit E (Tree Pruning and Line Clearance Specifications)</u>	7	09/07/2020
<u>Exhibit F (Customer Notification Process)</u>	3	09/07/2020

<u>Exhibit G (Customer Resolution Process)</u>	3	09/07/2020
<u>Exhibit H (Austin Energy Invoicing Process)</u>	4	09/07/2020
<u>Offer and Certifications – RFP 1100 EAL3013 – Complete and return</u>	13	09/07/2020
<u>Compliance Plan Packet– Complete and return</u>	34	09/07/2020
<u>Pricing Submittal (Transmission Rate Form) – Complete and return</u>	4	09/29/2020
<u>Addendum 1 - Complete and return</u>	5	09/14/2020
<u>Addendum 2 - Complete and return</u>	1	09/24/2020
<u>Addendum 3 - Complete and return</u>	1	09/29/2020
<u>Addendum 4 - Complete and return</u>	1	10/06/2020
<u>Addendum 5 - Complete and return</u>	1	10/08/2020

NIGP CODES

COMMODITY CODES

Code	Description
98887	Tree Trimming, Utility Lines (Energized)
96239	Hauling Services
96884	Traffic Control Device Placement and Removal Service
67590	Weed Killers (Herbicides), Liquid



Solicitation INSTRUCTIONS

Solicitation No.
RFP 1100 EAL3013

1 REQUEST FOR PROPOSALS

- 1.1 Invitation.** The City of Austin invites all Responsible Offerors to submit Proposals to provide the goods and/or services described in this Solicitation.
- 1.2 Documents.** This Request for Proposals (“RFP” or “Solicitation”) is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Process.** The process described in this RFP is the Competitive Sealed Proposals process. This process is procedurally compliant with the competitive proposal processes prescribed by Texas Local Government Code Ch. 252 and Ch. 271.
- 1.4 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.5 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.

2 PUBLICATION AND NOTICES

- 2.1 Publication.** This Solicitation was published in the City’s financial services website, Austin Finance Online, as of the Published date displayed in the Solicitation Cover Sheet section.
- 2.2 Email Notices.** On the Solicitation’s Published date, email notices regarding this Solicitation were issued to all vendors registered in Austin Finance Online, that had previously selected the NIGP Codes displayed in the Solicitation Cover Sheet section. All subsequent email notices regarding this Solicitation will be limited to those vendors or other persons that subscribe to this Solicitation in Austin Finance Online.
- 2.3 Newspaper Notices.** If applicable, one or more notices of this Solicitation were published in the newspaper as required by statute.
- 2.4 Third-Party Notices.** Austin Finance Online is the only source of official notices regarding this Solicitation. Prospective Offerors shall not rely on any notices concerning this Solicitation received from sources other than Austin Finance Online.

3 COMMUNICATIONS AND MEETINGS

- 3.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office’s main line at (512) 974-2500 and request assistance from any member of the Purchasing Office’s management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.
- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more

Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.

- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. (https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)

4 OFFER PREPARATION

- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer, a Technical Offer, and an Offer and Certifications submittal.
- 4.2 Alternate Offers.** Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.
- 4.3 Exceptions.** Offerors shall indicate if they take exception to any portions of the Solicitation in their Proposal. Any exceptions included in the Proposal may negatively impact the City's evaluation of the Proposal or may cause the City to reject the Proposal entirely.
- 4.4 Proposal Acceptance Period.** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal

- 4.5 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. Offerors seeking to keep any portions of their Offer confidential shall mark each such portion as “Proprietary”. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General’s Office of the State of Texas, of any Proposal contents marked as “Proprietary”. A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- 4.6 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.
- 4.7 Living Wages.** The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- 4.8 Proposal Bond. (“Bond”)**
- 4.8.1** All Offers shall be accompanied by a Proposal Bond in an amount of not less than five percent (5%) of the Performance Bond amount. The Proposal Bond must have a Power of Attorney attached, issued by a solvent surety authorized under the laws of the State of Texas and acceptable to the City.
- 4.8.2** The Proposal Bond accompanying the Offer of the apparent successful Offeror will be retained until a Contract is awarded and the successful Offeror executes the Contract and furnishes any required bonds and insurance, after which the Proposal Bond will be returned to the Offeror. The Proposal Bond provided by the next lowest or next Best Offeror will be retained until a Contract is awarded. All other Proposal Bonds will be returned within a reasonable amount of time necessary to make an award recommendation.
- 4.9 Payment Bond.**
- 4.9.1** The Contractor shall provide a Payment Bond in an amount equal to \$100,000 within 14 calendar days after Austin City Council approval. The Payment Bond serves as security for the faithful payment of all of the Contractor’s obligations for subcontracts, work, labor, equipment, supplies, and materials furnished under the Contract. The Payment Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety’s capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- 4.9.2** The Payment Bond shall remain in effect throughout the term of the Contract, and shall be renewed for each respective extension.
- 4.10 Performance Bond.**
- 4.10.1** The Contractor shall provide a Performance Bond in an amount equal to \$500,000 within 14 calendar days after Austin City Council approval. The Performance Bond serves as security for the faithful performance of all of the Contractor’s obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety’s capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

4.10.2 The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

4.11 Hazardous Materials.

4.11.1 If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Safety Data Sheets (SDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

4.11.2 Failure to submit the SDS as part of the Offer may subject the Offer to disqualification from consideration for award.

4.11.3 The SDS, instructions and information required in paragraph “A” must be included with each shipment under the contract.

5 OFFER SUBMISSION

Offers in response to this Solicitation may be submitted using one of the following methods.

5.1.1 Electronic Offers. Electronic Offers (electronic documents) shall be submitted to the City of Austin using the Solicitation’s eResponse function, available through the City’s online financial system, Austin Finance Online. To submit Electronic Offers using the eResponse function, Offeror’s must first be registered as a vendor with the City of Austin in Austin Finance Online.

See [Attachment 1, Submitting Offers in Austin Finance Online.](#)

5.1.2 Due Date and Time for Electronic Offers. Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.

5.1.3 Withdrawing Electronic Offers. Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation’s Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation’s Due Date and Time.

5.1.4 Late Electronic Offers. The Solicitation’s eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation’s Due Date and Time.

5.1.5 Opening Electronic Offers. The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation’s Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation’s eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.

5.1.6 Hardcopy Offers. Hardcopy Offers (physical documents including paper and flash drives) shall be delivered to the City of Austin’s Purchasing Office at one of the following addresses, depending on the delivery method:

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: RFP 1100 EAL3013 P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: RFP 1100 EAL3013 124 W 8 th Street, Rm 310

	Austin, Texas 78701 Reception Phone: (512) 974-2500
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- 5.1.7 Due Date and Time for Hardcopy Offers.** Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.
- 5.1.8 Withdrawing Hardcopy Offers.** Hardcopy Offers submitted may be withdrawn in writing, in person, or by email at any time prior to the Solicitation's Due Date and Time. When a Hardcopy Offer is withdrawn, the Purchasing Office will provide the Offeror with a receipt documenting the withdrawal, which must be acknowledged in writing by the Offeror.
- 5.1.9 Late Hardcopy Offers.** All Hardcopy Offers received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Offer's late receipt at the designated location.
- 5.1.10 Opening Hardcopy Offers.** The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one is in attendance at the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.
- 5.1.11 Solicitation Openings – Special procedures due to 2020 COVID-19 Pandemic.** Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: https://www.austintexas.gov/financeonline/afo_content.cfm?s=66.

When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Offers aloud and will referring the public to the Solicitation's eResponse section to view the remaining Electronic Offers.

6 OFFER EVALUATION

- 6.1 Basis of Competition.** The City may compare Offers based on groups or categories and will choose the basis of competition that best meets the City's needs for the resulting contracts. The basis of competition for each RFP will be described in section 11, Evaluation of Offers below.
- 6.2 Minimum Responsiveness.** Proposals are Minimally Responsive when they include all of the Submittals listed in this Solicitation, completed and with sufficient detail in each to evaluate the Proposal in accordance with the Solicitation's Instructions. Proposals that are not Minimally Responsive may be deemed non-responsive and rejected.
- 6.3 Responsibility.** An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance and positive compliance history with all City ordinances. An Offer may be rejected if an Offeror is determined to not be responsible.

- 6.4 Clarifications.** Any time after the opening of Proposals, the City may contact Offerors to ask questions about their Proposal's contents in order to better understand these contents as-written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Proposal's contents. Clarifications are not to be confused with Discussions as described herein.
- 6.5 Evaluation.** Proposals that are Minimally Responsive will be evaluated based on the Evaluation Factors listed in Section 11.1 of the Solicitation Instructions. Evaluation Factors correspond to their specified Submittals and shall indicate their respective weighting next to each. Proposal submittals not identified as Evaluation Factors will be evaluated on a pass / fail basis in accordance with the Solicitation's Instructions and any further instructions within each Solicitation. Although minimum responses are required in all Submittals, the Submittals identified as Evaluation Factors will be used to differentiate the Proposals and to identify which Proposal(s) represent the Best Value to the City. The City's evaluation may be made without Clarifications or Discussions with Offerors. Proposals should, therefore, include the Offeror's most favorable terms.
- 6.6 Discussions and Proposal Revisions.** After completing initial evaluations, the City may enter into Discussions (communications which may include negotiations and feedback about the Proposal submitted) with one or more Offerors submitting the highest rated Proposal(s). Following the completion of Discussions, the City may request Proposal revisions from these Offerors. The City may seek multiple rounds of Discussions and Proposal revisions as deemed necessary by the City. The City may revise its initial evaluations depending on the contents of any Proposal revisions received following these Discussions.
- 6.7 Interviews/Presentations.** The City may require that one or more Offeror submitting the highest rated Proposals participate in interviews and/or presentations.

7 CONTRACT AWARD AND EXECUTION

- 7.1 Award Determination.** City staff will recommend Contract award to the Offeror(s) submitting the highest rated Proposal(s) based on the Evaluation Factors set forth in this Solicitation. The Award Determination will be published to Austin Finance Online and notice will be sent to all Offerors subscribed to the Solicitation.
- 7.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the Offeror(s) submitting the next highest rated Proposal(s).
- 7.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

8 ADMINISTRATIVE MATTERS

- 8.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the execution of the contract.
- 8.2 Debriefings.** Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer (including City's evaluation of the Offer) in response to the Solicitation will be discussed.
- 8.3 Reservations.** The City reserves the right to: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation due date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii)

reject any or all Offers; (ix) procure any goods or services included in this Solicitation by other means; (x) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xi) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.

- 8.4 Protests.** The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.
- 8.4.1** Protest regarding the Solicitation (Pre-Submittal Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days prior to the due date and time for proposals. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.
- 8.4.2** Protests regarding the evaluation of Proposals. Any protest regarding the evaluation of Proposals by the City shall be filed with the City no later than five (5) days after the notification of award recommendation is posted on Austin Finance Online, or notification that the protestor's status as a Offeror has changed, such as notification that an Offer has been found to be non-responsive or an Offeror has been found to be non-responsive. Any protest filed after such date which raises issues regarding the evaluation will not be considered. Offerors may only protest the evaluation of their Proposal.
- 8.4.3** Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.
- 8.4.4** You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
- 8.4.5** Your protest shall be concise and presented logically and factually to help with the City's review.
- 8.4.6** When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
- 8.4.7** The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
- 8.4.8** A decision will usually be made within fifteen (15) calendar days after the hearing.
- 8.4.9** The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- 8.4.10** When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.
- 8.5 Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with

acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

<https://www.ethics.state.tx.us/File/>

9 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.

"Addendum" means 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.

"Best Offer" means the best evaluated Offer in response to a Request for Proposals or Request for Qualifications/Statements.

"Best Offeror" means the Offeror submitting the Best Offer.

"City" means the City of Austin, a Texas home-rule municipal corporation.

"Offer" means a complete signed response to a Solicitation including, but not limited to, a Request for Proposals.

"Offeror" means a person, firm, or entity that submits an Offer in response to this 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.

"Proposal" means a complete, properly signed Offer to a Request for Proposals.

"Proposer" means a person, firm, or entity that submits an Offer in response to a Request for Proposals.

"Purchasing Office" refers to the Purchasing Office in the Financial Services Department of the City.

"Purchasing Officer" means the director of the Purchasing Office and the principle recipient of procurement authority from the City Manager.

"Request for Proposals" means all documents utilized for soliciting Proposals.

"Responsible Offeror" means 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.

"Responsive" means meeting all the requirements of a Solicitation.

"Solicitation" means this Request for Proposals or RFP.

10. PROPOSAL SUBMITTALS

10.1 Executive Summary. Provide an Executive Summary that summarizes your RFP response and confirms that the Proposer will comply with the requirements, provisions, terms, and conditions specified in this solicitation. The Executive Summary should be in the form of a standard business letter on official business letterhead and signed

by an authorized representative of Proposer. Include the complete name and address of your firm, telephone number, and email address of the person the City of Austin should contact regarding your firm's response.

- 10.2 Authorized Negotiator:** Include name, address, email, and telephone number of a person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
- 10.3 Business Organization:** State full name and address of your organization and identify parent company (including location and contact information) if you are a subsidiary. Provide similar information about any subcontractors or partners being utilized in the delivery of the requirements of the Scope of Work. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- 10.4 Program – (includes requirements, implementation, staffing, safety, production levels):** Provide a detailed description on how you will complete the Scope of Work. Include any additional information you deem necessary to evaluate your program. At a minimum include:
- i. Requirements:
 - a. Define in detail your understanding of the requirements of this request for proposal and your plan to accomplish the work. Describe all factors that contribute to the effectiveness of your services.
 - b. Elaborate on your company's quality assurance program to demonstrate work efficiency and safety in accordance with the Scope of Work.
 - c. Provide information on your strategy and approach to comply with Exhibit G-Customer Notification Process and Exhibit H-Customer Resolution Process to ensure efficient and effective services as required under this Solicitation.
 - d. Describe your approach to meeting the requirements of Storm Restoration Events and Priority Response needs as described in the Scope of Work.
 - ii. Implementation
 - a. Describe your plan for contract initiation. Provide details of ramp up with estimated timeline to be fully staffed and equipped per the requirements in this Solicitation.
 - b. Describe the materials and equipment you will use to perform the services under this contract. Additionally, provide a list of available equipment beyond the required minimum specified and the corresponding rates.
 - iii. Staffing
 - a. Provide details on your recruiting and retention program of employees, and how you will ensure staffing levels continue to be met
 - b. Detail your proposed training program for employees.
 - c. Provide information on your employee evaluation plan. What is the frequency and how will you provide observation and feedback to employees through the Contract?
 - iv. Safety
 - a. Describe your safety program and how you will ensure compliance under the requirements of this Solicitation. What additional safety practices do you take to ensure protection of employees, electric utility customers, and the public?
 - b. Describe your firm's safety training program.
 - v. Production Levels
 - a. Define your company's standard production levels for performing distribution energized vegetation management pruning for low density, mid-density, and high-density areas.

10.5 Experience and Qualifications

- i. **Minimum Qualifications:** Offerors that do not meet all minimum qualifications stated in this section will be deemed non-responsive and will not be considered for award.

Minimum Qualification	Required Submittal To Validate Minimum Qualification Has Been Met
a) Safety: Offeror shall have a safety program in place.	Copy or overview of your safety manual
b) OSHA Training: Offeror shall comply with and provide training of OSHA 29CFR 1910.269 Electric Power Generation, Transmission, & Distribution.	OSHA training records for employees, OR OSHA training employee certificate OR Confirmation of Offeror training program which includes a list of employees that have completed the training. AND EHAP (Electrical Hazards Awareness Program) Accreditation training certificate stating an employee has completed both OSHA and ANSI training, if applicable.
c) ANSI A300 Training: Offeror shall comply with and provide training of ANSI A300, (Part 1) – 2017 Pruning - “Tree, Shrub and Other Woody Plant Management—Standard Practices (Pruning)”.	ANSI A300 training records for employees OR Documentation of the Offeror’s training program which includes a list of employees that have completed the training.
d) ANSI Z133-2017 Training: Offeror shall comply with and provide training of ANSI Z133- 2017, “For Arboricultural Operations – Safety Requirements”.	ANSI Z133-2017 training records for employees OR Documentation of the Offeror’s training program which includes a list of employees that have completed the training.
e) Minimum Experience: <u>three (3) years of Corporate Experience providing the same or similar services described in the Scope of Work. The minimum experience requirement must be within the last 5 years.</u> f) The City considers Corporate Experience as work conducted by Offeror’s employees, not individual experience resulting from work at another firm. The City considers same or similar services as <u>Vegetation Management (VM) services for energized line work where Contractor has managed at least 20 VM personnel (per labor classifications, Exhibit D) on an ongoing basis.</u>	Describe how you meet this requirement.

- ii. **Corporate Experience:**
 - a. Describe only relevant Corporate Experience providing energized vegetation management services. Do not include experience prior to 2009. At a minimum provide:
 - 1) Corporate experience with other similar utilities.

2) A minimum of three Corporate References - The City at its discretion may check references and/or past/current clients in order to determine the Offeror's experience and ability to provide the services described in this Solicitation. References shall indicate a record of positive past performance. References shall include the following:

- organization name;
- month and year(s) services were provided from start to end;
- brief description of services provided and a statement if the work was on energized lines;
- quantity of VM personnel working on the contract or project;
- total cost of the project; and
- valid reference name, title, address, phone number, and email address of a principal person who represents the organization and can speak to the services based on the involvement at the time of delivery.

b. **OSHA 0300 Logs:** Provide the most recent 3 years of OSHA 0300 Logs to demonstrate prior experience performing services safely.

iii. **Personnel:**

- a. Include names and qualifications of all key personnel who will be assigned to this project. Do not include experience unless personnel assigned to this project will actively participate for more than 40 hours per year. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide resumes for each. All billable personnel shall meet the Requirements for the labor classification proposed as required in Exhibit D, Transmission Maintenance Vegetation Management Labor Descriptions.
- b. Project Management Structure - Provide a general explanation and an organizational chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. Personnel listed cannot be changed without written approval by Austin Energy. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.

10.6 Price Proposal – Offeror shall enter pricing information in the Pricing Submittal - Transmission Rate Form. The Total Pricing Submittal amount will be the evaluated price. Whichever Offeror offers the City the most competitive price will be awarded the maximum amount of points. Remaining points will be distributed on a pro-rated basis.

10.7 Local Business Presence - The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. The Local Business Presence form in the Offer and Certifications section must be completed to be considered for Local Business Presence. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Any Offers with subcontracting not indicating specific percentages or dollar amounts will not receive Local Business Presence points for subcontracting.

10.8 Service-Disabled Veteran Business Enterprise ("SDVBE") - Pursuant to the interim Service-Disabled Veteran Business Enterprise (SDVBE) Program, Offerors submitting proposals in response to a Request for Proposals shall

receive a three point (3 percent) preference if the Offeror, at the same time the proposal is submitted, is certified by the State of Texas, Comptroller of Public Accounts as a Historically Underutilized Business and is a Service-Disabled Veteran Business Enterprise. This preference does not apply to subcontractors. To receive this preference, Offerors shall complete the enclosed Section 0840 Service-Disabled Veterans Business Enterprise Preference Form, in accordance with the Additional Solicitation Instructions included therein.

11. Evaluation of Offers This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in the solicitation instruction shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

The anticipated annual Contract Award amount is a Not-To-Exceed amount of \$3,500,000.

11.1 Evaluation Factors

RFP Evaluation Factors		Maximum Points														
Program (including requirements, implementation, staffing, safety, production levels)		40														
Experience and Qualifications (Corporate Experience, Personnel)		27														
Price		20														
Local Business Presence		10														
<table border="1"> <thead> <tr> <th>Team’s Local Business Presence</th> <th>Points Awarded</th> </tr> </thead> <tbody> <tr> <td>Local business presence of 90% to 100%</td> <td>10</td> </tr> <tr> <td>Local business presence of 75% to 89%</td> <td>8</td> </tr> <tr> <td>Local business presence of 50% to 74%</td> <td>6</td> </tr> <tr> <td>Local business presence of 25% to 49%</td> <td>4</td> </tr> <tr> <td>Local presence of between 1 and 24%</td> <td>2</td> </tr> <tr> <td>No local presence</td> <td>0</td> </tr> </tbody> </table>		Team’s Local Business Presence	Points Awarded	Local business presence of 90% to 100%	10	Local business presence of 75% to 89%	8	Local business presence of 50% to 74%	6	Local business presence of 25% to 49%	4	Local presence of between 1 and 24%	2	No local presence	0	
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Local presence of between 1 and 24%	2															
No local presence	0															
Service-Disabled Veteran Business Enterprise		3														
Total		100														

11.2 Interviews and/or presentations, Optional. The City will score proposals on the basis of the criteria listed above. The City may select a “short list” of Proposers based on those scores. “Short-listed” Proposers may be invited for presentations, demonstrations, or discussions with the City. The City reserves the right to re-score “short-listed” proposals as a result, and to make award recommendations on that basis.

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

1. GENERAL

1.1 TERM OF CONTRACT:

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

1.2 INDEFINITE QUANTITY:

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

1.3 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

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1.4 PAYMENT:

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

1.5 FINAL PAYMENT AND CLOSE OUT:

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project

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Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

- B. The making and acceptance of final payment will constitute:
- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

1.6 SPECIAL TOOLS & TEST EQUIPMENT:

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

1.7 AUDITS AND RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.8 FINANCIAL DISCLOSURES AND ASSURANCE:

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

1.9 RIGHT TO ASSURANCE:

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

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1.10 STOP WORK NOTICE:

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

1.11 DEFAULT:

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.12 TERMINATION FOR CAUSE:

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

1.13 ATTORNEY'S FEES:

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

1.14 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

1.15 FRAUD:

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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1.16 DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.17 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.18 INDEMNITY:

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

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

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- vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.
- B. **THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.**
- C. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- D. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
 - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- E. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- F. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

1.19 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.20 CONFIDENTIALITY:

The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required

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to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective Order. The Contractor agrees to use protective measures no less stringent than the Contractor uses in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.21 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;

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- ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
- iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.22 PUBLICATIONS:

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

1.23 ADVERTISING:

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

1.24 NO CONTINGENT FEES:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

1.25 GRATUITIES:

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

1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

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1.27 INDEPENDENT CONTRACTOR:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

1.28 ASSIGNMENT DELEGATION:

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

1.29 WAIVER:

The claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

1.30 MODIFICATIONS:

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

1.31 INTERPRETATION:

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

1.32 DISPUTE RESOLUTION:

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

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written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

1.33 JURISDICTION AND VENUE:

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

1.34 INVALIDITY:

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

1.35 HOLIDAYS:

The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year’s Day	January 1
Martin Luther King, Jr.’s Birthday	Third Monday in January
President’s Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4

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Labor Day	First Monday in September
Veteran’s Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

1.36 SURVIVABILITY OF OBLIGATIONS:

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

1.37 COOPERATIVE CONTRACT:

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City’s cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

1.38 NON-DEBARMENT CERTIFICATION:

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

1.39 EQUAL OPPORTUNITY:

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

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termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.

- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.40 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

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

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a "company", then the Contractor verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this Contract.
- C. The Contractor's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.41 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

1.42 SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any

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Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager no later than the 10th calendar day of each month.

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that.
 - i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

1.43 ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the Contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the Solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty (20%) percent for any single line item and in no event shall the total amount of the Contract be automatically adjusted as a result of the change in one or more-line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of Contract award and remain in effect until Contract expiration unless changed by subsequent amendment.

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- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor’s direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original Contracted price (the Solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or Contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
 - a. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
 - i. Utilize final Compilation data instead of Preliminary data
 - ii. If the referenced index is no longer available shift up to the next higher category index.
 - iii. Index Identification: Complete.

Weight % or \$ of Base Price: 100%	
Database Name: Bureau of Labor Statistics	
Series ID: CEU050000003	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: National	
Description of Series ID: Average hourly earnings of all employees, total private	
This Index shall apply to the following items of the Price Proposal: Section 1.1, 1.5, and 1.6	

Weight % or \$ of Base Price: 100%	
Database Name: CPI	
Series ID: CUUR0000SEHM	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: U.S. city average	

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Description of Series ID: Tools, hardware, outdoor equipment and supplies, all urban consumers
This Index shall apply to the following items of the Price Proposal: Section 1.2

Weight % or \$ of Base Price: 100%
Database Name: PPI
Series ID: WPU06530109
<input checked="" type="checkbox"/> Not Seasonally Adjusted <input type="checkbox"/> Seasonally Adjusted
Geographical Area: N/A
Description of Series ID: Chemicals and allied products – agricultural and commercial pesticides and chemicals
This Index shall apply to the following items of the Price Proposal: Section 1.3

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

Adjustment of a Portion of the Base Price: A portion of the Base Price changes such that only part of the price is adjusted, while the balance of the Base Price remains fixed. The portion of the Base Price subject to adjustment is defined in D iii. above.

Index at time of calculation
Divided by index on Solicitation close date
Equals change factor
Multiply the Base Price by the portion of Base Price subject to change = weighted portion
Multiply the weighted portion times the change factor
Equals the Adjusted Price for the portion of the Base Price subject to the Index change
Add the portion of the Base Price not subject to adjustment
Equals the Adjusted Price

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

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1.44 MONTHLY SUBCONTRACT AWARDS AND EXPENDITURES REPORT:
(applicable when an MBE/WBE Compliance Plan is required)

The Contractor must submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager specified herein no later than the tenth calendar day of each month.

1.45 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P.O. Box 1088
Austin, Texas 78767
OR
PURInsuranceCompliance@austinTexas.gov
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure,

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statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
 - xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
 - xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
 - xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements**: The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- i. **Worker's Compensation and Employers' Liability Insurance**: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.
 - ii. **Commercial General Liability Insurance**: Coverage with minimum bodily injury and property damage per occurrence limits of \$1,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - b. Independent Contractors coverage (Contractor/Subcontracted work);
 - c. Products/Completed Operations Liability for the duration of the warranty period;
 - d. Damage and injury by wildfire caused by insureds work under this contract
 - e. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
 - iii. **Business Automobile Liability Insurance**: Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;

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- b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
- c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability:** When pre-planning services apply, Contractor shall provide Professional Liability coverage, at a minimum limit of \$1,000,000 per occurrence, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.
- v. **Property Insurance:** The Contractor shall provide All Risk (Special Form) Property coverage in the amount of \$24,000 including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear. Property Insurance will only be required at the time the Contractor is issued a City of Austin owned tablet.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

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

1.46 BONDS:

A. PAYMENT BOND:

- i. The Contractor shall provide a Payment Bond in an amount equal to \$100,000 within 14 calendar days after Austin City Council approval. The Payment Bond serves as security for the faithful payment of all the Contractor's obligations for Subcontracts, work, labor, equipment, supplies, and materials furnished under the Contract. The Payment Bond shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus.
- ii. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.
- iii. The Payment Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

B. PERFORMANCE BOND:

- i. The Contractor shall provide a Performance Bond in an amount equal to \$500,000 within 14 calendar days after Austin City Council approval. The Performance Bond serves as security for the faithful performance of all the Contractor's obligations under the Contract. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas and shall meet any other requirements established by law or by the City pursuant to applicable law. The Surety must obtain reinsurance for any portion of the risk that exceeds 10% of the Surety's capital and surplus. For bonds exceeding \$100,000, the Surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

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- ii. The Performance Bond shall remain in effect throughout the term of the Contract and shall be renewed for each respective extension.

2. GOODS

2.2 WARRANTY:

A. PRICE:

- i. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- ii. The Contractor warrants that its prices provided in this Contract are no higher than its current prices on orders for similar goods under similar terms of purchase.

B. TITLE & RISK OF LOSS: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables. The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.

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

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

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

2.3 HAZARDOUS MATERIALS:

- A. If this Contract involves hazardous materials, the Contractor shall provide the City the Safety Data Sheets (SDS) on all chemicals and hazardous materials being used, specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the SDS is grounds for the City to terminate this Contract immediately.
- C. The SDS, instructions and information required in Paragraph "A" must be included with each shipment under the Contract.

3. SERVICES

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

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

3.2 WORKFORCE:

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

3.3 GUARANTEE – SERVICES:

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

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- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

3.4 TRAVEL EXPENSES:

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained online at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

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

3.5 PLACE AND CONDITION OF WORK:

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and Specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City 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.

3.6 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

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claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Paragraph.

3.7 LIVING WAGES:

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

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

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

3.8 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the Contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four- to six-week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;

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- ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
- iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City a 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.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a City-issued Contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work under the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 calendar days of the receipt of notification of denial.
- G. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- H. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- I. Contractor shall retain the reports and make them available for audit by the City during regular business hours

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VEGETATION MANAGEMENT - TRANSMISSION ENERGIZED LINE CLEARANCE

1. Background

The City of Austin Electric Utility, dba Austin Energy (Austin Energy) is the 8th largest publicly owned electric utility, with a service area of over 437 square miles and more than 600 miles of overhead electric transmission lines. Safety is one of Austin Energy's top priorities, and vegetation management (VM) around energized lines is critical to ensuring the public's safety.

2. Purpose

Contractor shall be experienced and qualified in performing energized electric utility transmission line VM services for Austin Energy's VM Program. The Contract will be utilized exclusively by Austin Energy.

This work shall include tree pruning and removal and suppression of various types of vegetation growing within Austin Energy's electrical facilities, utility easements and rights-of-way. Contractor shall be responsible for performing all types of VM services including the following types of services:

- **Capital Improvement Projects (CIP)** - All VM services involved in the installation or maintenance of transmission electrical facilities.
- **Transmission Maintenance** - Scheduled VM services on a circuit, span, grid or substation basis that address all vegetation concerns on the transmission system.
- **Transmission Reactive** - Reactive VM services to address areas along a transmission circuit, typically designated by transmission patrollers, that has the potential for causing outages, access problems or has had customer complaints.
- **Individual Customer Requests** - All VM services associated with addressing individual customer requests at a work location. This may include any tree work at a substation site.
- **Trouble Work** – Any VM services associated with restoring safe and reliable electric service to Austin Energy's customers. This may or may not be in conjunction with adverse weather conditions.
- **Vegetation Suppression** – Integrated VM services using a directed, herbicide application to control vegetation for the maintenance of Austin Energy's electrical system.

3. Term of Contract:

The term of the contract shall commence upon execution, unless otherwise specified, and remain in effect for an initial term of 24 (twenty-four) months. The Contract may be extended beyond the initial term for up to 3 (three) additional 12 (twelve) month periods at the City's sole option.

4. Regulations Relating to Work

Contractor shall perform all work in accordance with the Contract. Contractor shall obtain Austin Energy's written consent in the event of deviations from the Contract. The code, Specification, or standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These standards include but are not limited to:

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- A. Occupational Safety and Health Administration (OSHA) 29 CFR 1910.269 Electric Power Generation, Transmission, & Distribution
- B. Electrical Hazards Awareness Program (EHAP)
- C. American National Standards Institute (ANSI) A300, (Part 1) – 2017 Pruning - “Tree, Shrub and Other Woody Plant Management—Standard Practices (Pruning)”
- D. ANSI Z133- 2017, “For Arboricultural Operations – Safety Requirements”
- E. City of Austin Environmental Regulations and other applicable Federal, State and Local ordinances and laws
- F. International Society of Arboriculture (ISA) standards
- G. Texas Department of Agriculture (TDA) standards

Any material, method, or procedure specified by reference to a specific standard or Specification, such as a commercial standard, Federal or State Specification, industry or government code, trade association code or standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendments or supplements thereto. If the governmental requirements are different from the Austin Energy's, Contractor shall follow the more stringent guidelines.

5. Safety

- A. Contractor shall initiate, maintain and supervise all safety practices and programs in connection with the work. Contractor shall provide the necessary protection to prevent damage, injury or loss to all persons as well as real and personal property which may be affected by the work. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by Contractor shall be remedied by Contractor.
- B. All work performed in the vicinity of energized electric systems has inherent risks, and because safety for employees and the general public is of the highest concern, Austin Energy has set forth certain safety guidelines within Austin Energy's Utility Safety Manual (latest version). The intention of this manual is to provide workers a set of minimum guidelines. Whenever working on or near Austin Energy's energized system and whenever working with or in the close proximity of Austin Energy's crews, Contractor shall adhere to all pertinent rules and regulations provided in Austin Energy's Utility Safety Manual and all safety policies and procedures set forth by Austin Energy. In the event of a conflict between Austin Energy's Utility Safety Manual and any applicable Federal, State or local safety laws, rules, regulations or standards, the more stringent standard shall apply. Austin Energy encourages additional safety measures whenever conditions warrant.
- C. In emergencies affecting the safety or protection of persons or the work at the site or adjacent thereto, without special instruction or authorization from Austin Energy, Contractor shall promptly and reasonably act to prevent damage, injury, or loss and to mitigate damage or loss to the work.
- D. If there is an accident involving injury to any individual on or near the work, Contractor shall notify Austin Energy immediately by phone of the incident after ensuring the safety of Contractor's workers and any other affected parties. Contractor shall record the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports and other documentation that

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describes the event. Copies of such documentation shall be provided to Austin Energy within forty-eight (48) hours of the event.

- E. If there is an accident that causes damage to Austin Energy's property or any third-party property, Contractor shall notify Austin Energy immediately by phone of the damage after ensuring the safety of Contractor's workers. Contractor shall follow up this verbal notification with written notification and investigation of the incident, including any disciplinary actions to Austin Energy, within five (5) working days of the incident.

6. Tasks/Requirements

- A. Contractor shall assume and be solely responsible for all cost and risk resulting from Contractor's failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.
- B. Kick Off Meeting: Within thirty (30) calendar days of Contract execution, Austin Energy will coordinate a kick-off meeting with Contractor. Contractor shall not perform work prior to the kick-off meeting or prior to receipt of approval of Austin Energy.
- C. Facilities Information:
 - i. Coverage Area: The geographical area in which the work will be performed encompasses all of the transmission corridors used by Austin Energy within and outside of Austin Energy's electric service territory. A considerable portion of the transmission system extends beyond the Austin metropolitan area through rural areas to facilities near La Grange, Texas and Wharton, Texas. The current total number of transmission circuit miles is 624. Contractor shall manage all vegetation within the transmission system easements, rights-of-way, and substation facilities or generating plants owned or operated by the Austin Energy, at Austin Energy's request.
 - ii. Easements: The urban and suburban utility easements and rights-of-way may be adjacent to public streets and roads or may be situated along the rear or side lot lines of individual properties. The rural transmission easements run across farm and ranch country, through private properties, with access along the right-of-way or at public roads that intersect the transmission easement. Access along the easement may be limited by fences, creeks, canals and other obstructions.

D. Work Assignments:

Austin Energy will designate to Contractor the specific VM Transmission Maintenance work to be performed on an as-needed basis. Austin Energy will provide work assignments in writing at weekly planning meetings. Additional work assignments may be made at the verbal direction of the Project Manager. Work assignments may include identifying the lines, easements or rights-of-way to be cleared, and the order of and schedule for performance of the work. Transmission Reactive work, Individual Customer requests, and CIP work will be assigned as needed to meet construction need dates and maintain electric service reliability.

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Contractor shall furnish all labor and equipment necessary to perform VM Transmission Maintenance services as assigned at the relevant labor hour billing rate.

Work Hours and Billing Categories:

- i. Regular Time: Normal crew work hours shall be between the hours of 6:30 a.m. and 6:30 p.m. Monday through Friday, unless otherwise specified by Austin Energy. However, Contractor shall have enough skilled personnel and equipment available for all hours of the day or night and in all types of weather conditions to perform all work activities covered under this contract. Contractor shall be responsible for assembling required After Hours or Priority Response personnel within forty-five (45) minutes from receiving the request from Austin Energy.
- ii. Overtime Billing Rates: Defined as hours worked by Contractor's personnel after first obtaining forty (40) regular hours at the request of Austin Energy. Overtime must be approved in advance by Austin Energy. Any periods of non-productive time are at Contractor's expense and not billable to Austin Energy. Rate shall be inclusive of all costs.
- iii. After Hours: Defined as services requested by Austin Energy on a priority basis in response to an electric system reliability and safety disturbance, or weather-related conditions requiring Contractor to call out personnel outside of normal crew work hours and personnel are under forty (40) hours. Once Contractor personnel reach forty (40) hours, bill rates shift to the Overtime Billing rate. Contractor shall be responsible for assembling required After Hours or Priority Response personnel within forty-five (45) minutes from receiving the request from Austin Energy.
- iv. Priority Response: Defined as services requested by Austin Energy on a temporary priority basis in response to an electric system reliability and safety disturbance or weather-related conditions requiring Contractor to call out personnel. Austin Energy may require Contractor to supply crews from outside the Austin Energy Service Territory, and the Austin Energy Project Manager may direct Contractor to charge the Current United States General Services Administration Domestic Per Diem Rates per City of Austin Terms and Conditions, 3.4 – Travel Expenses. Per Diem charges not approved in advance by the Austin Energy Project Manager will not be paid. Contractor personnel engaged under the priority response category shall be billed as applicable under Regular Time or Overtime bill rates based on hours worked under the Contract.
- v. Miscellaneous Billing Rates: Volume-based billing rates for chemicals include all costs associated with the purchase, delivery and storage of the product, which shall be billed to Austin Energy, including all miscellaneous expenses and profit. These rates may be used for any work associated with Transmission Maintenance projects, Transmission Reactive projects, CIP, Individual Customer Requests, Trouble Work, Vegetation Suppression, electrical restoration and project support.
- vi. Per Diem: Contractor travel expenses for overnight and out-of-town work, inclusive of lodging, meals and incidental expenses per person, will be paid in accordance with the Price Sheet line items for Per Diem. Many of

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the work areas are more than one and one-half hours driving time, one way, from Austin. Contractor may use overnight lodging while working on remote transmission rights-of-way in the El Campo, Texas, Columbus, Texas and La Grange, Texas areas. Itemized receipts are not required for reimbursement of per diem expenses. Overnight lodging and meals are paid for Contractor personnel while working multiple days on transmission system right-of-way maintenance projects, beyond a one and one-half hours driving time from the Austin area, at the sole discretion of the Project Manager. These per diem rates are categorized as:

- a. Single Occupancy Overnight Lodging Per Diem Rate: for a single person in a room alone with expenses for three meals per day. Single room occupancy must be approved in advance by the Austin Energy Project Manager.
 - b. Double Occupancy Overnight Lodging Per Diem Rate: for two or more persons in a room with expenses for three meals per day per person.
 - c. Meals Only Per Diem: for expenses of three meals per day while out of town on the last day of a multi-day work assignment where no overnight lodging is required.
- E. Unit Price Basis: Contractor shall furnish labor, equipment and supervision necessary to perform electric utility line clearance, right-of-way maintenance and vegetation control work as assigned at a Cost per Acre Unit Price rate. The Unit Price rates include but are not limited to all labor and equipment costs related to all administration, supervision, line clearance work, herbicide application and notification. Austin Energy will assign the classification of the pricing strategy for each project. Austin Energy will assign a project as a Unit Price job when it is reasonable, practical and efficient to do so. A Unit Price job, assigned by Austin Energy, will be identified in writing as a Unit Price project and be planned and worked accordingly. These Unit Prices may be used for any work associated with transmission right-of-way maintenance, CIP, Transmission Reactive, vegetation suppression or other project on transmission and substation related properties during the contract period. All work must meet expectations as outlined in the description and definition of work categories.
- i. Herbicide Applications: Contractor shall be qualified, experienced and be a TDA licensed Category 5 Pesticide/Herbicide Applicator to provide VM services in a variety of settings. The herbicide methods that will be most used on the transmission rights-of-way and related facilities are:
 - a. Foliar Herbicide Application - Direct application of herbicide to all undesirable, woody plants under approximately eight feet in height for effective control to meet the desired objective. Contractor shall achieve this control without any off-target or off-site damages to nearby desirable vegetation. Any such avoidable damages shall be the responsibility of Contractor to mitigate, remediate and settle. Contractor shall make every possible effort to maximize product efficacy, mortality and successful control of target species by

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matching product selection to the target species, application method, and timing. Contractor shall treat vegetation with an appropriate product, as specified and provided for in the Price Sheet, to produce an acceptable level of mortality and control. Under most conditions, the acceptable level of control shall be a minimum of ninety (90) percent mortality of the target species.

For mesquite and huisache under adverse climatic, vegetative or physical conditions, Austin Energy, at its sole discretion, may lower the acceptable level of control to a minimum of eighty (80) percent mortality. Austin Energy will evaluate treatment efficacy and mortality of target species between six (6) and twelve (12) months following application to determine if goals for control have been met. If Austin Energy deems that the results are unsatisfactory, Contractor shall re-treat all untreated skips, escapes or partial results, at Contractor's expense.

Foliar Herbicide Applications will be classified as Unit Price Basis (per acre) for pricing and payment purposes and split into three categories according to stem density of target species. This determination will be made by systematic, random samples of one-hundredth acre plots within the treatment area, with typical, uniformly consistent stem density, representative and characteristic of the treatment area. This method of sampling will be used to assess the number of stems per acre to assign the density classification as follows:

- (1) Light/Sparse Stem Density—Less than 1,000 stems per acre
- (2) Moderate Stem Density—Between 1,000 and 5,000 stems per acre
- (3) Heavy Stem Density—More than 5,000 stems per acre

- b. Bare Ground Herbicide Application - Austin Energy requires the services of an herbicide applicator for bare ground control in a substation or similar facility. Contractor may use this application method where total control of all weedy vegetation in a gravel area or similar area is desired. Contractor shall achieve this control without any off-target or off-site damages to nearby desirable vegetation. Any such avoidable damages shall be the responsibility of Contractor to mitigate, remediate and settle. Contractor shall make every possible effort to maximize product efficacy, mortality and successful control of target species by matching product selection to the target species, application method and timing.

Bare ground application with an appropriate product as specified and provided for in the Price Sheet must result in 100% mortality rate. Austin Energy will evaluate treatment efficacy, mortality and control of target species between one (1) and three (3) months following

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application to determine if goals for control have been met. If Austin Energy deems that the results are unsatisfactory, Contractor shall re-treat untreated skips, escapes or partial results at Contractor's expense.

- ii. Mechanical Vegetation Mowing, Shredding or Clearing: Mechanical mowing, shredding or clearing is an important component of transmission VM services. Mowing is important to maintain vehicle access on a right-of-way and mechanical clearing may be required to reclaim a right-of-way when the vegetation has grown too large for any other economical means to manage it. Contractor shall reduce all vegetation mowed or cleared to a shredded material that resembles a coarse mulch and is scattered on-site in the process. Contractor shall remove vegetation as close to the ground as possible.

The primary differences between mowing and mechanical clearing are the size of the stems, vegetation species and frequency of use. Stem diameter classification will be made by site inspection of the right-of-way where the vegetation is uniformly consistent and typical of the representative vegetation. Stem diameters are measured in caliper inches near ground level and are grouped into three size-classes as follows:

- a. Small brush: 0" – 2" caliper inches
- b. Medium brush: 2" – 4" caliper inches
- c. Large brush: 4" –12" caliper inches

The Unit pricing strategy will be evaluated by Austin Energy to determine the efficiency of this method of work management, as needed. Austin Energy reserves the right to designate whether projects will be worked as Unit pricing projects or Time and Material projects. At any time during the Contract period Austin Energy reserves the right to solicit individual project or groups of projects under different Unit Pricing strategies.

F. Weekly Planning Meeting Requirements: Unless otherwise approved by Austin Energy's Project Manager or designee, Contractor's personnel shall meet with Austin Energy on a weekly basis to receive assignments, discuss status and any other issues as determined by the Austin Energy Project Manager. Unless otherwise agreed upon in advance by Austin Energy, Contractor's VM Pre-Planner Supervisor/Manager shall attend each meeting at a time and location determined by Austin Energy. If Contractor is unable, in whole or in part, to comply with any work assignments, including the schedule and order of performance, Contractor shall promptly notify the Austin Energy in writing, identifying the work assignments and the reasons why Contractor shall be unable to perform the work assignments as ordered. Austin Energy will meet with Contractor's representatives to adjust the work schedule as mutually agreed.

G. Site Cleanup: Upon completion of the work activity at each location, Contractor shall remove all equipment in conformance with all applicable ordinances, laws, rules and regulations and to the satisfaction of Austin Energy and of the respective property owners. All trash generated (e.g., lunch bags, drinking cups) through the daily work activity shall be picked up and properly disposed of at the end of each day.

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H. Debris Disposal: Upon completion of the work activity at each location, or when leaving the location for the day, Contractor shall dispose of all brush and debris in accordance with Exhibit F – Tree Pruning and Line Clearance Specifications, Paragraph X. Disposal of Cut Material. Contractor shall, at the request of Austin Energy, provide brush and debris pickup and disposal for any work resulting from line clearing performed by Austin Energy's forces.

I. Damages: Every effort shall be made to protect all property that may be affected by the work. Contractor shall repair any damage to the property owner's premises caused by Contractor at Contractor's sole cost. If Contractor causes damages to the property owner's premises in violation with any Federal, State or local ordinances or regulations, Contractor shall be solely responsible for making the necessary mitigation or restitution.

J. Changes to the Work: Contractor shall have the ability to adjust the work force if necessary, within thirty (30) calendar days of written request from Austin Energy. If Contractor cannot adjust, Contractor must provide written justification to Austin Energy within ten (10) calendar days of the initial request. If Contractor cannot meet the adjustment (in labor, equipment, and/or production levels), Austin Energy reserves the right to procure services from another supplier at Austin Energy's discretion.

K. Contractor Requirements:

- i. Contractor's equipment yard shall be located such that travel time from the equipment yard to the assigned work location, does not exceed 45 minutes. Satellite yards may be required by Austin Energy if the travel time exceeds 45 minutes. Contractor shall be responsible for proper storage facilities for items including but not limited to oil, herbicides or hazardous materials that meet City, State, and Federal regulations and codes. The business office and equipment yard(s) shall have water, wastewater and electric facilities that have been approved by Austin Energy. The daily crew requirements for ice and drinking water shall be provided at the equipment yard(s).
- ii. Contractor shall maintain a local, staffed business office complete with adequate telephone service. Contractor shall have a computer system at the main local business office. This system shall access and download tax plats from various tax appraisal districts and perform other work as specified by Austin Energy. A printer will be necessary to print vegetation work plans and other documents daily. Systems shall be upgradeable, and Contractor shall upgrade software and hardware as called upon to interact with Austin Energy's systems. Contractor shall have access to a copier to ensure all paperwork is handled in an efficient and timely manner.
- iii. The local business office shall remain open and staffed during the regular business hours as defined in 6.D.i, on regular business days. Observed holidays are provided in the City's Terms and Conditions. The office shall be staffed and equipped for the purpose of administering the Contract,

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answering customer questions regarding the VM services being performed by Contractor, receiving work assignments and answering questions arising from the Contract administration, billing and work activity.

- iv. Contractor shall comply with the requirements and instructions of Austin Energy in the performance of all work and meet all required deadlines.
- v. Prior to commencing any work, Contractor shall become familiar with the location and nature of any electrical facilities involved and shall always carefully guard against any interference with the normal operation of such facilities. All work shall be performed in accordance with all applicable Specifications and requirements, including, but not limited to the Tree Pruning and Line Clearance Specifications and Requirements (Exhibit E).
- vi. Contractor shall avoid unnecessary interference with concurrent activities of other contractors and Austin Energy forces at the work site.
- vii. Contractor shall not interfere with the use of public and private roads and shall provide and maintain suitable detours or other temporary expedients if necessary.
- viii. Contractor shall conduct the work in a manner to avoid unnecessary noise and other disturbance and shall cooperate with other occupants of the premises.
- ix. Contractor shall be responsible for determining if permits are required. Unless otherwise agreed upon by both parties, all other required permits (Capital Metro, Travis County, Williamson County, Hays County, and other regulatory entities as may be required) shall be obtained and maintained by Contractor and upon Austin Energy approval, reimbursable by Austin Energy after submission of a proper invoice including backup documentation. Austin Energy will submit for Austin Transportation Department permits only for Contractor. Reimbursement of permit is for the cost of the permit only.
- x. Contractor and/or its employees shall not solicit work or prune, remove, or perform any other work on trees, or remove any brush, under this Contract at the request of any party other than Austin Energy, including any utility customer or property owner, without the prior consent of Austin Energy. Any solicitation of work or any VM services for entities other than Austin Energy shall not occur while Contractor is performing services for Austin Energy.
- xi. Prompt response and execution of work, both routine and during periods of priority response or interruptions of electric service, are the most important requirements of the Contract. Contractor may be required to mobilize their forces on short notice at all hours of the day, and in all kinds of weather.
- xii. Each crew is required to begin each workday with an empty chip dump bed. Contractor, either before or after work hours, shall dump the final daily load of chips, unless other arrangements are approved in writing by Austin Energy. Travel time from the equipment yards to any job location within Austin Energy's service area shall not exceed a maximum of 45 minutes, unless agreed to in writing in advance by Austin Energy. Austin Energy may require satellite yards if the travel time exceeds 45 minutes.

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- xiii. Austin Energy reserves the right during the Contract period to modify or alter the systems and processes used in the performance and administration of this Contract with a minimum of thirty (30) calendar days written notice to Contractor.
- xiv. Contractor crews working on VM for Transmission Maintenance for Austin Energy's service territory cannot be assigned additional work on other contracts without prior written approval by Austin Energy, which will not be unreasonably withheld.
- xv. Contractor shall comply with Exhibit F - Customer Notification Process. All Contractor personnel shall communicate effectively and professionally with Austin Energy's customers at all times.
- xvi. Worker breaks, e.g., for water and rest, shall be taken individually, with the exception of lunch. Contractor personnel are not to stop at stores for food, drink or personal items during the workday, unless otherwise approved by Austin Energy.
- xvii. Smoking and vaping are not permitted on Austin Energy property or on property owned by Austin Energy customers.
- xviii. All Contractor personnel shall present a professional appearance and dress in a manner appropriate with current or impending environmental conditions (e.g., rain gear or winter clothing) allowing for the work to be performed in a safe and efficient manner. Each crewmember shall wear a standard company-identifying article of clothing that will readily identify personnel as employees of Contractor. Proper personal protective equipment shall be worn by all personnel when working in the field.
- xix. Working on or near Energized Equipment ARC Flash Protection: Contractor's employees shall wear at all times the proper personal protective equipment and clothing required for the head, face, torso, arms, hands, and lower body that provides a minimum Arc Thermal Protection Value of 12 calories per square centimeter (cal/cm²) when working on or near energized electrical equipment, or greater, if required by the NFPA Standard 70E and/or Article 410 of the NESC for the work being performed.
- xx. Contractor shall furnish qualified and experienced VM personnel as required by Austin Energy and other State and regulatory agencies. Contractor personnel shall meet minimum requirements for cardiopulmonary resuscitation the Texas Department of Transportation and TDA. Austin Energy may also require Contractor personnel to acquire additional training and certifications, such as Railroad safety training, and Competent Person for Work Zone Traffic Control training as necessary to perform VM services and billable to Austin Energy. All of the minimum personnel qualifications under the term of the contract are cumulative.
- xxi. Contractor minimum requirements for labor classifications and requirements by position are located in Exhibit D – Labor Descriptions. Any deviations in requirements for Contractor personnel must be submitted in writing to Austin Energy and approved by Austin Energy before any changes may occur.

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- xxii. Minimum Staff Requirements: Contractor shall adhere to the following minimum staffing requirements without prior written approval the Austin Energy Project Manager.
- a. Initial Ramp up: within forty-five (45) calendar days of Contract Award, Contractor shall have a minimum of one Field Representative, one General Foreman, four Working Foremen, one Vegetation Suppression Specialist, two Vegetation Management Pre-Planners, and ten Climbers/Tree Trimmers (minimum of five Tree Trimmers Class B).
 - b. Ongoing Staffing Needs: Upon written notice by Austin Energy, Contractor shall provide additional staff beyond the minimum staffing requirements stated above within thirty (30) calendar days of written notification.
 - c. Contractor shall have a safety and drug screening program that meets or exceeds industry best practices.
 - d. Contractor and Contractor personnel shall have certifications and licenses as required by labor classification prior to issuing work.
 - e. Pre-Planner Staff level changes: In the event that Contractor wants to propose shifting Contractor personnel to different labor classification billing categories, Contractor shall submit a written request to Austin Energy, including associated resumes and certifications thirty (30) calendar days prior to the requested change. Austin Energy has the right to approve or not approve the requested change.
 - f. Office Staff: Contractor shall provide at no cost to Austin Energy all office staff necessary to perform administrative work related to the Contract, answer phones and maintain contact with supervision and crews during working hours.
 - (1) Contractor's office personnel shall perform other company business, e.g., parts, material and supply ordering; mail pickup and delivery; paperwork necessary for contract compliance and TDA recordkeeping; subcontractor monitoring; invoicing and any other business function so as not to reduce the daily productivity of the field work force, supervision, or contract administrative personnel.
 - (2) Contractor's office shall communicate crew work locations to Austin Energy on a daily basis via email unless otherwise agreed upon by Austin Energy.
 - (3) Unless otherwise approved by Austin Energy, in the event that a Contractor employee does not successfully obtain the certifications required for a classification change, Contractor shall refund or credit Austin Energy the difference in bill rates. For example, if a Contractor employee is re-classified as a Field Representative, but after six months does not obtain the required Texas pesticide applicator license with a right-of-way subclass, Contractor shall re-classify the employee to the previous job classification and refund the difference between the bill

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rates times the number of hours charged for the amount of time that the employee worked. Contractor shall make such reimbursement within forty-five (45) calendar days of the expiration of the period in which the employee was to obtain the certification.

xxii. **Materials and Equipment:**

Contractor shall furnish, at Contractor's expense, all necessary equipment (e.g., tools, computers, trucks) and material (e.g., chemicals) to perform VM transmission maintenance services within the distribution and transmission system easements, rights-of-way, and substation facilities or generating plants either owned or operated by Austin Energy.

- a. Contractor shall ensure that personnel have access to and are appropriately trained on all system requirements.
- b. The system shall have:
 - 1) Adequate telephone service.
 - 2) LaserJet printer to print vegetation work plans and other Austin Energy information daily as required.
 - 3) Software and hardware shall be upgraded as called upon to interact with Austin Energy's systems.
 - 4) A copier to ensure all paperwork is handled in a timely manner.
 - 5) Available support staff during normal business hours on regular business days.
 - 6) The capability of accessing and downloading tax plats from various Tax Appraisal Districts and perform other work as specified by Austin Energy.
- c. **Communications:** Contractor shall furnish and maintain dependable cellular phones for Contractor supervisory, general foreman, work foreman and Pre-Planner personnel as required by Austin Energy at Contractor's expense. The equipment provided shall allow Austin Energy's personnel and Contractor supervision to communicate with all Contractor crews and Austin Energy either directly or indirectly while they are either in or out of their vehicles. The cellular phones shall send and receive phone calls as well as text messages to and from all makes of phones and cell phone providers. The cellular phones may be evaluated yearly, and Contractor shall make changes as necessary to maintain communications and ensure adequate coverage in outage restoration situations.
- d. **System requirements:** Contractor shall provide a portable computer or tablet (Portable Device) capable of supporting Austin Energy's web-based and field client-based VM program to be billed at a per month, per unit rate as specified in the Transmission Rate Form. Pricing will be prorated by calendar day of use if a full calendar month is not utilized. During the term of the resulting contract, Austin Energy will provide Portable Devices for work planning to replace Contractor provided devices. Software and hardware systems shall be upgradeable and Contractor shall maintain compatibility as called upon to interact with Austin Energy's systems. These Portable Devices shall be used in the field by the Field Representative, General Foremen and Pre-planners to review information required to complete work plans on each property, including but not limited to size

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and species of tree, the clearance required on different types of lines, herbicide application, the size and species of any removals.

The Portable Devices shall capture and save the property owner's signature, Contractor personnel or Pre-planner's signature, any changes to the original work plan, the name of the foreman who performed the work and the date that the work was assessed, signed off, and completed. The system shall print hard copies of information for crews, Austin Energy, and property owners. The Portable Devices shall have Wi-Fi, hot spot or air card capabilities for the ability to update and synchronize data entries in the field. Each Portable Device shall update and synchronize all data throughout the day to Austin Energy's field client programs as often as possible and shall update and synchronize at the end of each work day.

- e. Contractor shall return all Austin Energy issued items within one business day of request by Austin Energy, the separation of employment of Contractor's employee, or the utilization of Contractor's employee by another of Contractor's customers, whichever is earlier.
- f. Equipment and Labor Availability – Contractor shall be solely responsible for the care, preservation, conservation or protection of any materials, tools or machinery owned, leased or employed by Contractor or issued by Austin Energy for Contractor's use under the Contract.
- g. All equipment required by the Contract and used by Contractor for performance of work shall be free of any defects and shall be in good repair and maintained in a safe and operable condition. Austin Energy may direct Contractor to remove or replace equipment or machinery that is not functioning properly. Contractor shall have readily available back-up equipment to maintain the existing personnel functions.
- h. Contractor shall perform all refueling of trucks and equipment and any required maintenance, either before or after the scheduled workday, unless otherwise directed by Austin Energy.
- i. All vehicles shall be equipped with a GPS tracking system that can track and show vehicle locations throughout the day. Access to this system shall be available to Austin Energy.
- j. Minimum equipment required for all VM Transmission Maintenance services personnel shall be composed of the following unless otherwise approved by Austin Energy, additional required equipment listed in the Transmission Rate Form shall be available on an as-needed basis; the availability of this equipment shall be maintained throughout the duration of the contract. Basic equipment for all working VM crews shall be composed of the following unless otherwise agreed to by Austin Energy:
 - 1. One 4 wheel drive (WD) 50-foot Aerial Tower Bucket Truck with 12 cubic yard (CY) Dump Bed, winch & Hydraulic Tools
 - 2. Four ½ -ton 4WD Pickup Trucks/winch – General Foreman/ Pre-Planner Vehicles
 - 3. One 35-foot Aerial Tower "Squirt Boom" 4WD Bucket Truck with 12 CY Dump Bed, winch & Hydraulic Tools

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4. One 4WD 70-foot Minimum Working Height Aerial Tower Truck, with 12 Cubic Yard Chip Dump Bed, winch and Hydraulic Saw and Pruner w/attachments,
5. Two 4WD 1 ½-ton Manual Crew/Brush Hauling Truck with Dump Bed, 12 CY Capacity, winch
6. Two 70-horse power (HP) (minimum) Brush Chipper, 10 Inch Log Capacity
7. Two 185-HP (minimum) Whole Tree Chippers with Winch, 18 Inch Diameter Log Capacity
8. One 1-Ton 4WD Truck with winch and mounted 300-gallon tank, power sprayer and two hoses
9. One 1½-Ton 4WD Truck, winch with mounted 500-gallon nurse tank with pump to refill spray tank
10. One 1-Ton 4WD Truck with winch to haul and support the tractor mower
11. One 75-HP (minimum) Tractor with dual hydraulics (front and rear) to operate a blade, Fecon head, 6-ft Brown Wood Cutter, 8-ft Rhino, or equivalent
12. One Heavy Duty Trailer adequate to haul 75-HP Tractor, batwing or mower decks or other related equipment
13. Necessary safety equipment as required by law and Austin Energy requirements.
14. Work area protection cones and traffic signs or signals as required by state and local laws and ordinances.
15. Rechargeable lighting equipment equivalent to two rechargeable LED lamps or greater for illumination.
16. Four (4) battery powered chainsaws
17. All tools necessary to make minor repairs and adjustments to equipment at the work site.
18. Any tools necessary to clean up the work site (e.g., rake, broom, shovel, leaf blower) and aid in fire prevention and containment (e.g., fire rake, fire tank bag with pump, 5-gallon recommended)
19. All Pre-Planners, Field Representatives, Vegetation Suppression Specialists, and General Foremen shall have a Portable Device with Wi-Fi, hot spot or air card capabilities and a printer that may be used in the field that is compatible with Austin Energy's computer system for use in the line clearance processes, such as Contractor Invoicing and Notification and Line Clearance record maintenance.
20. All General Foremen, Vegetation Suppression Specialists and Foremen shall have the appropriate vegetation suppression application equipment. This equipment includes, but is not limited to, a pump-up herbicide sprayer (minimum one-gallon size) or 15-liter backpack herbicide sprayer and spill prevention equipment.
21. Individual equipment for each Crew Foreman and Climber on the crew shall include, but not be limited to: ropes, saddles, 14-inch (or larger) chain saw, hand speed-saw, throw-ball, standard pole pruner and pole saw with extensions, applicable personal safety equipment, tree wound dressing and applicator, tool disinfectant and applicator, and cellular phone communication.

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22. Unless otherwise stated, items and services required in this contract, but not included in the Transmission Rate Form are considered non-billable items and services and are to be provided by Contractor at no cost to Austin Energy.

xxiii. Storm Damage Restoration Events:

Contractor shall provide additional personnel and equipment to respond to storm damage to Austin Energy's electrical system when the needs of Austin Energy exceed the capabilities of Contractor's work force currently assigned to Austin Energy, when requested in writing by Austin Energy. When requested by Austin Energy to import a work force on a limited purpose basis, Contractor shall be compensated as follows:

- a. Compensation to Contractor for such additional emergency personnel and equipment shall be at the contractual rate of their home base operation. Contractor shall provide documentation sufficient to Austin Energy to support billing rates.
- b. Labor overtime rate will be calculated by the hourly rate overtime as indicated in the Transmission Rate Form.
- c. Contractor's personnel will be billed on a portal-to-portal basis, and after acquiring 40 regular time hours shall be compensated at the appropriate overtime billing rate. Compensation for travel shall be based on the actual time required to drive from Contractor's remote facilities to the Austin Energy's designated work location and back to Contractor's remote facilities, for each employee imported for the work.
- d. In cases when arrangements must be made for meals and lodging for Contractor's imported work force, the following shall apply:
 - 1) When required, Contractor shall obtain overnight lodging at the double-occupancy rates for each additional employee brought in from out of Austin Energy's Service Territory and not already performing services under the Contract. Austin Energy shall reimburse Contractor for actual cost incurred or Austin Energy at its discretion may provide lodging for Contractor's imported work force. Any charges incurred other than basic room rental and bed tax shall be the responsibility of Contractor and shall not be reimbursed by Austin Energy.
 - 2) When required, Contractor shall provide meals to imported work force. Austin Energy shall reimburse Contractor for reasonable and appropriate actual cost of meals, as determined by Austin Energy, for the additional employees brought in from out of town. Contractor shall furnish Austin Energy with copies of receipts or suitable documentation to verify all expenditures. Austin Energy will not provide reimbursement for alcoholic beverages, sundries or non-food items.
- e. Contractor, at Contractor's expense, or as otherwise approved in writing by Austin Energy, shall provide any additional transportation vehicles and the transporting of additional equipment to Austin Energy's service area by Austin Energy.

All other reasonable and appropriate expenses incurred by Contractor when requested by Austin Energy to import a work force for this limited purpose shall be negotiated in good faith by Austin Energy and Contractor in advance.

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L. No Verbal Agreement: With the single exception of an emergency, no verbal agreement or conversation with any officer, agent or employee of Austin Energy, either before or after execution of this Contract shall affect or modify Contractor's obligations under this Section. In case of an emergency request, Contractor may accept verbal instructions, which will be followed with written documentation at Austin Energy's earliest convenience.

M. Errors or Ambiguities: Contractor shall report any errors or ambiguities in the Specifications or any work order or assignment to Austin Energy as soon as detected. Austin Energy shall issue a clarification or interpretation that shall be definitive.

N. Exhibits: Contractor shall adhere to the requirements and processes set forth in these Attachments:

- i. FACTA Affidavit (Exhibit A)
- ii. Austin Energy Data Handling Controls (Exhibit B)
- iii. Network Connection Agreement (Exhibit C)
- iv. Energized Electric Utility Transmission Line Clearance Labor Descriptions (Exhibit D)
- v. Tree Pruning and Line Clearance Specifications (Exhibit E)
- vi. Customer Notification Process (Exhibit F)
- vii. Customer Resolution Process (Exhibit G)
- viii. Invoicing Process (Exhibit H)

7. Specific Invoice Requirements

The City's preference is to have invoices emailed to the below address:

	City of Austin
Department	Austin Energy
Attn:	Anna Hernandez
Email address	Anna.Hernandez@austinenergy.com

For questions regarding your invoice/payment please contact the City Contract Manager.

8. Designation of Key Personnel

The City and 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 equivalent experience and competence in executing projects such as the one described herein. Additionally, Contractor shall promptly notify the City and obtain approval for the

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replacement. Such approval shall not be unreasonably withheld. Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
City Contract Manager	Elizabeth Corey	<u>512-322-6531</u>	Elizabeth.Corey@austinenergy.com
City Project Manager	Joseph Osborne	<u>512-322-6930</u>	Joseph.Osborne@austinenergy.com
City Contract Administrator, Procurement Specialist	Julia Finn	<u>512-322-6060</u>	Julia.Finn@austintexas.gov