



**City Council Questions and Answers for
Thursday, December 10, 2015**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, December 10, 2015 at Austin City Hall
301 W. Second Street, Austin, TX



Mayor Steve Adler
Mayor Pro Tem Kathie Tovo, District 9
Council Member Ora Houston, District 1
Council Member Delia Garza, District 2
Council Member Sabino "Pio" Renteria, District 3
Council Member Gregorio Casar, District 4
Council Member Ann Kitchen, District 5
Council Member Don Zimmerman, District 6
Council Member Leslie Pool, District 7
Council Member Ellen Troxclair, District 8
Council Member Sheri Gallo, District 10

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions of departments via the City Manager's Agenda Office. This process continues until 5:00 p.m. the Tuesday before the Council meeting. The final report is distributed at noon to City Council the Wednesday before the council meeting.

QUESTIONS FROM COUNCIL

1. Agenda Item # 2: Approve an ordinance amending the Fiscal Year 2015-16 Operating Budget of Austin Resource Recovery (Ordinance No. 20150908-001) to increase transfers out by \$2,792,001 and amending the Fiscal Year 2015-2016 Austin Resource Recovery Capital Budget (Ordinance No. 20150908-002) to transfer in and appropriate \$2,792,001 from the Austin Resource Recovery Operating Budget for facility development and construction. Related to Item # 11.
 - a. QUESTION: 1) How is this facility different than the one at 2514 Business Center Dr, Austin, TX 78744? 2) Are there other private companies in Austin that do a similar service? If so, who? COUNCIL MEMBER ZIMMERMAN'S OFFICE
 - b. ANSWER: 1) The City-owned facility located at 2514 Business Center Drive, in Council District 2, services the citizens of Austin with recycling and reuse drop-off of many items to be recycled, reused or safely discarded, including electronics, appliances, household hazardous waste, single-stream recyclables, brush, yard trimmings, styrofoam and scrap metal. In addition, the facility operates a ReUse Store where citizens can pick up (at no cost): art supplies, cleaning products, mulch, and Austin ReBlend Paint. This is a collection facility to serve residents, and no processing or remanufacturing occurs on this site. This facility is operated by Austin Resource Recovery employees. The Austin [re]Manufacturing Hub is located at the City-owned property at 10108 FM 812, also in Council District 2. This facility is being constructed as a home for businesses that can utilize the products and materials that are diverted from the landfill. The City is investing in basic utility infrastructure to create an industrial park and inviting processing and manufacturing companies to lease the land and manufacture new products out of raw material captured from local recycling collection. This facility is significantly different from the Recycling and Reuse Center, as it provides an industrial park for new businesses, and would be operated by private companies on City-leased land. 2) There are no local industrial parks in Central Texas specializing in seeking Remanufacturing businesses to support local markets for recyclables collected. Several companies seeking to locate in Austin in the past five years have noted high costs of acquiring buildable land in Austin that is suitable for industrial development. In addition, those businesses noted a lack of infrastructure

geared toward aggregating raw material sources to sustain their business enterprise. The Austin [re]Manufacturing Hub addresses both concerns, by leasing industrial park land at market rates that are affordable, and through a circular economy of support networking amongst local recycling programs to gain the economies of scale necessary to remanufacture recyclables into new products. Based on the amount of formal Letters of Interest recently received from interested parties via public solicitation process, there are more companies expressing interest in locating at the Austin [re]Manufacturing Hub than available parcels to lease, thus the business demand is strong for this project. The City will realize ongoing lease revenue after completion of construction and full lease out. There are no local private developers engaged in this type of redevelopment. City staff have found two similar industrial parks of this nature; one in Phoenix AZ, and one in Edmonton, CA. The Austin [re]Manufacturing Hub business plan will be released to City Council within the next day, to address the prior request from Council.

2. Agenda Item # 3: Authorize negotiation and execution of a 60-month revenue concession agreement with IN-TER-SPACE SERVICES, INC. dba CLEAR CHANNEL AIRPORTS, for advertising services at Austin-Bergstrom International Airport.
 - a. QUESTION: 1) How many bids were received from the advertisements? 2) Who held the previous contract? 3) What was the previous award in both terms and revenue as well as the concession fees? COUNCIL MEMBER ZIMMERMAN'S OFFICE
 - b. ANSWER: 1) Two proposals were received. 2) In-Ter-Space Services, dba Clear Channel Airports, held the previous contract. 3) The previous award was a 60-month revenue concession agreement. Clear Channel paid over \$5 million in revenue return to the City over the 5-year term. The minimum annual guaranteed concession fee was \$550,000 or 55% for static displays and 45% for digital displays generated from gross receipts.
 - c. QUESTION: Backup RCA mentions this the best of two proposals however, the backup does not contain bid information from the two parties that submitted. Please have aviation provide the additional backup materials. COUNCIL MEMBER GALLO'S OFFICE
 - d. ANSWER: See attachment.
 - e. QUESTION: 1) Can we get a copy of the contract? 2) Specifically, is Austin getting any free time to promote for tourism, image, PSA, public safety, transportation advisories, economic development, airport advisories and the like? Networks and stations use their commercial breaks to promote themselves. Is Austin going to have to repurchase those rights from Clear Channel? COUNCIL MEMBER HOUSTON'S OFFICE
 - f. ANSWER: There is not a proposed agreement to provide at this time, as the

Aviation Department is seeking Council approval to negotiate and execute an agreement. The Department will negotiate within the agreement a portion of inventory for use by the Aviation Department as well as the right to use a percentage of unsold advertising inventory, to promote, communicate, and market a variety of Airport services, i.e. air service, parking, loyalty program, etc., without cost.

3. Agenda Item # 10: Authorize negotiation and execution of an interlocal agreement with TEXAS DEPARTMENT OF STATE HEALTH SERVICES to provide telephone surveys for studying tobacco use as part of the Texas Behavioral Risk Factor Surveillance System, in an amount not to exceed \$100,000 for the term of November 1, 2015 through September 1, 2017.

- a. QUESTION: 1) When was the last time, if ever, the city participated in in telephone surveys for studying tobacco? 2) If there were studies in the past, is there a link to the survey results? 3) Since the study covers all of Travis County, how many participants are expected to be in the City of Austin vs. outside the City of Austin? COUNCIL MEMBER ZIMMERMAN'S OFFICE

- b. ANSWER: 1) Texas, including Austin residents, have participated in the BRFSS survey every year. Oversamples of Travis County, which provide more accurate estimates of the burden of chronic disease in the population, have been conducted in 2009, 2010, 2011, 2012, 2014, and 2015. Questions specific to tobacco have been part of the core BRFSS survey since 1984, though Texas did not begin state level surveying until 1987. Oversampling for Travis County has been particularly important for evaluation of the project related to tobacco, which has resulted in the city receiving approximately \$585K, with an additional \$100K expected in January 2016. 2) The Texas Department of state Health Services (DSHS) and CDC direct the Texas BRFSS survey. Results for Travis County are available in the 2015 Critical Health Indicators Report on the Austin/Travis County Health & Human Services Department website, and specific requests for data from other years can be made to the health department to HHSD. Older data (2009 and 2010) for Travis County are available on the Texas DSHS website:

https://www.dshs.state.tx.us/chs/brfss/spr/spr_form.shtm

Link to Critical Health Indicators Report:

http://www.austintexas.gov/sites/default/files/files/Health/Info_to_Post/Critical_Health_Indicators_Report.pdf

- 3) The BRFSS sampling design aims to establish a representative population of Travis County, and it is assumed that because Austin residents represent 79.3% of the Travis County population (US Census 2010 estimate), the percentage of Travis County participants surveyed who reside in Austin will be roughly 80%. The total oversample size is expected to be around 1000, so approximately 800 participants are expected to be in the City of Austin and approximately 200 from outside the City.


4. Agenda Item # 11: Authorize negotiation and execution of all documents and instruments necessary or desirable to sell approximately 9.405 acres of land, located at Lot 1, Block "E", Missouri-Pacific Industrial Park, Section One, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 52, Page 21 of the Plat Records of Travis County, Texas, and locally known as 4711 Winnebago Lane, to Jimmy Nassour in the amount of \$1,450,001 for the land (District 2). Related to Item # 2.


- a. QUESTION: 1) Which parcels described in backup "Memo (08-07015 - ORES - Sale of City Assets)" have been sold? 2) Is there a tentative schedule for each parcel showing when they will come before Council? COUNCIL MEMBER ZIMMERMAN'S OFFICE
- b. ANSWER: 1) As of today, none of the parcels described in the referenced memo have been sold. 2) Real Estate does not have a tentative schedule for sale of the City-owned surplus parcels identified in the referenced memo.
- c. QUESTION: 1) It looks as if the tract backs up to several residential neighborhoods to the south. Is that accurate? Approximately how many residents live in that area? Will the neighbors be able to access the tract by walking? 2) Is this a parks deficient area as determined by our gap studies? 3) I have heard that some tracts to the near east are also being developed as residential. Is that accurate? How many new residents are expected? MAYOR PRO TEM TOVO'S OFFICE
- d. ANSWER: 1) The Winnebago property does have residential neighborhoods to the south. The neighborhood has approximately 2,000 residents and potential for future development of an additional 2,000 residents. The attached area map shows a proposed connection through private property. If PARD were to become owners of the Winnebago property, PARD would try to acquire the proposed connection through parkland dedication or fee simple. 2) Yes, the Winnebago site is currently park deficient area. However, the existing and future residents to the south of the Winnebago property are served by Franklin Neighborhood Park and a ½ mile park service area of the Winnebago site would be sparsely populated. 3) There are currently several residentially zoned properties that would allow for approximately new 2,000 residents. To summarize: PARD's interest in the Winnebago site, was strictly for a dog park. The department's interest peaked in the Winnebago site after attempts failed at Mabel Davis District Park to develop an off-leash park. However, since then, PARD has acquired 32 acres along Country Club Creek at the end of Pleasant Valley Road approximately ½ mile to the east of Mabel Davis. The Country Club Creek property will fulfill PARD's needs for an off-leash park with a couple of small acquisitions for access improvement. Overall, PARD has no remaining interest in the Winnebago property.
- e. QUESTION: 1) Of the properties identified on the Surplus Real Property list, August 3, 2015 please identify which if any of these properties: Are located in areas that have been identified as parkland deficient, are located in high opportunity areas according to the Low Income Housing Tax Credit criteria, that could provide enhanced connectivity for bicycle /pedestrian infrastructure projects and which are potential acquisitions for open space or green infrastructure? 2) During work session, real estate staff noted that the tract was offered several times for sale and that this offer was the most we've received. Please provide details about when this tract was offered for sale in the past. MAYOR PRO TEM TOVO'S OFFICE

- f. ANSWER: 1) Staff is unable to compile the requested information in the timeframe allowed. The ORES sales review process will be discussed at Audit and Finance Committee (AFC) on Monday, December 14th. After receiving the recommendations of the AFC, ORES will determine a target date to provide an update to City Council coordinating this and any other requested information. 2) The Office of Real Estate Services (ORES) placed the property up for sale on September 10, 2015 and accepted bids through October 9, 2015. ORES did not receive a qualifying bid, so the property was reposted for sale on October 16, 2015 with a bid close date of November 10, 2015.
- 5. Agenda Item # 14: Authorize execution of a 12-month extension of the contract with REPUBLIC SERVICES INC. for the management and disposal of industrial Class 2 non-hazardous waste in an amount not to exceed \$264,820, for a total contract amount not to exceed \$794,460. (Notes: This contract was awarded in compliance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program. No subcontracting opportunities were identified; therefore, no goals were established for this contract.)
 - a. QUESTION: Why wasn't a new contract negotiated last year/earlier this year since this contract is set to expire on Dec 11, 2015 and Republic Services' landfill was set to close on Nov 1, 2015? COUNCIL MEMBER ZIMMERMAN'S OFFICE
 - b. ANSWER: At the Council meeting on November 19, 2015, staff brought forward a contract extension for approval, but the item was postponed to the December 10, 2015 agenda to give staff additional time to resolve issues regarding options for utility poles and landfill locations. Staff researched the use of existing contracts as a bridge toward a new contract. Although waste hauling contracts are in place through several City departments, each one was competitively bid using specific scopes of services. Adding a different type of waste is considered a significant alteration of an existing contract which is prohibited by state and local procurement policies. In addition, the Law Department has advised that hauling and disposal of Class 2 non-hazardous industrial waste is beyond the scope of existing City contracts. Austin Resource Recovery is currently working to combine Class 2 non-hazardous industrial waste contracts from multiple City departments, including Austin Energy, into one contract to reduce costs and create consistent disposal and diversion requirements. The estimated time frame for the execution of a combined contract is August 2016. Although the original landfill closed on November 1, 2015, Republic Services has continued to provide services using another landfill.
 - c. QUESTION: 1) Where can we get a copy of the existing Republic contract? 2) Where can we get a copy of the "hold over" agreement? 3) When and how did City Staff authorize Republic to start using the WMI Austin Community Landfill? COUNCIL MEMBER ZIMMERMAN'S OFFICE - FOLLOW UP QUESTIONS

- d. ANSWER: 1) See attached. 2) See attached. 3) Austin Energy Environmental Services staff authorized Republic Services to start using the new disposal site in a memo signed on September 22, 2015 and confirmed again with another memo dated November 17, 2015.

END OF REPORT - ATTACHMENTS TO FOLLOW

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance, please call 512-974-2210 or TTY users route through 711.*

Solicitation #	RFP-8100-ABIA-002
Solicitation Description	Advertising Concession Program at Austin-Bergstrom International Airport Barbara Jordan Passenger Terminal

Evaluator Matrix																																
			Respondents																													
Criteria #	Description	PTS	Departure Media, Inc.						Interspace d/b/a Clear Channel Airports																							
			Evaluator					Avg	Evaluator					Avg	Evaluator					Avg	Evaluator					Avg						
			A	B	C	D	E		A	B	C	D	E		A	B	C	D	E		A	B	C	D	E							
1	Local Business Presence	10	0					0.0	10					10.0	0					0.0	0					0.0	0					0.0
2	Financial Proposal	30	20	27	20	24	20	22.2	27	27	27	25	20	25.2						0											0	
3	Financial Strength	P/F	p	p	p	p	p	0	p	p	p	p	p	0						0										0		
4	Experience and Qualifications of Firm	20	15	15	15	18	13	15.2	20	18	18	19	14	17.8						0											0	
5	Design Concept and Creativity	15	10	10	12	13	10	11.0	15	14	14	12	11	13.2						0											0	
6	Quality of Advertising Plan	15	10	10	10	11	10	10.2	15	14	12	12	10	12.6						0											0	
7	Capital Investment and Improvements	10	5	5	4	8	7	5.8	8	10	9	8	8	8.6																		
8	Method of Management & Operations	10	5	6	5	6	6	5.6	10	10	9	8	7	8.8						0											0	
Total Score		110							70.0							96.2	0.0							0.0							0.0	

Solicitation Number	RFP-8100-ABIA-002
Solicitation Description	Advertising Concession Program at Austin-Bergstrom International Airport Barbara Jordan Passenger Terminal

***If additional cost criteria are needed, then the formulas in this spreadsheet may not be accurate or may produce unexpected results. Please contact AIMS Help for all additions.**

Section 0600 Best Value Evaluation Factors													
Section 0600	Criteria	Total Points	Low Price	Departure Media, Inc.		Interspace d/b/a Clear Channel Airports		0		0		0	
				Bid Amount	Pts	Bid Amount	Pts	Bid Amount	Pts	Bid Amount	Pts		
1	Cost Factor #1	0	\$0.00		0		0		0		0		0
2	Cost Factor #2	0	\$0.00		0		0		0		0		0
3	Cost Factor #3	0	\$0.00		0		0		0		0		0
4	Cost Factor #4	0	\$0.00		0		0		0		0		0
5	Cost Factor #5	0	\$0.00		0		0		0		0		0
6	Cost Factor #6	0	\$0.00		0		0		0		0		0
	TOTAL POINTS	0	\$0.00	\$0.00	0.0	\$0.00	0.0	\$0.00	0.0	\$0.00	0.0	\$0.00	0.0

Formula =
(L\$/\$)*Points

Solicitation Number	RFP-8100-ABIA-002
Solicitation Description	Advertising Concession Program at Austin-Bergstrom International Airport Barbara Jordan Passenger Terminal



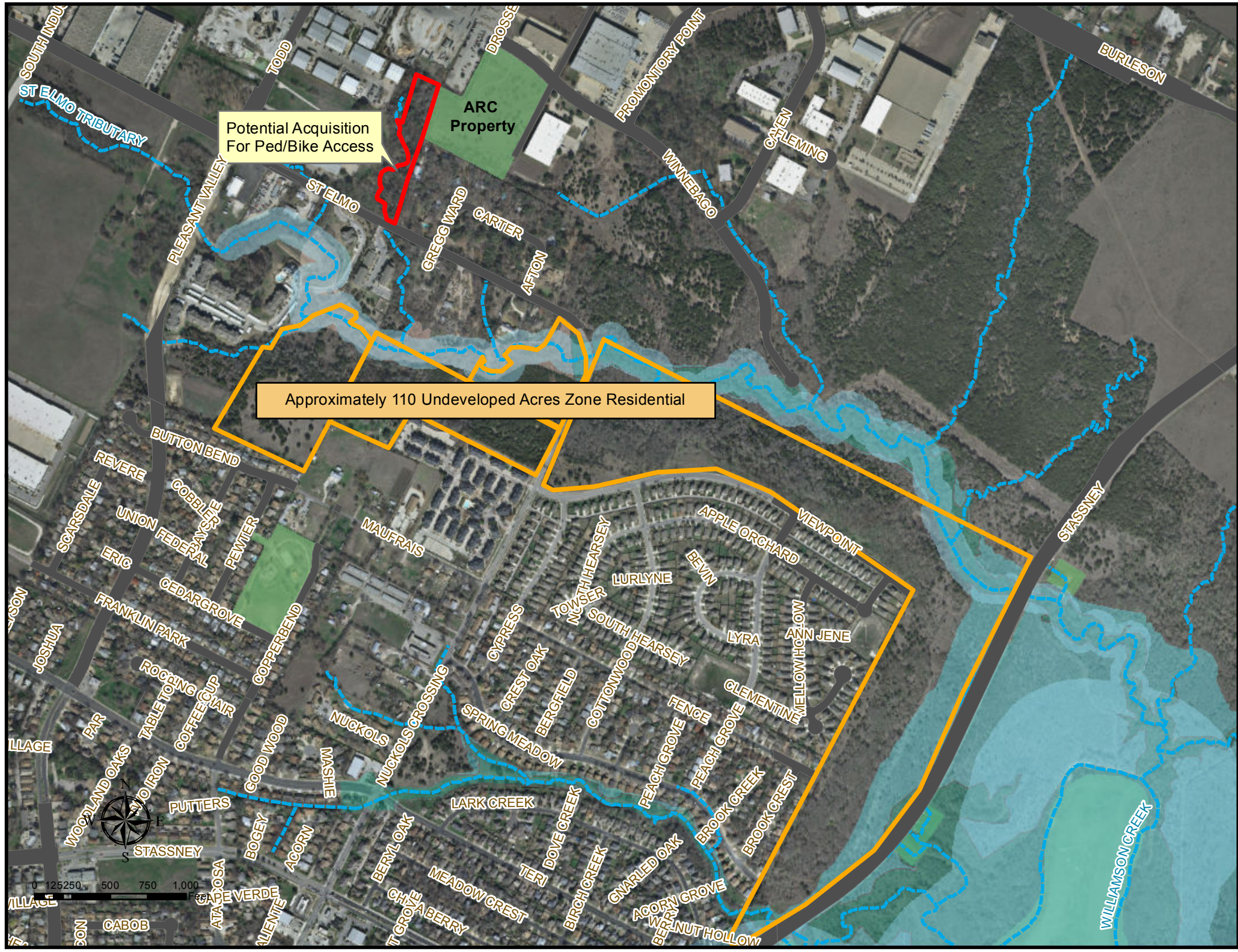
	Vendor Name	Evaluation Committee Score	Cost Proposal	Total Score		Max Possible Score
1	Departure Media, Inc.	70.00	0.00	70.00	of a possible	110.00
2	Interspace d/b/a Clear Channel Airports	96.20	0.00	96.20	of a possible	110.00
3		0.00	0.00	0.00	of a possible	110.00
4		0.00	0.00	0.00	of a possible	110.00
5		0.00	0.00	0.00	of a possible	110.00
6		0.00	0.00	0.00	of a possible	110.00
	Maximum Possible Score	110.00	0.00	110.00	of a possible	110.00



Potential Acquisition
For Ped/Bike Access

ARC
Property

Approximately 110 Undeveloped Acres Zone Residential





Amendment No. 3
of
Contract No. NA130000107
for
Management & Disposal of Class 2 Industrial & Special Wastes
between
Republic Services Inc. dba BFI Waste Services of Texas LP
and the
City of Austin

- 1.0 The City hereby exercises the hold over provision of the above referenced contract for a period of 60 days in accordance with the language in the "Term of Contract" provision which reads as follows:

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

- 2.0 The term of the hold over is Oct 11, 2015 to Dec 11, 2015.

- 3.0 The total contract is recapped below. There are two extension options remaining.

Term	Action Amount	Total Contract Amount
Initial Term: 5/04/2013- 05/03/2015	\$529,640.00	\$529,640.00
Amendment No. 1: 120 Day Holdover 5/04/2015-8/24/2015	\$0.00	\$529,640.00
Amendment No. 2 45 Day Holdover 8/25/2015- 10/10/2015	\$0.00	\$529,640.00
Amendment No. 3 60 Day Holdover 10/11/2015- 12/11/2015	\$0.00	\$529,640.00


- 3.0 MBE/WBE goals were not established for this contract.

- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:


Authorized Representative
Republic Services
BFI Waste services of Texas LP
PO BOX 820
Jon Anstey
janstey@republicservices.com
512-848-0675

Sign/Date:


Nicole Turner, Senior Buyer Supervisor
City of Austin - Purchasing Office



Amendment No. 2
of
Contract No. NA130000107
for
Management & Disposal of Class 2 Industrial & Special Wastes
between
Republic Services Inc. dba BFI Waste Services of Texas LP
and the
City of Austin

- 1.0 The City hereby exercises the hold over provision of the above referenced contract for a period of 45 days in accordance with the language in the "Term of Contract" provision which reads as follows:

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

- 2.0 The term of the hold over is August 25, 2015 to Oct 10, 2015.
- 3.0 The total contract is recapped below: There are two extension options remaining.

Term	Action Amount	Total Contract Amount
Initial Term: 5/04/2013- 05/03/2015	\$529,640.00	\$529,640.00
Amendment No. 1: 120 Day Holdover 5/04/2015-8/24/2015	\$0.00	\$529,640.00
Amendment No. 2 45 Day Holdover 8/25/2015- 10/10/2015	\$0.00	\$529,640.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Jon Anstey 7/30/15
Authorized Representative
Republic Services
BFI Waste services of Texas LP
PO BOX 820
Jon Anstey
janstey@republicservices.com
512-848-0675

Sign/Date: Nicole Turner 8/18/15
Nicole Turner, Senior Buyer Supervisor
City of Austin - Purchasing Office

Sign/Date: Gage Loois 8/18/15
Gage Loois, Interim Purchasing Manager
City of Austin - Purchasing Office



Amendment No. **1** (NT)

of
Contract No. NA130000107

for

Management & Disposal of Class 2 Industrial & Special Wastes

between

Republic Services Inc. dba BFI Waste Services of Texas LP

and the

City of Austin

- 1.0 The City hereby exercises the hold over provision of the above referenced contract for a period of 120 days in accordance with the language in the "Term of Contract" provision which reads as follows:

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

- 2.0 The term of the hold over is May 4, 2015 to August 24, 2015.

- 3.0 The total contract is recapped below: There are two extension options remaining.

Term	Action Amount	Total Contract Amount
Initial Term: 5/04/2013- 05/03/2015	\$529,640.00	\$529,640.00
Amendment No. 1: 120 Day Holdover 5/04/2015-8/24/2015	\$0.00	\$529,640.00

- 3.0 MBE/WBE goals were not established for this contract.

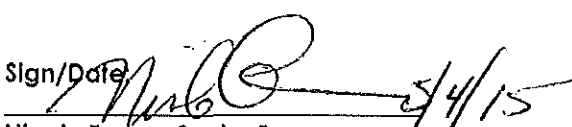
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Republic Services
BFI Waste services of texas LP
PO BOX 820
Jon Anstey
janstey@republicservices.com
512-848-0675

Sign/Date:


Nicole Turner, Senior Buyer
City of Austin - Purchasing Office

Sign/ Date:


Gage Lools, Interim Purchasing Manager
City of Austin- Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Allied Waste Services ("Contractor")
for
Management & Disposal of Class 2 Industrial & Special Waste
MA 100 NA130000107**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Allied Waste Services having offices at Del Valle, Texas 78617 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number DKC0093.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Invitation for Bid (IFB), DKC0093 including all documents incorporated by reference
- 1.1.3 Allied Waste Services Offer, dated January 16, 2013, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications

1.3 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

1.4 Term of Contract. The Contract will be in effect for an initial term of twenty-four (24) months and may be extended with Council review and approval for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$529,640.00 for the initial Contract term and \$264,820.00 for each extension option, if approved by Council, as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be

altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

CITY OF AUSTIN

Printed Name of
Authorized Person: Dolores Castillo

Signature: 

Title: Senior Buyer

Date 05/03/2013

CITY OF AUSTIN, TEXAS

Purchasing Office INVITATION FOR BID (IFB) Offer Sheet

SOLICITATION NO: DKC0093

COMMODITY/SERVICE DESCRIPTION: Management & Disposal of
Class 2 Industrial & Special Wastes

DATE ISSUED: November 28, 2012

REQUISITION NO.: RQM 1100 12100100007

PRE-BID CONFERENCE TIME AND DATE: N/A

COMMODITY CODE: 96871

LOCATION: N/A

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:**

BID DUE PRIOR TO: 2:00 PM on December 19, 2012

COMPLIANCE PLAN DUE PRIOR TO: N/A

Dolores Castillo

Senior Buyer

Phone: (512) 322-6466

BID OPENING TIME AND DATE: 2:15 PM on December 19, 2012

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

LIVE BID OPENING ONLINE:

**For information on how to attend the Bid Opening online, please select
this link:**

<http://www.austintexas.gov/department/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINAL AND 2 SIGNED COPIES OF OFFER & 1 ELECTRONIC COPY

OFFER SUBMITTED BY

By the signature below, I certify that I have submitted a binding offer.

Signature of Person Authorized to Sign Offer

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. _____

Date: _____

Company Name: _____

Address: _____ **Email Address:** _____

City, State, Zip Code _____

Phone No. ()

Fax No. ()

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All other Sections may be viewed at: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm

RETURN THE FOLLOWING DOCUMENTS WITH YOUR OFFER**

- Cover Page Offer Sheet
- Section 0600 Bid Sheet(s)
- Section 0605 Local Business Presence Identification Form
- Section 0700 Reference Sheet
- Sections 0800 - 0835 Certifications and Affidavits (return all applicable Sections)
- Section 0900 No Goals Utilization Plan

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

*** INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the address or phone number indicated on page 1 of this Offer Sheet. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

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

All Contractors and Subcontractors should be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture should be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto http://www.austintexas.gov/financeonline/vendor_connection/index.cfm and follow the directions.

City of Austin
Purchasing Office
Local Business Presence Identification Form

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE).

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN, SECTION 0900 OF THE SOLICITATION.

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

**City of Austin
Purchasing Office
Local Business Presence Identification Form**

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TRAVIS

I certify that my responses and the information provided on **Form 0605** are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

Signature, Authorized Representative of Offeror

Title

Date

END

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**

Please Complete and Return This Form with the Offer

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

Company's Name	<input type="text"/>		
Name of Contact	<input type="text"/>	Contact Title	<input type="text"/>
Present Address	<input type="text"/>		
City	<input type="text"/>	State	<input type="text"/>
		Zip Code	<input type="text"/>
Telephone Number	<input type="text"/>	FAX Number	<input type="text"/>
Email Address	<input type="text"/>		

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**

Please Complete and Return This Form with the Offer

Solicitation Number:

Offeror's Name

Date

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Telephone Number	<input type="text"/>	FAX Number	<input type="text"/>
Email Address	<input type="text"/>		

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**

Please Complete and Return This Form with the Offer

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

[Add Reference](#)

Company's Name	<input type="text"/>		
Name of Contact	<input type="text"/>	Contact Title	<input type="text"/>
Present Address	<input type="text"/>		
City	<input type="text"/>	State	<input type="text"/>
		Zip Code	<input type="text"/>
Telephone Number	<input type="text"/>	FAX Number	<input type="text"/>
Email Address	<input type="text"/>		

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION
SOLICITATION NO DKC0093

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

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

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

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

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

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

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

Sanctions:

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

Term:

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

Dated this _____ day of _____, 20____.

CONTRACTOR _____

Authorized Signature _____

Title _____

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION

SOLICITATION NO. DKC0093

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

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

Contractor's Name:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
Signature of Officer or Authorized Representative:	<div style="border: 1px solid black; height: 40px; width: 100%;"></div>	Date:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>
Printed Name:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
Title:	<div style="border: 1px solid black; height: 20px; width: 100%;"></div>		

CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT
SOLICITATION NO. DKC0093
FOR

MANAGEMENT & DISPOSAL OF CLASS 2 INDUSTRIAL & SPECIAL WASTE

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

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

1. **Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
2. **Preparation of Solicitation and Contract Documents.** . The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
3. **Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
4. **Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
5. **City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
6. **Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

Offeror's
Explanation:

--

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

Contractor's Name:	<div style="border: 1px solid black; height: 20px;"></div>
Printed Name:	<div style="border: 1px solid black; height: 20px;"></div>
Title:	<div style="border: 1px solid black; height: 20px;"></div>

Signature of Officer or Authorized Representative:

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My Commission Expires _____

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

SOLICITATION NO. DKC0093

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

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

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add		
Delete		

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

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

Contractor's Name:	<input type="text"/>		
Signature of Officer or Authorized Representative:	<input type="text"/>	Date:	<input type="text"/>
Printed Name:	<input type="text"/>		
Title:	<input type="text"/>		

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

Contract Number:	<input type="text"/>
Description of Services:	<input type="text" value="MANAGEMENT & DISPOSAL OF CLASS 2 INDUSTRIAL & SPECIAL WASTE"/>
Contractor Name:	<input type="text"/>

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

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

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	<input type="text"/>		
Signature of Employee:	<input type="text"/>	Date:	<input type="text"/>
Employee's Printed Name:	<input type="text"/>		

(Witness Signature)

(Printed Name)

City of Austin, Texas
NONRESIDENT BIDDER PROVISIONS
SOLICITATION NO. DKC0093

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

- ☐ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
- ☐ Non-resident Bidder

Bidder's Name:			
Signature of Officer or Authorized Representative:		Date:	
Printed Name:			
Title:			

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER: DKC0093

PROJECT NAME: MANAGENENT & DISPOSAL OF CLASS 2 INDUSTRIAL & SPECIAL WASTE

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes _____ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Company Name

Name and Title of Authorized Representative (Print or Type)

Signature

Date

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

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

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

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

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

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

12. INVOICES:

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

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13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- 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 Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- 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 non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. 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 City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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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.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

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

17. RIGHT TO AUDIT:

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

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization 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 Utilization 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 Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

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

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

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

- A. Recycled Deliverables shall be clearly identified as such.

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

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that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (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.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) 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.
29. **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.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) 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 process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

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

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (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.
- 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.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- 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 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 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 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 shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the

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City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
- A. **Patents.** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights.** As to any Deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or

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joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

- C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the Deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

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45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the 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.
50. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the

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parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

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

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

55. **EQUAL OPPORTUNITY**

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

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

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

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office no later than five business days prior to bid opening date. Submissions may be made via email to: Dolores.castillo@austinenergy.com or FAX: 512-322-6490.

2. **INSURANCE**. Insurance is required for this solicitation.

- A. General Requirements: See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
- B. Specific Requirements: The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract and during any warranty period. These insurance coverages are required minimum and are not intended to limit the responsibility or liability of the Contractor.
 - i. Worker's Compensation and Employers' Liability Insurance: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$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 WC 420304
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601
 - ii. Commercial General Liability Insurance: The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.
 - (1) The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Independent Contractor's Coverage.
 - (c) Products/Completed Operations Liability for the duration of the warranty/period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and Underground Coverage (X,C,U).
 - (2) The policy shall also include these endorsements in favor of the city of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010
 - iii. Business Automobile Liability Insurance: The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$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 TE 2046A
 - (b) Thirty (30) days of Notice of Cancellation, Endorsement TE 0202A
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B

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- iv. Hazardous Materials Insurance. For work which involves asbestos or any hazardous material pollutant, CONTRACTOR or Subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:
 - (1) Provide an endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverage's A&B and products and completed operations coverage with a separate aggregate of \$1,000,000. This policy shall not exclude coverage for the hazardous material or pollutant identified in the contract scope of work, and shall provide "occurrence" coverage without a sunset clause. This policy shall provide 30 day Notice of Cancellation and Waiver of Subrogation endorsements in favor of the CITY.
 - (2) CONTRACTOR or Subcontractor responsible for transporting any hazardous materials under this contract shall provide pollution coverage. All Federal and State insurance requirements for transporting the materials described in this contract shall be met. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement shall, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects and loading and unloading of conveyances.
 - (3) CONTRACTOR shall submit complete copies of the policy providing pollution liability coverage to OWNER.
 - v. Endorsements: The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
- C. The Contractor shall provide a Certificate of Insurance with the types and amounts of coverage and the endorsements required herein within 14 calendar days of notification of award, unless otherwise specified.
 - D. The Certificate of Insurance, and annual updates, shall contain the solicitation number and the Buyers name and shall be mailed to the following address:

City of Austin Purchasing Office
Attn: Dolores Castillo
721 Barton Springs Road
Austin, Texas 78704

3. TERM OF CONTRACT

- A. The Contract shall be in effect for an initial term of Twenty-four (24) months and may be extended thereafter for up to Three (3) additional Twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

THIS IS A 24 MONTH CONTRACT.

FIRM PRICES ARE TO BE SUBMITTED FOR THE FIRST TWELVE (12) MONTH PERIOD

4. **INVOICES and PAYMENT** (reference paragraphs 12 and 13 in Section 0300)

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

Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Energy
Attn:	Jim Eldred
Address	811 Barton Springs Road, Suite 605
City, State Zip Code	Austin, Texas 78704

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) 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.

5. **NO GUARANTEE AS TO AMOUNT OF WORK**

This contract is to provide the City with waste disposal services as requested by the City. Information contained in this contract is not intended nor shall be construed to guarantee the Contractor any minimum amount of work or payment. Any quantities set forth in this specification or bid documents are intended solely for the purpose of bid evaluation and establishing the maximum municipal expenditure authority for this contract. The City shall determine in its sole discretion for which projects, if any, it will employ Contractor's services. The City reserves the right to separately bid out any individual project. Notwithstanding anything in the contract documents to the contrary, Contractor shall assert no claim or demand for re-negotiation as a result of any discrepancy between any estimate of the expected amount of work under this contract and the actual amount of work assigned to the Contractor.

6. **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING**

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the

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No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at:
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

7. NON-SOLICITATION

- A. During the term of the Contract, and for a period of six (6) months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.
- B. In the event that a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor.

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 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 contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
- G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

9. ECONOMIC PRICE ADJUSTMENT

- A. Prices shown in this contract shall remain firm for the first 12 months period of the contract. After, in recognition of the potential for fluctuation of the Contractor's cost, either the City or the Contractor subject to the following considerations may request a price adjustment (increase or decrease):
- B. Price Increases

Requests for price increases must be made in writing and submitted to the appropriate Buyer in the City's Purchasing Office. The letter must be signed by a person with the authority to bind the

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Contractor contractually, shall reference the contract number, and include the following documentation:

- (1) an itemized, revised price list with the effective date of the proposed increase;
 - (2) Contractor shall submit, as a part of the request for increase, the version of the U.S. Department of Labor Employment Cost Index for Wages and Salaries for all Private Industry Workers Index #CIU2020000300000A, Service Occupations, current as of the date of the Contractor's Offer; and a copy of the index for the most current period.
 - (3) Proposed price increases must be solely for accommodating increases in the Contractor's costs for the products or services provided. Prices for products or services unaffected by verifiable cost trends shall not be subject to change.
- ii. Requests for price increases must be made in writing and submitted to the appropriate Contract Manager prior to each yearly anniversary date of contract. Prices will only be considered for an increase at that time. Once received, the City will have forty-five (45) calendar days to review and approve/disapprove the requested increase. Should the City not agree with the requested increase, Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the contract.
 - iii. Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully documented increase requests, which, in the Contractor's opinion, justify price increases for one or more line items in the contract. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

C. Price Decreases

- i. Proposed price decreases may be offered to the City at any time, and become effective upon acceptance by the City unless a different effective date is specified by the Contractor. Price decrease offers may also be subject to negotiation.
- ii. Price decreases based on relevant factors may be requested by the City at any time. Such requests shall be accompanied by a complete statement of the City's justification for the request. The Contractor shall have forty-five (45) calendar days to respond to the City's request. Following receipt of the Contractor's agreement with the requested decrease, the City may implement the decrease at any time. Should the Contractor not agree with the requested decrease, the City may either maintain the prices currently in effect, negotiate with the contractor, or terminate the contract.

10. APPLICABLE STANDARDS/REGULATIONS

Except to the extent that more explicit or more stringent requirements are written directly into the contract documents, the Contractor shall comply with all applicable codes, regulations, and standards including, but not limited to the following:

- 30 Texas Administrative Code (TAC) Section 335; State of Texas Hazardous and Solid Waste Regulations.
- Occupational Safety and Health Administration (OSHA) Regulations for hazardous Materials Workers; 29 CFR 1910 Sections 106, 120, 133, 134, 144, and other applicable sections.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS
IFB DKC0093**

- Resource Conservation Recovery Act (RCRA); 40 CFR 279 and 40 CFR 266 related to used oil, and 40 CFR 260 through 270 related to hazardous wastes.
- Department of Transportation (DOT) Regulations related to the transportation of hazardous materials, 49 CFR 100-199.
- “Methods for Chemical Analysis of Water and Wastes”, U.S. Environmental Protection Agency, Environmental Monitoring and Support Laboratory, Publication PB84-128677.
- “Annual Book of ASTM (American Society for Testing and Materials) Standards”, Section 11.

The Contractor shall perform the work in strict accordance with all applicable federal, state, and local statutes, regulations, rules, and ordinances, including, but not limited to, those pertaining to 1) health and safety, 2) environment and 3) employer-employee relations. The more stringent standard shall apply. Reference in this specification to a statute, law, regulation, rule or ordinance does not relieve the Contractor or any Subcontractors from its obligation to comply with any and all other statutes, laws, regulations, rules, or ordinances which are applicable to performance of the referenced task.

All statutory and regulatory provisions currently in effect, or which may be subsequently enacted and which are applicable to the performance of this Contract, are hereby incorporated by reference as additional terms of this Contract and shall be enforced as though the same were included specifically herein. The Contractor shall be responsible for determining for itself the laws, rules, ordinances, regulations, orders or other legal requirements imposed upon its activities there under.

If the Contractor observes that any contract documents or provisions are at variance with such laws, ordinances, rules, regulations, and orders in any respect, the Contractor shall notify the City in writing and any necessary changes will be made by appropriate modification. If Contractor performs any work to the contrary of such laws, rules, ordinances, regulations, and orders, the Contractor shall bear the full responsibility and cost attributable to such performance and shall indemnify and hold the City harmless from all resulting cost, loss, expense or liability.

11. CONTRACT MANAGER

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

Austin Energy
Jim Eldred

811 Barton Springs Road, Suite 605

Austin, TX 78704

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**CITY OF AUSTIN
PURCHASE SPECIFICATION
FOR
MANAGEMENT & DISPOSAL OF
Class 2 Industrial and Special Wastes**

<u>DATE</u>	<u>PREPARED BY</u>	<u>ISSUANCE/REVISION</u>	<u>APPROVAL SIGNATURES</u>
8/29/12	Jim Eldred	Issuance /	

This specification, until revised or rescinded, shall apply to each future purchase and contract for the service described herein. Retain for future use.

CITY OF AUSTIN
PURCHASE SPECIFICATION
FOR
DISPOSAL OF INDUSTRIAL CLASS 2 NON-HAZARDOUS & SPECIAL WASTES

1. **SCOPE AND CLASSIFICATION**

A. ***SCOPE***

The City of Austin Electric Utility Department (dba Austin Energy), herein after referred to the City, requires the turnkey services of a Waste Disposal Contractor, herein after referred to as the Contractor, to transport, treat, and dispose Industrial Class 2 and Special Non-hazardous waste generated at *Austin Energy facilities* specifically.

B. ***CLASSIFICATION***

The selected Contractor(s) shall provide all personnel, equipment, supplies, materials, and supervision to perform the specified waste management activities.

2. **BACKGROUND**

A. ***SERVICE LOCATIONS***

The City/Austin Energy owns and operates two (2) power plants, two (2) service centers, four chilled water plants, and several office buildings and support facilities within the City of Austin service area (see “Site Location Table” below). Waste streams may be generated at any of the City including but not limited to those listed below.

SITE LOCATION	U.S.EPA ID#	TEXAS GENERATOR ID#
POWER PLANTS (Industrial)		
Decker Creek Power Plant 8003 Decker Ln. Austin, TX 78724	TXD981049729	33938
Sand Hill Energy Center 13005 Fallwell Ln. Del Valle, TX 78617	TXR000043984 (currently a CESQG)	86737
Robert Mueller Energy Center 4901 Lancaster Drive Austin, TX 78723	CESQG	N/A
Domain Chilled Water Plant 11,400 Burnet Rd., Bldg 62 Austin, TX 78758	CESQG	N/A
Hobby Chilled Water Plant 300 San Antonio St. Austin, TX 78701	CESQG	N/A
SERVICE CENTERS (Non-Industrial)		
Kramer Lane Service Center		

2412 Kramer Ln. Austin, TX 78758	TXD980624878 (CESQG)	32804
St. Elmo Service Center 4411 Meinardus Dr. Austin, TX 78744	CESQG	81607
OTHER COA/AE FACILITIES (Non-Industrial)		
Decker Transformer Shop 10,001 Decker Ln. Austin, TX 78724	CESQG	N/A
Energy Control Center 301 West Ave. Austin, TX 78703	CESQG	N/A
Reclamation Facility 906 Justin Ln. Austin, TX 78757	CESQG	N/A
Town Lake Center 721 Barton Springs Rd. Austin, TX 78704	CESQG	N/A
Sixty-four (64) Substations throughout the AE Service Area	CESQG	N/A

B. WASTE MANAGEMENT SERVICES TO BE PROVIDED

Upon receipt of a written work order from the City, the Contractor shall provide any or all of the following waste management services: manifesting, transporting (roll-offs only), and ultimate disposal of various non-hazardous waste streams generated by AE activities. Services shall include providing all necessary labor, equipment, tools, and paperwork preparation that will facilitate waste shipments. The waste management services required by the City are described below and will be awarded to a single contractor.

Industrial Class 2, Municipal and Special Waste Disposal

The City generates non-hazardous Special Wastes that are not suitable for dumpster disposal as general plant trash. These wastes include, but are not limited to, used treated wood utility poles, soil contaminated with <1500ppm TPH, soil contaminated with mineral oil from transformers with >1500ppm TPH soils (covered by a TCEQ variance that allows that specific soil to be disposed of in a municipal landfill (copy will be provided)), construction/demolition debris, Class 2 wastewaters, rust, spent desiccants, unused solid chemical products, no-pcb bushings/capacitors and asbestos. The City requires a Contractor to safely handle and dispose of these materials.

To be eligible for this contract, the Contractor shall, at a minimum own or operate a landfill permitted to accept the City's waste listed under this task.

Moved to section 0400

3. ENVIRONMENTAL REQUIREMENTS.

- (a) The Contractor shall ensure that all environmental pollution is prevented, abated, and controlled and environmental degradation arising from loading and transportation activities is minimized by complying with all applicable federal, state, and local laws and regulations concerning environmental pollution control and abatement, as well as the specific requirements, if any, listed below.
- (b) **Spill Prevention and Cleanup.** Contractor will be responsible for the management and cleanup of all drips and spills for any product loaded onto Contractor's tanker and will be responsible for minimizing all drips and spills during the loading process. To prevent drips and spills from hose to tanker connections, each connection will be in secondary containment. When the hose is not in use, the contractor will place the hose connection end in a secondary containment. Contractor shall be responsible for cleanup of all de minimus spills.

Any spills to the land in quantities of 25 gallons or more and/or any spill causing a sheen in a waterway (including an off-site drainage ditch) shall be the responsibility of Austin Energy to cleanup. However, Contractor shall be financially responsible for the cleanup costs of any incident for product loaded onto Contractor's tanker.

Contractor is solely responsible for all costs incurred by Austin Energy for any spills or leaks caused by Contractor or its subcontractors or consultants during performance of, or in connection with the Contract. Without limiting the foregoing sentence, Contractor shall be responsible for all costs incurred to contain, remediate and restore the site of the spill according to applicable state and federal laws and regulations, and if on Austin Energy's property, according to Austin Energy's requirements.

Austin Energy shall be responsible for all spill or leak-related notifications required by federal, state or local law or regulation. Contractor shall immediately notify Austin Energy, including the SME and, if identified to Contractor, the Site supervisor and the individual responsible for environmental compliance, with the nature and location of the spill. Contractor shall provide a written report to Austin Energy identifying the substance, quantity released, location of the spill and perform clean up and remediation activities. If the spill occurs off the Austin Energy's property, then the Contractor shall also notify the Austin Energy of any agencies notified and the representatives of the agencies contacted. The report shall be a narrative that summarizes on-scene activity and remediation efforts. If long-term remediation will be required, it shall be noted in the report. The initial report shall be provided to Austin Energy within 24 hours after the incident. Follow-up reports shall be provided to Austin Energy weekly until remediation efforts have been completed and the spill has been properly remediated.

CONTRACTOR SHALL INDEMNIFY AND HOLD AUSTIN ENERGY HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, EXPENSES, COSTS AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO, REMEDIATION COSTS, FINES, PENALTIES, COURT COSTS AND ATTORNEYS' FEES RESULTING FROM SPILLS, RELEASES, IMPROPER HANDLING AND/OR DISPOSAL OF WASTES OR FUEL BY CONTRACTOR, ITS SUBCONTRACTORS AND/OR ITS CONSULTANTS.

- (c) **Environmental Communication and Inspections.**
 - (1) **Environmental Coordinator.** Prior to the start of project work, Austin Energy will designate a person or entity to act as Austin Energy's Representative regarding environmental considerations during project work or in case of emergency services, to review and define the work to be performed and outline strategies and approaches to such work. Contractor shall assign a qualified person or if required, a "Competent Person," to coordinate response actions and environmental requirements. All workers performing work on Site shall be properly qualified to perform the work they are expected to perform, and have the necessary certifications, licenses and other credential necessary to perform the Work.

- (2) Environmental Communications. Contractor shall immediately inform the Austin Energy's Representative of all federal, state, and local regulatory inspections, notices, citations, and penalties associated with the work and any environmental incident that occurs during the performance of the Work that violates any environmental law or regulation. Contractor shall ensure that its employees, subcontractors and suppliers are aware of the civil and criminal penalties for failure to comply with environmental laws and regulations.
- (3) Periodic Inspections. To protect the environment and ensure that the environmental requirements of the Contract are being met, the Austin Energy reserves the right to inspect the work site(s) and any records associated with the Contract at any time for environmental compliance.
- (4) Resource Protection.
 - (a) Air Quality Requirements.
 - i. Contractor shall not conduct any activities that could impair visibility on any public roadway or otherwise impair traffic conditions.
 - ii. Contractor shall not operate in any manner that could cause a nuisance condition, such as odors, excessive particulates, or noise.
 - iii. No debris or surplus materials may be disposed of by burning at the Site or at any other location. This does not preclude the Contractor from disposing of waste at an appropriately authorized and permitted disposal facility which may include incineration as a part of the waste treatment process, if approved by Austin Energy.
 - (b) Protection of Land Resources. The land resources affected by performance under this Contract shall be preserved in their present condition or be restored to a condition after project work is complete that will appear to be natural and not detract from the appearance of the facility. Activities shall be confined to areas defined by the plans and specifications.
 - (c) Protection of Water Resources.
 - i. No water courses shall be polluted with any debris, petroleum products, paints, solvents, cleaners, fuels, surface preparation materials, oils, lubricants, bitumens, calcium chlorides, insecticides, herbicides, or other toxic materials harmful to life; nor shall Contractor release any pollutants (as defined in Tex. Water Code § 26.001(13)) into water courses without appropriate permit, license, or authorization. Chemical emulsifiers, dispersant, coagulants, or other cleanup compounds shall not be used without prior written approval of Austin Energy... It is the responsibility of the Contractor to insure compliance with state and local water quality standards, and conditions of any permits held by Austin Energy.
 - ii. Existing plant drains shall not be used for disposal of any solid and/or contaminated material and or any liquids other than clear water.
- (5) Waste Management and Disposal. Contractor shall, in accordance with the provisions set forth herein and all applicable federal, state and local laws, rules and ordinances, assist Austin Energy with disposal of all debris and other wastes resulting from Contractor's performance of the Work. Class 2 solid wastes shall be disposed of in containers supplied by the Austin Energy. If the Contractor expects to generate a Class 1 or Hazardous Waste they must contact the Environmental Coordinator before waste generation begins and Austin Energy can provide assistance in obtaining appropriate containers. Austin Energy will designate a satellite

accumulation area. The Contractor shall provide MSDS's and samples of the waste as requested. This waste will then be analyzed, classified and disposed of by Austin Energy. Contractor shall segregate waste containers in satellite accumulation areas by waste type. Each container shall be marked with a unique I.D. number which will be used to track the waste from the point of generation to the point of disposal. The Contractor shall also be required to:

- a. Protect storage containers from rain and other adverse weather conditions. Do not allow rainwater to collect in empty drums and containers.
- b. Provide secondary containment for liquid storage containers. Inspect container storage secondary containment systems weekly and after rain events for accumulated liquids. Remove and containerize accumulated liquids from secondary containment systems within 24 hours of discovery. Manage the accumulated liquids removed from secondary containment systems in the same manner as the waste or material within the storage area.
- c. Stack waste containers no more than two containers high. Maintain a minimum of a 3-ft wide aisle space to allow for inspection of containers and movement of equipment. Container labels shall be clearly visible and legible for inspection. Keep containers closed while in storage unless waste is being added or removed.
- d. Handle waste containers in a manner as to prevent any rupture or leak. Do not repair waste containers if leaking. Transfer the leaking container to an over pack drum.

Contractor shall collect and containerize all uncontaminated waste generated from the Work (e.g., trash, debris, garbage, sanitary waste, and construction waste) in contractor-supplied receptacles unless otherwise specified in the Scope of Work. Contractor shall dispose of contractor-generated uncontaminated wastes in accordance with applicable state and local regulations and ordinances governing the management of such wastes.

4. **WASTE MANAGEMENT REQUIREMENTS**

A. ***GENERAL SERVICE REQUIREMENTS***

Section 0600, Bid Sheet, includes the estimated quantities of wastes that are expected to be generated annually during the service contract. The work to be accomplished by the Contractor shall consist of the following:

- (1) The Contractor shall supply all necessary labor, equipment, and materials to properly transport roll-offs and to receive and dispose of the waste properly.
- (2) The City would prefer the separate collection and recycling of scrap wood (City will separate from other "Plant Trash" or refuse). Contractors shall respond on bid sheet and summarize briefly how scrap wood would be recycled. Scrap wood includes wood from pallets, crates, and construction debris. Weathered poles or other treated lumber are not considered scrap wood. Contractors may include recycle options for other waste streams on bid sheet such as weathered poles and should specify process and weight unit cost (e.g. cost per ton).
- (3) The City shall characterize the City's waste streams and shall provide all Texas Commission on Environmental Quality (TCEQ) waste codes, when required.
- (4) The Contractor shall use reliable inventory control to ensure proper record-keeping and manifesting of non-hazardous waste shipments, especially in relation to the disposal of asbestos.
- (5) The Contractor shall return phone calls to City personnel within twenty-four (24) hours. When the person designated as the single point of contact will be unavailable for more than one (1) work day, a backup contact person shall be assigned by the Contractor for that period of time.

- (6) The Contractor shall provide the driver assigned to drop or retrieve roll-offs at an Austin Energy facility the contact name and phone number of site person with knowledge of the roll-off drop/pickup request, provided by the City, for each drop/pickup. The driver shall provide facility security personnel the contact name if requested and shall contact the individual named if there are problems finding the location.
- (7) The City shall connect a completed disposal company manifest to each roll-off ready for removal and disposal. The Contractor shall provide pre-printed company disposal manifests for routine roll-off shipments. The City shall provide a completed Uniform Hazardous Waste Manifest for asbestos shipments and shall complete disposal company manifests for other wastes transported to the disposal facility by the City or by Contractors for the City.
- (8) The Contractor shall provide transportation for several City-owned roll-off containers to the Contractor's disposal facility and then return them to the City facility they were picked up from.
- (8) The Contractor shall be responsible for assuring that the loaded wastes do not exceed weight limits for the transport vehicle. The Contractor shall determine and provide the weight for each bulk load. The net weight of bulk loads shall be provided in the form of weight tickets or may be hand-written, initialed and dated on the original manifest that is signed and returned to the City.
- (9) If the Contractor finds that a waste shipped from a City facility does not conform to the approved profile for that waste, the Contractor shall notify the City's Project Coordinator within 24 hours and they shall work together to determine the appropriate action to take. If the waste that does not conform to the profile must be taken to a different disposal facility or sent back to the City, the cost will be the responsibility of the City. The City shall make every attempt to ensure that the wastes being disposed of conform to the profiles used.
- (10) **Manifests:** The Contractor shall return the signed original white copy of the shipping manifest used to ship the City's waste material to the City Project Coordinator listed below within calendar 35 of date of arrival at the disposal facility.

Austin Energy
 Attn: Jim Eldred
 811 Barton Springs Rd., suite 605
 Austin, TX 78704

- (11) **Profiles:** The City will provide the Contractor with waste characterization data and shall prepare Contractor waste approval forms. The Contractor shall review and process completed waste approval forms submitted by the City within five (5) working days of the submittal. Additional information required shall be requested in a timely manner. The Contractor shall provide the City a copy of each completed profile with the approval code that has been assigned by the contractor and the expiration date for that code, when applicable.

B. PERMITS AND RESPONSIBILITY

The transporter and disposal facilities shall have all applicable licenses; insurance and permits necessary to perform the work required under this contract prior to award and shall make such facility licenses, permits and insurance available for inspection. The Contractor shall submit a letter identifying all such items with the bid package. If, at any time during the life of this contract such licenses, insurance and/or permits are amended, renewed, replaced or terminated, the Contractor shall notify the City in writing at least ten (10) calendar days prior to the amendment, renewal, replacement, or termination. Failure of the Contractor to maintain these required items shall be a material breach of this agreement.

During the term of this contract, the Contractor shall notify the City in writing of all violations or notices of non-compliance of operating permits that occur at the facility used to dispose of City waste

streams. The Contractor shall include three (3) copies of all notices of violation or non-compliance received by the Contractor. Notices shall be sent to the City's Contract Manager, noted in section 0400, paragraph 25 no later than thirty (30) calendar days from the day the notice was issued.

C. SPILL RESPONSIBILITY

The Contractor is solely responsible for any and all spills or leaks caused during transportation by the Contractor while performing under this contract. At no cost to the City, the Contractor shall contain, remediate, and restore the site of the spill in accordance with applicable federal and state regulations, and, if on City property, in accordance with City requirements. The Contractor shall notify the City official contact (Section 0400, paragraph 25) within one (1) hour of the spill. A written report shall be submitted by the Contractor identifying the substance, the associated profile number, the quantity released, the Reportable Quantity for the substance, agencies notified and representatives contacted, and remediation assistance required. The report shall be a narrative summarizing all on-scene activity, initial remediation and shall advise if long-term remediation is required. The written report shall be submitted within seven (7) calendar days of the event and supplemented with follow-up reports until the incident is closed out.

D. OCCUPATIONAL HEALTH AND SAFETY ACT REQUIREMENTS

- (1) The Contractor shall comply with all Occupational Safety and Health Act (OSHA) laws and regulations, training requirements and safety practices as they relate to contract operations. Contractor shall be responsible for job site safety and for the safety of its agents, employees, and Subcontractors (including its subcontractors agents, and employees). The Contractor, or Subcontractor, shall provide, have on hand, and properly maintain, at no additional cost to the City, necessary personal protection equipment, such as OSHA-approved footwear, eye protection, hard hats, respiratory protection, safety belts, and harnesses, and other such health and safety-related apparel as may be required by statute, regulation, rule, ordinance, or job site conditions and ensure that all employees are thoroughly trained in using the equipment. The Contractor shall also ensure that all equipment and clothing are maintained in a clean and sanitary condition and shall not be shared between employees.
- (2) Before commencing work, the Contractor shall file with the contract manager written documentation of the Contractor's Worker's Compensation modification ratings for the previous three (3) years. Upon request by the City, the Contractor shall file with the contract manager copies of 1) Contractor's employee safety handbook and 2) Contractor's project managers' safety records for the previous three (3) years.

A site safety orientation is not required by the City for performing work specified in this contract. A site safety orientation may be required for special projects for which the Contractor will be on-site for an extended period of time.

The Contractor shall be responsible for job site safety. The Contractor is responsible for continuously monitoring safety conditions on the job site to determine if it is safe and suitable for performance of the work. If Contractor believes that an unsafe condition exists on the job site directly or indirectly affecting the Contractor's performance of the work, the Contractor shall 1) correct the unsafe condition prior to performing the work, and 2) notify the City's Project Coordinator about the condition.

E. DEPARTMENT OF TRANSPORTATION REQUIREMENTS

The Contractor shall provide personnel who are trained in accordance with Department of Transportation (DOT) Hazardous Materials Regulation 49 CFR 100-199, if required. The transportation of non-hazardous industrial solid waste shall be performed by a licensed, insured, and permitted transporter, as required. The containment mechanism utilized by the Contractor to transport the waste shall comply with DOT regulation listed in this section, as well as with hazardous waste transportation rules in 40 CFR 263.

F. DOCUMENTATION

The Contractor shall maintain documentation that verifies the quantities and types of waste materials transported, stored, treated, and disposed of under this contract. The documentation shall be adequate to protect both the City and the Contractor according to all applicable laws and regulations, and to document that all waste materials have been transported, treated and disposed of properly.

G. ENVIRONMENTAL AUDITS

The City shall have the right to 1) inspect any disposal facility and obtain copies of written licenses, permits, or approvals issued by any governmental entity or agency to the Contractor or Subcontractors which are applicable to the performance of this contract at the City's expense; 2) inspect and test, at its own expense, transportation vehicles or vessels, containers provided by the Contractor; and 3) to inspect the handling, loading, transportation, storage, or disposal operations conducted by the Contractor in the performance of this Contract. The right of inspection and the exercise thereof shall not relieve the Contractor of its obligation to indemnify the City. These inspections may be conducted prior and throughout the contract life.

H. CITY WARRANTY

City warrants that the waste materials identified in this bid specification represent waste streams generated by the City. The City will strive to provide analytical, Material Safety Data Sheets, and generator knowledge for proper identification of waste streams. The City holds clear title to all waste materials to be transferred thereunder and has contractual authority to dispose of the materials. The City is under no legal restraint or order, which would prohibit transfer of possession of such materials to the Contractor for transportation, storage, or disposal.

I. CONTRACTOR WARRANTY

- (1) Contractor warrants that it is fully qualified to perform the services described in this specification and that it understands the currently known hazards, which are presented to persons, property and the environment in the transportation, storage, and disposal of the waste materials described in Section 0600. Contractor warrants that it understands the scope of all applicable regulations to properly transport, store and dispose of such materials in full compliance with all laws, governmental regulations and orders, and in full compliance with all terms and conditions specified in permits currently held by Contractor, as applicable to providing the services described in this Bid Specification.
- (2) Contractor further warrants that 1) all disposal facilities, transporters, and handlers are properly permitted, 2) employees, subcontractors, (and employees of subcontractors) are properly trained to perform the various tasks which may be required pursuant to this agreement, and 3) that all wastes or materials shall be handled, transported, stored, and disposed of in accordance with all applicable federal, state, local statutes, laws, regulations, rules or ordinances.
- (3) The failure by Contractor of any of its warranties under this section shall be a material breach of the contract. Contractor shall defend (at the option of the City), indemnify, and hold the City, harmless from and against all cost, loss, expense (including attorneys' fees, court costs, and expenses or litigation), damage, civil or criminal penalties, claims, suits, judgments, and liability of every nature arising out of, concerning, or caused by the breach of any of the warranties under this section.

J. DISPOSAL LOCATIONS AND TREATMENT METHODS

All disposal sites and treatment methods used by the Contractor under this contract shall be approved in advance by the City's Project Coordinator. Any change in disposal site or treatment method without obtaining prior approval of the City's Project Coordinator shall constitute a material breach of this contract.

The information contained in this bid tabulation is for information only and does not constitute actual award/execution of a contract.

BID TABULATION CITY OF AUSTIN

BID NO. IFBDKC0093

RX NO.

DATE: 1/9/2013

BUYER: DOLORES CASTILLO

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

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES

Allied Waste Services #843									
ITEM NO.	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY.	UNIT	TREATMENT	POTENTIAL TSDF(s)	UNIT PRICE	STATE FEE (if applicable)	TOTAL PRICE
1	DISPOSAL								
1	Weathered & Non-weathered Utility Poles (cut to fit roll-off)	Roll-off	6,240	Cu Yd	Grind & Reuse in disposal processes of Landfill	Sunset Farms	\$18.00	included	\$112,320.00
2	Scrap Wood (from broken pallets, crates, or construction debris)	Roll-off	200	Cu Yd	Recycle	No Bid	No Bid	No Bid	No Bid
3	Asbestos, friable, bulk		40	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$1,000.00
4	Asbestos, non-friable bulk		40	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$1,000.00
5	Solids - Bulk contaminated soil		600	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$15,000.00
6	Solids - drained capacitors and oil switches		180	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$4,500.00
7	Solids - loose bulk plant trash and constr debris		1,530	Cu Yd	Landfill	Sunset Farms	\$17.00	included	\$26,010.00
8	Solids - Drum	55 G Drum	80	EA	Landfill	Sunset Farms	\$50.00	included	\$4,000.00
9	Solids - Drum	30 G Drum	5	EA	Landfill	Sunset Farms	\$50.00	included	\$250.00
10	Solids - Drum	20 G Drum	5	EA	Landfill	Sunset Farms	\$50.00	included	\$250.00
11	Solids - Drum	8 G Drum	5	EA	Landfill	Sunset Farms	\$50.00	included	\$250.00
12	Liquids - Bulk	Tanker	25,000	Gallons	Solidification AND Landfill	Tessman Road	\$0.50	included	\$12,500.00
13	Liquids - Drum	55 G Drum	30	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$1,800.00
14	Liquids - Drum	30 G Drum	4	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$240.00

15	Liquids - Drum	20 G Drum	4	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$240.00
16	Liquids - Drum	8 G Drum	4	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$240.00
17	Sludge - Bulk	Vac Box	6	each 3000 gal	Solidification AND Landfill	Tessman Road	\$1,500.00	included	\$9,000.00
18	Sludge - Drum	55 G Drum	10	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$600.00
19	Sludge - Drum	30 G Drum	2	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$120.00
20	Sludge - Drum	20 G Drum	2	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$120.00
21	Sludge - Drum	8 G Drum	2	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$120.00
TRANSPORTATION									
1	20 Yd3 Roll-off Delivery Rate	N/A	18	EA	N/A	N/A	\$150.00	N/A	\$2,700.00
2	20 Yd3 Roll-Off Rental Rate	N/A	300	Days	N/A	N/A	\$3.00	N/A	\$900.00
3	20 Yd3 Roll-Off Haul Rate	N/A	6	EA	N/A	N/A	\$280.00	N/A	\$1,680.00
4	30 Yd3 Roll-Off Delivery Rate	N/A	6	EA	N/A	N/A	\$150.00	N/A	\$900.00
5	30 Yd3 Roll-Off Rental Rate	N/A	1095	Days	N/A	N/A	\$3.00	N/A	\$3,285.00
6	30 Yd3 Roll-Off Haul Rate	N/A	220	EA	N/A	N/A	\$280.00	N/A	\$61,600.00
7	40 Yd3 Roll-Off Delivery Rate	N/A	2	EA	N/A	N/A	\$150.00	N/A	\$300.00
8	40 Yd3 Roll-Off Rental Rate	N/A	365	Days	N/A	N/A	\$3.00	N/A	\$1,095.00
9	40 Yd3 Roll-Off Haul Rate	N/A	10	EA	N/A	N/A	\$280.00	N/A	\$2,800.00
OTHER - List any other charges not included in above line items that are necessary for completion of waste mgmt task. Please specify each additional									
1	Over weight fee	Maximum per load is 10 tons. Anything over 10 tons will be charged \$.40 per pound.							
2									
3									
4									
5									
6									
TOTAL PRICE FOR TASK 1									\$264,820.00

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

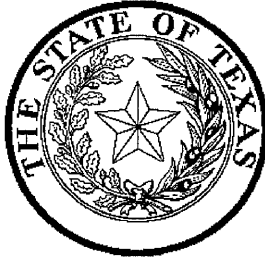
TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDF(s)	UNIT PRICE	STATE FEE(if applicable)	TOTAL PRICE
1.	DISPOSAL								
1.	Weathered & Non-weathered Utility Poles (cut to fit roll-off)	Roll-off	6240	Cu Yd	Grind & Reuse in disposal processes or Landfill				
2.	Scrap Wood (from broken pallets, crates, or construction debris)	Roll-off	200	Cu Yd	Recycle				
3.	Asbestos, friable, bulk		40	Cu Yd	Landfill				
4.	Asbestos, non-friable bulk		40	Cu Yd	Landfill				
5.	Solids - Bulk contaminated soil		600	Cu Yd	Landfill				
6.	Solids - drained capacitors and oil switches		180	Cu Yd	Landfill				
7.	Solids - loose bulk plant trash and constr debris		1530	Cu Yd	Landfill				
8.	Solids - Drum	55 G Drum	80	Each	Landfill				
9.	Solids - Drum	30 G Drum	5	Each	Landfill				
10.	Solids - Drum	20 G Drum	5	Each	Landfill				
11.	Solids - Drum	8 G Drum	5	Each	Landfill				
12.	Liquids - Bulk	Tanker	25000	Gallons	Solidification AND Landfill				
13.	Liquids - Drum	55 G Drum	30	Each	Solidification AND Landfill				
14.	Liquids - Drum	30 G Drum	4	Each	Solidification AND Landfill				
15.	Liquids - Drum	20 G Drum	4	Each	Solidification AND Landfill				
16.	Liquids - Drum	8 G Drum	4	Each	Solidification AND Landfill				

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDf(s)	UNIT PRICE	STATE FEE(if applicable)	TOTAL PRICE
17.	Sludge - Bulk	Vac Box	6	each 3000 gal	Solidification AND Landfill				
18.	Sludge - Drum	55 G Drum	10	Each	Solidification AND Landfill				
19.	Sludge - Drum	30 G Drum	2	Each	Solidification AND Landfill				
20.	Sludge - Drum	20 G Drum	2	Each	Solidification AND Landfill				
21.	Sludge - Drum	8 G Drum	2	Each	Solidification AND Landfill				
	TRANSPORTATION								
1.	20 yd ³ Roll-Off Delivery Rate	N/A	18	Each	N/A	N/A			
2.	20 yd ³ Roll-Off Rental Rate	N/A	300	Days	N/A	N/A			
3.	20 yd ³ Roll-Off Haul Rate	N/A	6	Each	N/A	N/A			
4.	30 yd ³ Roll-Off Delivery Rate	N/A	6	Each	N/A	N/A			
5.	30 yd ³ Roll-Off Rental Rate	N/A	1095	Days	N/A	N/A			
6.	30 yd ³ Roll-Off Haul Rate	N/A	220	Each	N/A	N/A			
4.	40 yd ³ Roll-Off Delivery Rate	N/A	2	Each	N/A	N/A			
8.	40 yd ³ Roll-Off Rental Rate	N/A	365	Days	N/A	N/A			
9.	40 yd ³ Roll-Off Haul Rate	N/A	10	Each	N/A	N/A			
	OTHER - List any other charges not included in above line items that are necessary for completion of waste management task. Please specify each additional								
1.									

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDF(s)	UNIT PRICE	STATE FEE(if applicable)	TOTAL PRICE
2.									
3.									
4.									
5.									
6.									
	TOTAL PRICE FOR TASK 1							\$	
	Company Name _____								
	Signature _____								



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PERMIT FOR MUNICIPAL
SOLID WASTE MANAGEMENT FACILITY
Issued under provisions of Texas
Health & Safety Code
Chapter 361

MSW Permit No.: 1447A TCEQ Docket No.: 2007-1774-MSW

Site Operator / Permittee: BFI Waste Systems of North America, LLC
4542 SE Loop 410
San Antonio, Texas 78222-3925

Property Owners: BFI Waste Systems of North America, LLC
4542 SE Loop 410
San Antonio, Texas 78222-3925

Giles Holdings, L.P.
1223 Judson Road
Longview, Texas 75601-3922

Facility Name: BFI Sunset Farms Landfill

Classification of Site: Type I Municipal Solid Waste Management Facility

The permittee is authorized to store, process, and dispose of wastes in accordance with the limitations, requirements, and other conditions set forth herein. This amended permit is granted subject to the rules and orders of the Commission and laws of the State of Texas and it replaces any previously issued permit. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This permit will be valid until canceled, amended, or revoked by the Commission.

APPROVED, ISSUED AND EFFECTIVE in accordance with Title 30 Texas Administrative Code Chapter 330, as in effect before March 27, 2006.

ISSUED DATE: NOV 05 2009


For the Commission

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BFI Sunset Farms Landfill
MSW Permit No. 1447A
Travis County

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PART NO. 1

I. Location and Size of Facility

- A. The BFI Waste Systems of North America Sunset Farms Landfill is located approximately three quarters of a mile north of the intersection of Giles Road and U.S. Highway 290, in Travis County, Texas. The site is within the city limits and extra-territorial jurisdiction of the City of Austin. The address of the landfill entrance is 9912 Giles Road.
- B. The legal description is contained in Part I of the application, in Attachment A of this permit.
- C. Coordinates and Elevation of Site Permanent Benchmark:
 - Latitude: N 30° 20' 21"
 - Longitude: W 97° 37' 01"
 - Elevation: 613.40 feet above mean sea level (msl)
- D. The total area within the permit boundary is approximately 349.4 acres, of which approximately 251.5 acres will be used for waste disposal. The final maximum elevation of the waste fill and final cover material will be 795 feet msl.

II. Incorporated Application Materials

This permit is based on and the permittee shall follow Parts I through IV of the permit application dated August 1, 2005, and the revisions dated May 8, 2006, August 22, 2006, November 10, 2006, January 18, 2007, February 12, 2007, March 14, 2007, May 12, 2008, January 16, 2009 and January 29, 2009, which are hereby approved subject to the terms of this permit and any other orders of the Texas Commission on Environmental Quality (TCEQ). These materials are incorporated into this permit by reference in Attachment A as if fully set out herein. Any and all revisions to these application materials shall become conditions of this permit upon the date of approval by the Commission.

Part V of the permit application shall be submitted upon completion of construction of the facility. The permittee shall maintain Parts I through V of the application as described in Title 30 Texas Administrative Code (30 TAC), Chapter 330, Section (§) 330.51(a) at the facility and make them available for inspection by TCEQ personnel. (Chapter 330 rule citations in this document refer to the rules in effect at the time of the application, before the March 27, 2006, revisions.)

III. Facilities and Operations Authorized

A. Days and Hours of Operation

The facility is authorized to operate and accept waste 24 hours per day, seven days per week.

B. Wastes Authorized at This Facility

The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including household garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, construction-demolition waste, and yard waste. The facility may also accept, regulated asbestos-containing material from municipal sources, Class 1 industrial nonhazardous solid waste that is considered Class 1 only because of asbestos content (30 TAC §330.136(b) and §330.137(b)), Class 2 industrial nonhazardous solid waste, Class 3 industrial nonhazardous solid waste, and certain special wastes identified in Part IV in Attachment A of this permit. The acceptance of special wastes is contingent upon such waste being handled in accordance with 30 TAC §330.136, and in accordance with the listed and described procedures in Part IV in Attachment A of this permit, subject to the limitations and special provisions provided herein.

C. Wastes Prohibited at This Facility

The permittee shall comply with the waste disposal restrictions set forth in 30 TAC §330.5(e). Hazardous wastes (other than municipal hazardous waste from conditionally exempt small quantity generators), radioactive wastes, polychlorinated biphenyl (PCB) wastes, nonhazardous Class 1 industrial wastes (other than that considered Class 1 only because of asbestos content), or any other wastes not identified in Section III.B. of this permit shall not be accepted at this facility.

D. Waste Acceptance Rate

Authorized solid waste may be accepted for disposal at this site at the initial rate of approximately 3,150 tons-per-day and increasing over time to a maximum acceptance rate of approximately 5,000 tons-per-day. The actual yearly waste acceptance rate is a rolling quantity based on the sum of the previous four quarters of waste acceptance. Present and future waste acceptance rates are detailed in Part III, Appendix IIIA in Attachment A of this permit.

E. Volume Available for Waste Disposal

The total waste disposal capacity of the landfill is 38,333,735 cubic yards, based on the information contained in Appendix III-A of Part III, in Attachment A of this permit.

F. Facilities Authorized

The permittee is authorized to operate a Type I municipal solid waste landfill that utilizes a combination of area excavation fill and aerial fill of the municipal solid waste landfill, subject to the limitations contained herein. All waste disposal activities subject to permitting are to be confined to the following facilities, which shall include disposal units, structures, appurtenances, or improvements: access roads, dikes, berms and temporary drainage channels, permanent drainage structures, detention ponds, wheel-wash facility, fuel storage tanks, citizen drop-off area, brush storage and grinding area, landfill gas management system, contaminated water management system, final cover, groundwater monitoring system, landfill liner system, and other improvements.

G. Changes, Additions, or Expansions

Any proposed facility changes must be authorized in accordance with the Texas Commission on Environmental Quality (TCEQ) permit amendment or modification rules, 30 TAC Chapters 305 and 330.

IV. Facility Design, Construction, and Operation

- A. Facility design, construction, and operation and/or maintenance must comply with the provisions of this permit; Commission Rules, including 30 TAC §§330.50 through 330.65, 330.111 through 330.139, 330.150 through 330.159, 330.200 through 330.206, 330.230 through 330.242, 330.250 through 330.256, 330.280 through 330.284, and 330.300 through 330.305; Chapter 37, Subchapter R; special provisions contained in this permit; and Parts I through IV of the application in Attachment A of this permit, and shall be managed in a manner to protect human health and the environment.
- B. The entire waste management facility shall be designed, constructed, operated, and maintained to prevent the release and migration of any waste, contaminant, or pollutant beyond the point of compliance as defined in 30 TAC §330.2 and to prevent inundation or discharge from the areas surrounding the facility components. Each

receiving, storage, processing, and disposal area shall have a containment system that will collect spills and incidental precipitation in such a manner as to:

1. Preclude the release of any contaminated runoff, spills, or precipitation;
 2. Prevent washout of any waste by a 100-year storm; and
 3. Prevent run-on into the disposal areas from off-site areas.
- C. The site shall be designed and operated so as not to cause a violation of:
1. The requirements of §26.121 of the Texas Water Code;
 2. Any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements of §402, as amended, and/or the Texas Pollutant Discharge Elimination System (TPDES), as amended;
 3. The requirements under §404 of the Federal Clean Water Act, as amended; and
 4. Any requirement of an area wide or statewide water quality management plan that has been approved under §208 or §319 of the Federal Clean Water Act, as amended.
- D. Contaminated water shall be handled, stored, treated, disposed of, and managed in accordance with 30 TAC §330.55(b)(6), 30 TAC §330.56(o), and Part III, Attachment 15 in Attachment A of this permit.
- E. Best management practices for temporary erosion and sedimentation control shall remain in place until sufficient vegetative cover has been established to control and mitigate erosion on areas having final cover. Vegetative cover will be monitored and maintained throughout the post-closure care period in accordance with Part III, Attachment 13 in Attachment A of this permit.
- F. Storm water runoff from the active portion of the landfill shall be managed in accordance with 30 TAC §330.55(b)(3) and §330.133(b), and as described in Part III in Attachment A of this permit.
- G. All facility employees and other persons involved in facility operations shall be qualified, trained, educated, and experienced to perform their duties so as to achieve

compliance with this permit. The permittee shall comply with 30 TAC §330.52(b)(9) and as described in Part I in Attachment A of this permit. The permittee shall further ensure that personnel are familiar with safety procedures, contingency plans, the requirements of the Commission's rules and this permit, commensurate with their levels and positions of responsibility, in accordance with Part III and Part IV in Attachment A of this permit. All facility employees and other persons involved in facility operations shall obtain the appropriate level of operator certification as required by recent changes in the statute and applicable regulations.

- H. The facility shall be properly supervised to assure that bird populations will not increase and that appropriate control procedures will be followed. Any increase in bird activity that might be hazardous to safe aircraft operations will require prompt mitigation actions.

V. Financial Assurance

- A. Authorization to operate the facility is contingent upon compliance with provisions contained within the permit and maintenance of financial assurance in accordance with 30 TAC Chapter 330, Subchapter K and 30 TAC Chapter 37, Subchapter R.
- B. Within 60 days after the date of issuance of this permit, the permittee shall provide financial assurance instrument(s) for demonstration of closure of the landfill in accordance with 30 TAC §§330.253(d)(6) and 330.281. The closure cost estimate of \$39,099,849 (2004 dollars) is based on estimates as described in Part III, Attachments 8 and 12, in Attachment A of this permit. The financial assurance instrument shall be in an amount that includes the inflation factors for each calendar year following 2004 until the year the permit is issued.
- C. Within 60 days after the date of issuance of this permit, the permittee shall provide financial assurance instrument(s) for demonstration of post-closure care of the landfill in an amount for the entire landfill facility. The post-closure care cost estimate of \$7,984,570 (2005 dollars) is based on estimates as described in Part III, Attachments 8 and 13, in Attachment A of this permit. The financial assurance instrument shall be in an amount that includes the inflation factors for each calendar year following 2005 until the year the permit is issued.
- D. The owner and/or operator shall annually adjust closure and/or post-closure care cost estimates for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance instrument pursuant to 30 TAC §330.281 and §330.283, as applicable.

- E. If the facility closure and/or post-closure care plan is modified in accordance with 30 TAC §305.70, the permittee shall provide new cost estimates in current dollars in accordance with 30 TAC §§330.253(d)(6), 330.254(b)(3)(D), 330.281, and 330.283, as applicable. The amount of the financial assurance mechanism shall be adjusted within 45 days after the modification is approved. Adjustments to the cost estimates and/or the financial assurance instrument to comply with any financial assurance regulation that is adopted by the TCEQ subsequent to the issuance of this permit, shall be initiated as a modification within 30 days after the effective date of the new regulation.

VI. Facility Closure

Closure of the facility shall commence:

- A. Upon completion of the disposal operations and the site is completely filled or rendered unusable in accordance with Part III, Attachment 7 in Attachment A of this permit. All waste receipt shall cease on or before November 1, 2015. After the last receipt of wastes, the permittee shall complete installation of the permitted final cover system in accordance with 30 TAC §330.253;
- B. Upon direction by the Executive Director of the TCEQ for failure to comply with the terms and conditions of this permit or violation of State or Federal regulations. The Executive Director is authorized to issue emergency orders to the permittee in accordance with §5.501 and §5.512 of the Water Code regarding this matter after considering whether an emergency requiring immediate action to protect the public health and safety exists;
- C. Upon abandonment of the site;
- D. For failure to secure and maintain an adequate bond or other financial assurance as required; or
- E. Upon the permittee's notification to the TCEQ that the landfill will cease to accept waste and no longer operate at any time prior to the site being completely filled to capacity.

VII. Site Completion and Closure

The landfill shall be completed and closed in accordance with 30 TAC §330.250 and the applicable portions of 30 TAC §§330.253 through 330.256. Upon closure, the permittee shall submit to the Executive Director documentation of closure as set out in 30 TAC

§330.253. Post-closure care and maintenance shall be conducted in accordance with Part III, Attachment 13 found in Attachment A of this permit, for a period of 30 years or as otherwise determined by the Executive Director pursuant to 30 TAC §330.254(b).

VIII. Standard Permit Conditions

- A. Parts I through IV, as described in 30 TAC §330.51(a), which comprise the Permit Application for MSW Permit No. 1447A are hereby made a part of this permit as Attachment A. The permittee shall maintain Parts I through IV and Part V, as described in 30 TAC §330.51(a), at the facility and make them available for inspection by TCEQ personnel. The contents of Part III of Attachment A of this permit shall be known as the "Approved Site Development Plan," in accordance with 30 TAC §330.54 and §330.55. The contents of Part IV of Attachment A of this permit shall be known as the "Approved Site Operating Plan," in accordance with 30 TAC §330.57 and §330.114.
- B. Attachment B, consisting of minor amendments, modifications, and corrections to this permit, is hereby made a part of this permit.
- C. The permittee shall comply with all conditions of this permit. Failure to comply with any permit condition may constitute a violation of the permit, the rules of the Commission, and the Texas Solid Waste Disposal Act, and is grounds for an enforcement action, revocation, or suspension.
- D. A pre-construction conference shall be held pursuant to 30 TAC §330.64(c) before beginning any construction within the permit boundary to ensure that all aspects of this permit, construction activities, and inspections are met. Additional pre-construction conferences may be held prior to the opening of the facility.
- E. A pre-opening inspection shall be held pursuant to 30 TAC §330.64(d).
- F. The permittee shall monitor sediment accumulations in ditches and culverts on a quarterly basis, and remove sedimentation to re-establish the design flow grades on an annual basis or more frequently if necessary to maintain the design flow.
- G. The tracking of mud off-site onto any public right-of-way shall be minimized.
- H. In accordance with 30 TAC §330.7(a), the permittee shall record in the deed records of Travis County, a metes and bounds description of all portions within the permit boundary on which disposal of solid waste has and/or will take place. A certified

copy of the recorded document(s) shall be provided to the Executive Director in accordance with 30 TAC §330.7(b).

- I. Daily cover of the waste fill areas shall be performed with clean soil that has not been in contact with waste. Intermediate cover, run-on, and run-off controls shall not be constructed from soil that has been scraped up from prior daily cover or which contains waste.
- J. During construction and operation of the facility, measures shall be taken to control runoff, erosion, and sedimentation from disturbed areas. Erosion and sedimentation control measures shall be inspected and maintained at least monthly and after each storm event that meets or exceeds the design storm event. Erosion and sedimentation controls shall remain functional until disturbed areas are stabilized with established permanent revegetation. The permittee shall maintain the on-site access road and speed bumps/mud control devices in such a manner as to minimize the buildup of mud on the access road and to maintain a safe road surface.
- K. In complying with the requirements of 30 TAC §330.123, the permittee shall consult with the local District Office of the Texas Department of Transportation or other authority responsible for road maintenance, as applicable, to determine standards and frequencies for litter and mud cleanup on state, county, or city maintained roads serving the site. Documentation of this consultation shall be submitted within 30 days after the permit has been issued.
- L. The permittee shall retain the right of entry onto the site until the end of the post-closure care period as required by 30 TAC §330.62(b).
- M. Inspection and entry onto the site by authorized personnel shall be allowed during the site operating life and until the end of the post-closure care period as required by §361.032 of the Texas Health and Safety Code.
- N. The provisions of this permit are severable. If any permit provision or the application of any permit provision to any circumstance is held invalid, the remainder of this permit shall not be affected.
- O. Regardless of the specific design contained in Attachments A and B of this permit, the permittee shall be required to meet all performance standards required by the permit, the regulations, and as required by local, state, and federal laws or ordinances.
- P. If differences exist between permit provisions, application materials (incorporated as Parts I through IV of Attachment A of this permit) and the rules under 30 TAC Chapter 330, then the permit provisions and the rules shall hold precedence over the

application materials. The Special Provisions contained in Section X of this permit shall hold precedence over any inconsistent provisions in this permit.

- Q. The permittee shall comply with the requirements of the air permit exemption in 30 TAC §106.534, if applicable, and the applicable requirements of 30 TAC Chapters 106 and 116.
- R. All discharge of storm water will be in accordance with the U.S. Environmental Protection Agency NPDES requirements and/or the State of Texas TPDES requirements, as applicable.

IX. Incorporated Regulatory Requirements

- A. To the extent applicable, the requirements of 30 TAC Chapters 37, 281, 305, and 330 are adopted by reference and are hereby made provisions and conditions of this permit.
- B. The permittee shall comply with all applicable federal, state, and local regulations and shall obtain any and all other required permits prior to the beginning of any on-site improvements or construction approved by this permit.

X. Special Provisions

- A. The permittee shall comply with the conditions specified in a letter from the Capital Area Council of Governments (CAPCOG) to the TCEQ, dated August 23, 2006, and agreed to by the applicant in a letter to CAPCOG dated January 18, 2007, as described in Section I.B (Supplementary Technical Report) of Part I of the application and documented in Section II.K (Coordination Letters) of Part II of the application, in Attachment A of this permit.
- B. All waste receipt shall cease on or before November 1, 2015. The permittee shall restrict the property on which the landfill currently operates from use for transfer station operations on or after November 1, 2015. After the last receipt of wastes, the permittee shall complete installation of the permitted final cover system in accordance with 30 TAC §330.253. The maximum heights, depths and footprint for the landfill fill area, as approved by the TCEQ under permit No. MSW 1447A shall not be exceeded by any subsequent modification or amendment of the permit.
- C. Leachate and gas condensate shall not be recirculated.

- D. The permittee shall repair eroded cover within 5 days of detection unless the commission's regional office approves otherwise.
- E. The following Special Provisions are incorporated as a result of a settlement agreement between the permittee, Giles Holdings, L.P., and the City of Austin, and include the definitions below which apply to Special Provisions E.1 through E.9:

Side slope means the exterior edges of fill areas or sidewalls of detention ponds which generally will have a slope steeper than 10%.

Top deck means the top portion of the landfill which generally will have a slope flatter than 10%.

Adequate vegetation growth means 85% surface area coverage in vegetation at least 1" tall.

Seeding events means seeding in compliance with City of Austin Environmental Criteria Manual (ECM) Section 1.4.7 A (Exhibit 1) except as otherwise noted.

Amended landfill permit means proposed TCEQ draft permit 1447A for the Sunset Farms Landfill.

Property means the property on which the Landfill operates as described in the amended landfill permit application.

1. BFI shall place intermediate cover and implement seeding events, on all side slope areas on which waste placement activity has not recommenced within 60 days except BFI is under no obligation to seed such areas during the months of July and August. These seeded areas shall be irrigated in accordance with the requirements of Exhibit 1. This provision is not intended to modify the requirement to seed or sod immediately following the application of final cover as required by 30 TAC §330.253(b)(3).
2. BFI shall place intermediate cover and implement seeding events on the top deck of the landfill in all areas on which waste placement activity has not recommenced within 120 days except for that area immediately up gradient of the five constructed temporary drainage down chutes on intermediate cover areas as shown on attached Exhibit 2. Those up gradient areas shall be immediately vegetated upon construction of each down chute with a filter strip of buffalo grass sod that extends at least 100 feet out from each down chute inlet and is wide enough to filter the run off to be directed to each down

chute (See Exhibit 2 for width dimensions). The buffalo grass filter strip shall be maintained until final cover is placed. In addition, a silt fence or mulch berm or other erosion control mechanisms approved by the TCEQ shall be placed on the top deck in front of the inlet of each down chute and at the end of each constructed down chute (See Exhibit 2 for locations). These controls shall remain in place and be maintained until the areas contributing runoff to these down chutes achieve adequate vegetation growth. This provision is not intended to modify the requirement to seed or sod immediately following the application of final cover as required by 30 TAC §330.253(b)(3).

3. The initial seeding event for all areas will be accomplished using hydro-mulch seeding application procedures per Exhibit 1.
4. Seeding will be of a seasonally appropriate mix. Currently the seed mix is bermuda/millet for warm weather and rye for cold weather. When cold weather seed is used the seeded area shall be reseeded with warm weather mix within 60 days of the onset of sufficiently warm weather to support the warm weather mix. The reseeded area shall be irrigated until adequate vegetation growth is achieved.
5. Seeding for the final cover shall include a seasonally appropriate 609-S (native seeds) mix as defined in Exhibit 3, excerpt from the City of Austin Standard Specifications Manual, on approximately 15% of the surface area of the eastern and northern slopes of the landfill and for the remainder of the site a seasonally appropriate mix.
6. Perimeter sediment/erosion control devices such as silt fences, hay bales, mulch tubes or mulch berms shall be in place prior to the establishment of any soil stock piles on site. For soil stock piles which have slope lengths greater than 20 feet, mid-slope temporary stabilization controls such as seeding, tarping or placement of silt fences or mulch berms shall be implemented within fourteen days of the initial establishment of the soil stock pile and shall be maintained in good working condition until the stockpile is removed.
7. BFI shall install and maintain silt fences or mulch berms within 14 days of completion of intermediate cover at the base of all side slope and top deck intermediate cover areas until adequate vegetation growth is achieved.

8. Stormwater runoff from the landfill area designated as Drainage Area 2 shall be routed through the existing detention pond, or the proposed water quality/detention pond, when the waste fill in Drainage Area 2 has reached the final grades proposed in the landfill expansion plan.
9. BFI will ensure that the side slopes of the existing detention pond and the side slopes of the proposed water quality/detention pond in the northeast portion of the landfill shall be adequately stabilized through proper grading and maintenance and by implementing/applying vegetation on the side slopes of the ponds within thirty days of completion of construction of the pond. BFI further agrees to inspect the sedimentation ponds/basins every three months and after every half-inch rainfall event and to clean the ponds/basins by removing the accumulated sediment once the sediment has reached 25% of the respective pond capacity.
10. BFI shall not accept liquid waste as defined in 30 TAC §330.2(70) and shall not construct or operate a liquid waste stabilization/solidification basin at the Sunset Farms Landfill.
11. BFI shall take steps to discourage commercial waste hauling vehicles from utilizing Blue Goose Road as ingress or egress to the Sunset Farms Landfill except for those few vehicles which service businesses and residences in that area. These steps may include posting signs, adding surcharges, or similar measures.

F. BFI shall not use alternative material daily cover (ADC) at the Sunset Farms Landfill.

PART NO. 2

Attachment A

Parts I through IV of the permit application.

PART NO. 3

Attachment B

Minor Amendments, Corrections, and Modifications that may be issued for MSW Permit No. 1447A

BFI Sunset Farms Landfill
MSW Permit No. 1447A
Page 15

The minor amendment, modification, or correction document prepared and executed with an approval date shall be attached to this attachment. There is no limit on the number of these documents that may be included in Attachment B of this permit.

EXHIBIT 1

Vegetative Practices

Temporary Vegetative Stabilization of Disturbed Areas

1. Description.

Stabilize soil in disturbed areas with temporary vegetation or mulching.

2. Purpose.

To stabilize the soil; to reduce damages from sediment and runoff to downstream areas; improve wildlife habitat; enhance natural beauty.

3. Conditions Where Practice Applies.

Use vegetation to temporarily stabilize the soil on disturbed, graded or cleared areas prior to establishment of permanent vegetation.

4. Design Criteria.

Prior to vegetative establishment, install needed erosion control practices, such as diversions, grade stabilization structures, berms, dikes, level spreaders, and sediment basins.

Final grading and shaping has usually not been completed for temporary stabilization.

5. Fertilizer.

For temporary vegetative establishment, apply fertilizer with an analysis of 15-15-15 at the rate of 5 pounds of nitrogen per 1,000 square feet during the installation period. In order to avoid the conveyance of nutrients off-site, the timing shall not occur when rainfall is expected.

6. Seed Bed Preparation.

Prepare a suitable seed bed which allows good seed-to-soil contact and soil conditions that are conducive to vegetative growth. Do not disturb the soil within the critical root zone of existing trees.

Areas of compacted soil shall be loosened to a depth of at least two (2) inches by plowing, discing, raking or other acceptable means before seeding. In areas where no topsoil exists, or where fill is needed, the subgrade shall be loosened by discing or by scarifying to a depth of at least two (2) inches to permit bonding of the topsoil to the subsoil.

Topsoil, when used, shall have the following requirements: The depth of the topsoil shall be a minimum of 6" in all areas except within the critical root zone of existing trees. Do not add topsoil within the critical root zone of existing trees.

For temporary vegetative stabilization, the top six inches of soil used for intermediate cover must contain sufficient organic matter and nutrients to support vegetative cover. The following description is not required but is a suggested mix which will be presumed to meet this performance requirement: *The topsoil shall be composed of 3 parts of soil mixed with 1 part Compost, by volume. The compost*

shall be Dillo Dirt or an equal approved by the Engineer, or designated representative. The soil shall be locally available native soil that meets the following specifications:

- Shall be free of trash, weeds, deleterious materials, rocks, and debris.
- 100% shall pass through a 0.75-inch screen.
- Less than 25 % shall pass through a #200 sieve.

Topsoil salvaged from the existing site may often be used, but it should meet the same standards as set forth in these standards.

7. Seeding.

If seeding is to be conducted during the cool season (November 1 to February 15) select species noted as "cool season cover crop" from the tables in Standard Specification 604S and/or 609S. If seeding is to be conducted during the warm season (February 16 to October 31) use one of the following options (whichever is applicable).

- Native Seeding: Green Sprangletop (*Leptochloa dubia*) at the rate of 4 lbs. per acre.
- Non-native Seeding: Comply with 604S.5 using Bermuda grass.
 - Apply seed uniformly with a seed spreader, drill, cultipacker seeder or hydroseeder (slurry includes seed, fertilizer and binder).

8. Protection of Seed Bed with Hydromulching or Soil Retention Blanket.

Newly-installed temporary vegetation must be protected by hydromulch or soil retention blanket (refer to Standard Specification 605S Soil Retention Blanket) immediately after seeding. Protection of the seed bed shall occur in a manner that will allow seed germination and that encourages effective vegetative growth. Hydromulching, when used, shall comply with the requirements of Table 1.4.7-A: Hydromulching for Temporary Vegetative Stabilization.

Table 1.4.7-A: Hydromulching for Temporary Vegetative Stabilization

Material	Description	Longevity	Typical Applications	Application Rates
70/30 Wood/Cellulose Blend Mulch	70% Wood 30% Paper 3% Tackifier	0-3 months	Moderate slopes; from flat to 3:1	45.9 lbs/1000 sf
Wood Fiber Mulch	96% Wood 3% Tackifier	0-3 months	Moderate slopes; from flat to 3:1	45.9 lbs/1000 sf

a. 70/30 Wood/Cellulose Blend Fiber Mulch. Wood/Cellulose blend fiber mulch shall consist of 70% long wood grain fibers produced from grinding clean, whole wood chips and 30% cellulose fiber produced from ground newsprint. Refer to Table 1.4.7-B for mulch properties and to Standard Specification 604S – Seeding for additional mulch requirements.

b. Wood Fiber Mulch. Wood fiber mulch shall consist of 100% long wood grain fibers produced from grinding clean, whole wood chips. . Refer to Table 1.4.7-C for mulch properties and to Standard Specification 604S – Seeding for additional mulch requirements.

Table 1.4.7-B: Properties of 70/30 Wood/Cellulose Blend Fiber Mulch

<u>Property (Test Method)</u>	<u>Required Value</u>
<u>Moisture content %</u>	<u>12.0% ±3.0% (max.)</u>
<u>Organic matter % - wood fiber</u>	<u>70% ±1% Oven Dry Basis (min.)</u>
<u>Organic matter % - paper fiber</u>	<u>30.0% ±1% Oven Dry Basis (max.)</u>
<u>Tacking Agent</u>	<u>3.0% (min.)</u>
<u>Water holding capacity</u>	<u>1,000 Grams of water per 100 grams of fiber (min.)</u>

Table 1.4.7-C: Properties of Wood Fiber Mulch

<u>Property (Test Method)</u>	<u>Required Value</u>
<u>Moisture content %</u>	<u>12.0% ±3.0% (max.)</u>
<u>Organic matter % - wood fiber</u>	<u>96% ±1% Oven Dry Basis (min.)</u>
<u>Organic matter % - paper fiber</u>	<u>30.0% ±1% Oven Dry Basis (max.)</u>
<u>Tacking Agent</u>	<u>3.0% (min.)</u>
<u>Water holding capacity</u>	<u>1,000 Grams of water per 100 grams of fiber (min.)</u>

9. Watering

Seed germination will be expected within 1 week of sowing. Watering is required to germinate seed and maintain growth. Seedlings shall be watered daily, or more often as necessary to ensure growth and to ensure that the vegetative cover stabilizes the soil as required.

Exhibit 2

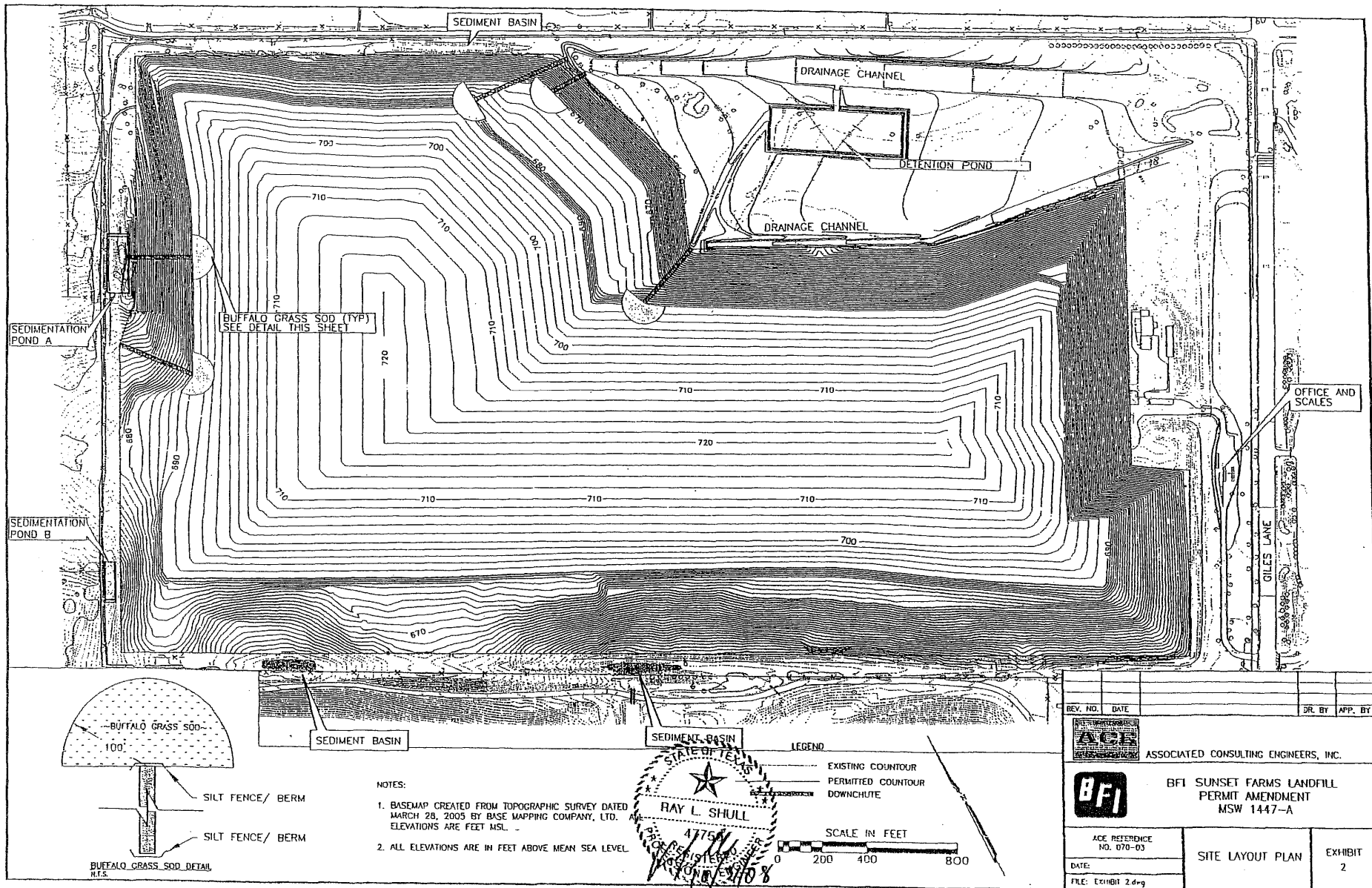


EXHIBIT 3

If the native grassland is being installed during the cool season (November 1 to February 15), the cool season cover crop species (as listed) shall be included in the mix.

The rooted plants shall be applied in accordance with appropriate 'growing environments' (UFS = Upland Full Sun; USD = Upland Shade-Dappled; and FHM = Facultative, Moderate to High Moisture)

Table 2: Native Grass Planting Options				
Select Rooted Grasses For Appropriate Environments On Project Site Use Several Species If Site Environment Is Diverse Or To Achieve Greater Diversity				
Common Name	Botanical Name	Spacing	Size	Preferred Environment
Buffalo Grass	Buchloe dactyloides	5 foot centers	16" X 24" piece of sod	UFS
Sideoats Grama	Bouteloua curtipendula	5 foot centers	1 gallon equivalent	UFS
Green Sprangletop	Leptochloa dubia	5 foot centers	1 gallon equivalent	UFS
Little Bluestem	Schizachyrium scoparium	5 foot centers	1 gallon equivalent	UFS
Blue Grama Grass	Bouteloua gracilis	5 foot centers	1 gallon equivalent	UFS
Big Bluestem	Andropogon gerardii	5 foot centers	1 gallon equivalent	UFS or FHM
Indiangrass	Sorghastrum nutans	5 foot centers	1 gallon equivalent	UFS or FHM
Bushy Bluestem	Andropogon glomeratus	5 foot centers	1 gallon equivalent	FHM
Big Muhly (Lindheimer's)	Muhlenbergia lindheimeri	5 foot centers	1 gallon equivalent	FHM
Eastern Gama Grass	Tripsacum dactyloides	5 foot centers	1 gallon equivalent	FHM
Switchgrass	Panicum virgatum	5 foot centers	1 gallon equivalent	FHM
Inland Sea Oats	Chasmanthium latifolium	5 foot centers	1 gallon equivalent	USD
Canada Wild Rye	Elymus canadensis	5 foot centers	1 gallon equivalent	USD
Caric Sedges	Carex spp.	5 foot centers	1 gallon equivalent	USD
Canada Wild Rye	Elymus canadensis	5 foot centers	1 gallon equivalent	USD

The seed mixture and the rate of application shall be as follows for both native grasses and wildflowers:

Table 3: Native Grasses			
Common Name	Botanical Name	Application rates	
		Lbs/1000 feet ²	kg/ 100 meter ²
Indiangrass	Sorghastrum nutans	0.2	0.10
Sideoats grama	Bouteloua curtipendula	0.2	0.10
Green sprangletop	Leptochloa dubia	0.2	0.10
Buffalo Grass	Buchloe dactyloides	0.1	0.05
Little Bluestem	Schizachyrium scoparium	0.05	0.025
Blue Grama Grass	Bouteloua gracilis	0.2	0.10
Canada Wild Rye	Elymus canadensis	0.2	0.10
Eastern gamagrass	Tripsacum dactyloides	0.2	0.10
Switchgrass	Panicum virgatum	0.1	0.05
Big Bluestem	Andropogon gerardii	0.05	0.025
Total Grass Seeding Rate		1.5	0.75

Table 4: Native Wildflowers			
Common Name	Botanical Name	Application rates	
		Lbs/1000 feet ²	kg/ 100 meter ²
Black-Eyed Susan	Rudbeckia hirta	0.05	0.025
Bundleflower	Desmanthus illinoensis	0.05	0.025
Scarlet Sage	Salvia coccinea	0.10	0.05
Pink Evening Primrose	Oenothera speciosa	0.05	0.025
Phlox	Phlox Drummondii	0.05	0.025
Coreopsis	Coreopsis tinctoria	0.05	0.025
Greenthread	Thelesperma filifolium	0.05	0.025
Purple Prairie Clover	Petalostemum purpurea	0.05	0.025
Cutleaf Daisy	Engelmannia pinnatifida	0.05	0.025
Partridge Pea	Cassia fasciculata	0.1	0.05
Indian Blanket	Gaillardia pulchella	0.1	0.05
Bluebonnet	Lupinus texensis	0.15	0.075
Mexican Hat	Ratibida columnaris	0.05	0.025
Maximilian Sunflower	Helianthus maximiliani	0.1	0.05
Total Wildflower Seeding Rate		1.0	0.5
Total Warm Season		2.5	1.25

Seeding Rate (Grass & Wildflowers)			
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Table 5: Cool Season Cover Crop			
Common Name	Botanical Name	Application rates	
		Lbs/1000 feet ²	kg/ 100 meter ²
Wheat	Triticum aestivum	0.5	0.25
Oats	Avena sativa	0.5	0.25
Cereal Rye Grain	Secale cereale	0.5	0.25
Total Cool Season Cover Crop Seeding Rate		1.5	0.75
Total Cool Season Seeding Rate (Grass, Wildflowers, & Cover Crop)		4.0	2.0

Species substitution as necessary due to availability shall be approved by the Engineer or designated representative. Watering and fertilizer application shall follow procedures outlined above or as otherwise specified on the Drawings.

Seed shall be applied by broadcast or drill method and shall be distributed evenly over the topsoil. Mulching shall immediately follow seed application.

September 15 to March 1:

Add 1.5 pounds per 1000 square feet (0.75 kilograms per 100 square meters) of cool season cover crop to grass and wildflower mixture.

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 9, 2009

Brad Dugas
South Central Texas District Manager
BFI Waste Systems of North America, Inc.
4542 Southeast Loop 410
San Antonio, Texas 78222

Re: BFI Waste Systems of North America, LLC; Permit No. MSW-1447A

Dear Mr. Dugas:

Enclosed is a copy of the above referenced permit for a municipal solid waste facility issued pursuant to Chapter 361, Texas Health & Safety Code. The Site Development Plan, the Site Operating Plan, and all other documents and plans, including the application, prepared and submitted to support the permit application shall be considered a part of this permit and shall be considered as operational requirements of this permit.

If you have any questions concerning this letter or if we may be of any assistance to you regarding municipal solid waste, you may contact Mr. Arten Avakian, MSW Permits Section, at MC-124, P.O. Box 13087, Austin, Texas 78711; telephone number (512) 239-4419.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosure

cc with enclosure: Paul Gosselink, Lloyd Gosselink Rochelle & Townsend, P.C.,
816 Congress Avenue, Suite 1900, Austin, Texas 78701
Ray Shull, P.E., President, Associated Consulting Engineers, Inc.,
901 South MoPac Expressway, Building II, Suite 165, Austin, Texas 78746

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 9, 2009

TO: Persons on the attached mailing list

RE: BFI Waste Systems of North America, LLC
TCEQ Docket No. 2007-1774-MSW; SOAH Docket No. 582-08-2178
MSW Permit No. 1447A

The above-referenced matter was previously approved by the Commission at its September 9, 2009 Agenda. The order concerning this matter was mailed with a draft copy of the permit on September 17, 2009. Enclosed is the signed copy of the permit.

Should you have any questions, please contact Melissa Schmidt of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3317.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosure

BFI Waste Systems of North America, LLC
TCEQ Docket No. 2007-1774-MSW
SOAH Docket No. 582-08-2178

FOR THE APPLICANT:

Paul Gosselink
John Carlson
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Austin, Texas 78701

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INTERESTED PERSONS:

See attached list.

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Arten Avakian, Technical Staff
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
via electronic mail:

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Office of Chief Clerk MC-105
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* The Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
P. O. Box 13025
Austin, Texas 78711-3025

* Courtesy Copy via inter-agency mail

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