

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
CHAMELEON INDUSTRIES INC
For
LIQUID COPPER SULFATE PENTAHYDRATE
MA 2200 GS20000003**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Chameleon Industries LLC ("Contractor"), having offices at Mesquite, TX 75149.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be David Hammond, Phone: 510-289-3310, Email Address: dhammond@earthsciencelabs.com. The City's Contract Manager for the engagement shall be Ryan Braziel, 512-972-0287, Email Address: ryan.braziel@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein 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.

2.2 Contractor shall supply EarthTec QZ in bulk at \$1.265 per pound and in totes at \$3.831 per tote as shown in Exhibit B – Pricing Agreement

2.3 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the tasks listed in Exhibit A – Scope of Work.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid an amount not-to-exceed \$4,000,000 for all fees and expenses upon the successful delivery of the Commodities, as described herein.

3.2 **Economic Price Adjustment.**

3.2.1 **Price Adjustment.** Prices shown in this Contract shall remain firm for the first 12 months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this

provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period.** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price.** Initial period quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price.** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor.** The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %.** The percent of the Base Price subject to adjustment based on an index change.

3.2.4.2. **Adjustment-Requested Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Bureau of Labor Statistics	
Series ID: PCU325180325180	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: National	
Description of Series ID: Other basic inorganic chemical manufacturing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

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

3.2.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

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

3.3 **Invoices.**

3.3.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order 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.

3.3.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, date of each delivery, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be 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. Invoices shall be emailed within five calendar days after each delivery to the address where the delivery was made:

Ullrich Water Treatment Plant: AWAdminUllrich@austintexas.gov

Davis Water Treatment Plant: AWAdminDavis@austintexas.gov

Handcox Water Treatment Plant (WTP#4): AWAdminWTP4@austintexas.gov

3.3.3 Invoices shall include a completed and signed Chemical Delivery Notice and certified scale receipt for each delivery. The City will pay based on gallons of the chemical in the shipment, approved by the Plant Supervisor or designee. The invoices submitted to the City shall be for the number of gallons in the load delivered, calculated by the Contractor based on the truck weight and product specific gravity.

3.3.4 The City will spot check loads, and if there is a discrepancy between the City's results and the certificate of analysis, the City's result will be the one used for payment. If the Contractor disagrees, a third-party lab will be retained to run the sample. If the result is closer to the City's result, the Contractor will pay for the analysis. If the result is closer to the Contractor's result, the City will pay for the analysis.

3.3.5 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.3.6 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.4 **Payment.**

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

3.4.2 The Contractor may elect to offer a discount for early payment at the Contractor's discretion. The Contractor invoice shall have the discounted amount included and full amount if the early payment is not received. If the City fails to make a payment according to the early payment discount but does make the payment within 30 days, the City will not receive the early payment discount but shall pay no other penalty. When the payment date falls on a weekend or City holiday, payment may be made on the following business day.

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

3.4.4 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:

3.4.4.1 delivery of defective or non-conforming deliverables by the Contractor;

3.4.4.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

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

3.4.4.4 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;

3.4.4.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

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

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

3.4.5 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

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

3.4.7 Time is of the essence in the performance of the contract; therefore, the Contract shall strictly adhere to the contract delivery schedule. No changes in the delivery schedule will be effective unless in writing executed by both the City and the Contractor. The parties agree that if, due to no fault of the City, the delivery of any material or performance of any service is delayed beyond the time specified in the contract, the actual damage sustained by the City because of such delay will be uncertain and difficult to determine, and that the reasonable foreseeable damage incurred by the City is hereby stipulated to be one percent (1%) per calendar day of total dollar amount of the quantity in the missed delivery. The Contractor, therefore, agrees to apply a credit to the amount requested on the invoice for the delayed load.

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

3.6 **Final Payment and Close-Out.**

3.6.1 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.

3.6.2 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to four additional 12-month periods at the City's sole option.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

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

4.1.3 This is a 12-month Contract. Prices are firm for the first twelve (12) months.

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

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by 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.

4.5 **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.

4.6 **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.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

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

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

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The 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.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088 OR PURInsuranceCompliance@austintexas.gov
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

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

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

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

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

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

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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

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

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

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

5.2 **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.

5.3 **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.

5.4 **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.

5.5 **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.

5.6 **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.

5.7 **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.

5.8 **Equal Opportunity.**

5.8.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No 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 and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.8.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.9 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

5.10 **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.

5.11 **Delays.**

5.11.1 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 herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.11.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such

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

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

5.12.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.12.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.12.3 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph 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 herein.

5.13 **Texas Public Information Act.**

5.13.1 All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.13.2 In accordance with Texas Government Code Sec. 552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

5.13.2.1 Preserve all contracting information related to the Contract as provided by the records retention requirements in Section 17 (Audits and Records) of the Contract;

5.13.2.2 Promptly provide to the City any contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and

5.13.2.3 On completion of the Contract, either:

5.13.2.3.1 Provide at no cost to the City all contracting information related to the Contract that is in the custody or possession of Contractor; or

5.13.2.3.2 Preserve the contracting information related to the Contract as provided by the records retention requirements in Section 17 (Audits and Records) of the Contract.

5.13.3 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

SECTION 7. MISCELLANEOUS

7.1 Workforce.

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

7.1.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.1.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.1.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

7.3 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract

Manager. As used in this provision, a “significant event” is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- 7.3.1 disposal of major assets;
- 7.3.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.3.3 any significant termination or addition of provider contracts;
- 7.3.4 the Contractor’s insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.3.5 strikes, slow-downs or substantial impairment of the Contractor’s facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.3.6 reorganization, reduction and/or relocation in key personnel;
- 7.3.7 known or anticipated sale, merger, or acquisition;
- 7.3.8 known, planned or anticipated stock sales;
- 7.3.9 any litigation against the Contractor; or
- 7.3.10 significant change in market share or product focus.

7.4 **Audits and Records.**

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

7.4.2 Records Retention:

7.4.2.1 Contractor is subject to City Code 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor’s internal administration.

7.4.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City

7.4.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

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

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

7.7 **Indemnity.**

7.7.1 Definitions:

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

7.7.1.1.1 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;

7.7.1.1.2 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),

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

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

7.8 **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 effect 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.

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

To the City:

City of Austin, Purchasing Office

ATTN: Sandy Wirtanen, Procurement Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

Chameleon Industries Inc.

ATTN: David Hammond, Contract Manager

113 S. E 22nd Street, Suite 1

Bentonville, Arkansas 72712

7.10 **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 Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the 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.

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

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

7.13 **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 with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **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.

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

7.16 **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.

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

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

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to

be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

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

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

7.21 **Subcontractors.**

7.21.1 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

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

7.21.1.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.21.1.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.21.1.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

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

7.21.2 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.21.3 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.

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

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

7.24 **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.

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

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

7.27 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.28 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.28.1 any exceptions to the Offer accepted in writing by the City;

7.28.2 the Supplemental Purchase Terms and Conditions;


7.28.3 the Standard Purchase Terms and Conditions;

7.28.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

CHAMELEON INDUSTRIES INC.

CITY OF AUSTIN


Signature


Signature

Jason L. Garza
Printed Name of Authorized Person

Sandy Wirtanen
Printed Name of Authorized Person

Vice President
Title

Procurement Specialist IV
Title

12 February 2020
Date

2/12/20
Date

List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Supplemental Purchase Provisions
Exhibit C	Pricing Agreement
Exhibit D	Non Discrimination Certification, Section 0800

**CITY OF AUSTIN
SCOPE OF WORK
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)
MA 2200 GS200000003**

1.0 PURPOSE

The City of Austin ("City") seeks a qualified Vendor ("Contractor") who can provide Liquid Copper Sulfate Pentahydrate (Earth Tec QZ). Earth Tec QZ will be used at Austin Water treatment plants for eliminating the accumulation of zebra mussels on the raw water intake and associated infrastructure. The City reserves the right to add or delete departments and locations as deemed necessary at the same contract price.

Any services that have been omitted from this specification that are clearly necessary or in conformance with Earth Tec QZ shall be considered a requirement although not directly specified or called for in the scope of work.

2.0 APPLICABLE SPECIFICATIONS

- 2.1 The Contractor shall ensure the Earth Tec QZ complies with federal, state and local laws, ordinances, and guidelines for this type of chemical.
- 2.2 The Earth Tec QZ shall be certified as suitable for contact with or treatment of drinking water by an accredited certification organization in accordance with ANSI/NSF Standard 60, Drinking Water Treatment Chemicals – Health Effects.
- 2.3 The Earth Tec QZ shall comply with American Water Works Association (AWWA) standards contained in the most recent AWWA B602 publication, except for any modifications contained in these specifications.
- 2.4 The Earth Tec QZ shall be registered with the Federal EPA as a molluscicide for control of quagga and zebra mussels, in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Product packaging and labeling shall be in accordance with FIFRA as well.
- 2.5 The Contractor shall comply with:
 - 2.5.1 Environmental Protection Agency (EPA).
 - 2.5.2 Texas Commission on Environmental Quality (TCEQ).
 - 2.5.3 Occupational Safety and Health Administration (OSHA) safety requirements.
 - 2.5.4 Federal Motor Carrier Safety Regulations, specifically 49CFR part 383.
 - 2.5.5 City of Austin Ordinances and regulations.

3.0 MATERIAL REQUIREMENTS

- 3.1 Physical & Chemical Requirements
 - 3.1.1 The Earth Tec QZ shall be a clear blue liquid with minimal odor.
 - 3.1.2 Product shall contain between 18 - 22 percent (%) copper sulfate pentahydrate with a 5% +/- 0.25% metallic copper equivalent.
 - 3.1.3 The water-insoluble matter shall not exceed 0.5 percent (%) by weight.
 - 3.1.4 Specific gravity shall be 1.188 +/- 0.05 with a pH of the neat product of no greater than 0.5.
 - 3.1.5 Product shall have complete freeze/thaw stability.
- 3.2 The Earth Tec QZ shall be suitable for use in municipal water supplies and, when used in standard recommended dosages, shall not contain any impurities that would cause water to be unsuited for human consumption.
- 3.3 The Earth Tec QZ shall be free of any inorganic or organic substances in quantities capable of producing deleterious or injurious effects of the health of those consuming the water that has been properly treated with the Earth Tec QZ.

**CITY OF AUSTIN
SCOPE OF WORK
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)
MA 2200 GS200000003**

- 3.4 The Earth Tec QZ shall be clean and free from debris and/or any visible suspended matter and/or sediment.
- 3.5 The copper in the Earth Tec QZ shall be kept entirely (100%) in its cupric ion form.
- 3.6 The Contractor shall include **with each delivery** a certified analysis of the Earth Tec QZ. This analysis shall include the following:
 - 3.6.1 Percent (%) of copper sulfate pentahydrate present in the solution
 - 3.6.2 Percent (%) metallic copper equivalent, expressed to the nearest tenth of a percent
 - 3.6.3 Specific gravity
 - 3.6.4 Percent (%) water insoluble matter
 - 3.6.5 pH

4.0 CONTRACTOR RESPONSIBILITIES

- 4.1 The Contractor shall be a manufacturer, authorized dealer/reseller, or supplier of the products offered.
- 4.2 The Contractor shall **include before award of the contract** an affidavit that the Earth Tec QZ is registered with the Federal EPA as a molluscicide for control of quagga and zebra mussels, in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and complies with the ANSI/NSF Standard 60, Drinking Water Treatment Chemicals – Health Effects standards, applicable requirements of this specification and the most recent addition of AWWA B602 where applicable.
- 4.3 The Contractor shall schedule a kick-off meeting with the Plant Supervisors within 10 business days after notification of award of the contract.
- 4.4 The Contractor shall provide the exact product and shall indicate the shipping address/location from where the material is being shipped. In the event this information changes during the contract period and prior to the shipping the first shipment from the new location, the Contractor shall submit written notification to each plant facility. This shall assure that the Earth Tec QZ is not repackaged and is shipped from a National Sanitation Foundation (NSF) approved manufacturer by an NSF approved trucking company.
- 4.5 The Contractor shall notify the Plant Supervisor or designee in writing throughout the life of the contract of any changes in manufacturer, product name and/or, if a manufacturer discontinues a contract item. The Contractor shall request in writing approval from the Plant Supervisor or designee on any contract product substitution prior to shipment.
- 4.6 Wear the necessary personal protective equipment (PPE) and maintain proper spill response requirements while on City property. PPE required will vary depending on the chemical being delivered, City procedure, and construction activity on site. PPE may include long pants, long-sleeved shirts, work boots with safety toe, safety glasses, reflective vest, hard hat, and any PPE required as is appropriate for the chemical being delivered. PPE shall be provided by the Contractor at no additional expense to the City. This is for all Contractor personnel and subcontractors.
- 4.7 Single Point of Contact (SPOC)
 - 4.7.1 The Contractor shall provide a SPOC, who is skilled, knowledgeable, and experienced in Earth Tec QZ and its delivery. The SPOC shall have the authority to dispatch Contractor personnel; and shall have full decision-making authority for all emergency deliveries and services provided under this Contract.
 - 4.7.2 The SPOC shall be available and on-call twenty-four (24) hours daily including weekends and holidays. Contractor shall provide the office number, email address, and cell phone number for the SPOC. During times the SPOC is unavailable (due to vacation, travel, etc., for example), the

**CITY OF AUSTIN
SCOPE OF WORK
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)
MA 2200 GS200000003**

Contractor may provide a designee for the SPOC. The designee shall meet the same requirements as specified for the SPOC within this SOW and shall have the same authority as the SPOC.

5.0 SAFETY DATA SHEET (SDS) REQUIREMENTS

- 5.1 An SDS shall be included ***before award of the contract***. An electronic copy of the SDS with contract information shall be transmitted by the Contractor to the following City email address ***upon award***: austinwatersds@austintexas.gov.
- 5.2 In order to comply with Texas Health & Safety Code, Sec. 502.006, as amended, the Contractor shall provide, on or before the date of each delivery of the hazardous material, an electronic version of the most current "Safety Data Sheet" meeting the requirements set forth in Sec. 502.006, Texas Health & Safety Code. Each SDS provided shall bear the date when it was last revised.

6.0 CITY RESPONSIBILITIES

- 6.1 The Plant Supervisor or designee will provide updated Point of Contact information for this contract if any changes of personnel occur during the term of this contract.

7.0 SECURITY

- 7.1 Due to developments in national security, Austin Water needs to know who is delivering bulk chemicals and needs to ensure orders are accurate. The Contractor shall FAX a completed "Chemical Delivery Notice" see Attachment A, to the Plant Supervisor or designee within 4 business hours prior to dispatching driver for delivery. The driver must provide a photo ID (any U.S. state) to the Plant Supervisor or designee, no exceptions.
- 7.2 Transportation of Hazardous Material to a City location must comply with the Federal Motor Carrier Safety Regulations, specifically 49CFR part 383 which governs commercial driver license standards requirements and penalties. In accordance with this regulation, delivery driver shall present to Plant staff a Class C CDL with an H or an X endorsement at the time of delivery.
- 7.3 Hazardous Material is defined under 49 CFR part 383.5 as:

Any material that has been designated as hazardous referencing 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR Subpart F, Part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)**

The following Supplemental Purchasing Provisions apply to this offer:

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

2. **DELIVERY REQUIREMENTS:**
 - A. Contractors shall be responsible for contacting the authorized contact person and requesting a site visit to ensure delivery conditions are acceptable PRIOR to contract execution. Otherwise, the City will assume that the delivery conditions are acceptable to the Contractor.

 - B. After contract execution and prior to the first delivery under this contract, the Contractor's delivery personnel shall visit the water treatment plants to ensure they know the requirements for delivery to the respective plant(s).

 - C. If the Contractor changes the trucking company throughout the term of the Contract, the Contractor shall notify the Plant Supervisor or designee, in writing, at least one week prior to any deliveries made by the new company.

 - D. The Contractor shall be fully responsible for cleanup of any spillage or leakage and repair of any property damage occurring during transportation and/or on the Plant site due to defective pumping and/or unloading equipment and/or negligence of the driver. Cleanups/repairs shall be completed and approved by the City before the driver leaves the facility. If an immediate cleanup/repair is not possible, the Contractor shall complete the cleanup/repairs within five (5) business days and verify through the City that cleanup/repair is completed. All cleanup and disposal activities shall be conducted in a manner consistent with the best available technology and conform to all local, state, and federal regulations. The Contractor shall assume the responsibility and costs associated with the cleanup and disposal activities as the generator of such contaminated material, along with all inherent obligations to ensure proper disposal of contaminated material and any responsibilities arising from future efforts associated with disposal of such contaminated materials.

 - E. Liquid Copper Sulfate Pentahydrate (Earth Tec QZ) shall be shipped in totes or bulk quantities. The delivery truck shall be equipped to transfer the product to the City's chemical storage facilities. The Contractor shall be responsible for providing all proper hoses, fittings and connections required to transfer all chemical in a safe and effective manner.

 - F. Delivery locations:

Ullrich Water Treatment Plant

ATTN: Kevin Fetterman, Plant Superintendent

1000 Forest View Drive

Austin, Texas 78746

kevin.fetterman@austintexas.gov

(512) 972-1801 (office)

(512) 972-1834 (fax)

Ullrich WTP delivery and departure route are restricted to Red Bud Trail.

Davis Water Treatment Plant

ATTN: Mike Mulgrew, Plant Supervisor

3500 W 35 Street

Austin, Texas 78703

Michael.Mulgrew@austintexas.gov

(512) 972-1760 (office)

(512) 972-1727 (fax)

EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)

Handcox Water Treatment Plant (formerly Water Treatment Plant #4)

ATTN: Mark Penton, Plant Superintendent

6800 N FM 620

Austin, Texas 78732

mark.penton@austintexas.gov

(512) 972-2201 (office)

(512) 972-2212 (fax)

- G. Delivery shall be made within ten (10) calendar days after the order is placed. The Contractor shall accept orders by phone/fax/email, on an "as needed" basis. The Plant Supervisor/Designee will contact the Contractor to place an order and provide a delivery date and quantity. The Contractor shall confirm delivery date within one business day of receiving the order request. No partial shipment or backorders shall be allowed.
- H. Emergency Deliveries shall be made within twenty-four (24) hours after the order is placed or as mutually agreed between the City and the Contractor. The City may require partial deliveries from a single truckload to be made at more than one location.
- I. If a delivery needs to be rescheduled, the Contractor shall notify the Plant Supervisor or designee in writing no later than close of business the day before originally scheduled delivery date. Rescheduled/missed deliveries will be subject to liquidated damages per Section 3.4.7 of the Contract.
- J. Delivery drivers shall speak fluent English.
- K. The City will check documentation, take samples, and test the samples to ensure compliance with the City's specifications prior to accepting the delivery. If the materials do not meet the specification, the delivery may be rejected by the Plant Supervisor or designee.
- L. The truck driver shall check in at the guard shack upon arrival. The driver must show his driver's license. The driver shall not offload the product unless the Plant Supervisor or designee accompanies the driver to the area where the product will be unloaded.
- M. The Contractor shall obtain sign-off on the Chemical Delivery Notice (Attachment A) on every delivery. A Chemical Delivery Notice shall be submitted to the Plant Supervisor or designee, on the day of delivery. The delivery truck shall not be allowed on-site until the Chemical Delivery Notice is received. "Estimated Arrival Time" on the Chemical Delivery Notice shall be completed with an estimate not exceeding a two-hour window.
- N. The Contractor shall furnish weight certificates from the State of Texas certified scales in the Austin area. An individual certified scale receipt indicating the date, the tare, and gross weight shall accompany each delivered load. A Safety Data Sheet (SDS) shall accompany each delivered load as well. The City reserves the right to have the weight verified by a weigh station within Austin, Travis County, Texas. The City will pay the cost of the weigh station charges if verification is required.
- O. The Contractor shall provide to the Plant Supervisor or designee the manufacturer's certificate of analysis with each independent truck delivery of the product per the Purchase Specification, as well as documentation identifying the name of the manufacturer and the lot number of the Liquid Copper Sulfate Pentahydrate (Earth Tec QZ). The City's test results will be the leading record of analysis if different properties are identified during testing than what is listed on the invoice or certificate of analysis.
- P. Delivery shall be made Monday thru Friday (except on City observed holidays) between the hours of 7:30 a.m. and 2:00 p.m. local time. If the Contractor makes a delivery on any date/time other than the scheduled delivery date/time, the City will not be charged demurrage for any delays encountered in unloading the truck. The Plant Supervisor or designee will be present during all deliveries. The delivery driver shall remain with the truck during the unloading process.

EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)

- Q. If a truck arrives to deliver on a Saturday, Sunday, holiday, or after 2:00 p.m. local time on a regular City workday without the prior approval of the Plant Supervisor or designee, the City may, at its sole discretion, wait to receive the product until normal City working hours at no additional expense to the City or charge the Contractor any overtime and call back expenses experienced to offload the delivery. If the City chooses to wait to receive the product until normal City working hours, the Contractor will not be allowed to leave the truck or trailer on City property.
- R. **The Contractor shall complete transfer by 3:00 p.m.** local time to the storage tank without demurrage of additional truck standing time charges. Should a delivery be completed after 3:00 pm local time, the Contractor shall be responsible for all associated costs, including any overtime required for City employees working outside of their normal business hours to accept the delivery.
- S. The Contractor shall allow a minimum three (3) hour time requirement for transferring the product from the delivery truck into the City's tank without demurrage of additional truck standing time charges.
- T. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- U. The Contractor shall confirm the quantity to be shipped on orders within two (2) hours of notification by phone from the Plant Supervisor or designee.
- V. Contractors shall note that the treatment plants are not serviced by rail. Delivery shall be made in bulk trucks. Trucks shall be fully equipped with the correct unloading equipment, hoses, and fittings to transfer the product.
- W. Unless requested by the Plant Supervisor or designee, deliveries shall not be made on City-recognized legal holidays (see Section 7.24 of the Contract).
- X. The Contractor and any subcontractors shall wear the necessary Personal Protective Equipment (PPE) while on City property. PPE required will vary depending on the chemical being delivered, City procedure, and construction activity on site; PPE may include long pants, long-sleeved shirt, work boots with safety toe, safety glasses, reflective vest, hard hat, and any PPE required as is appropriate for the chemical being delivered. PPE shall be provided at no additional expense to the City.
- Y. The Contractor may be required to deliver on holidays and weekends, as needed. Orders shall be made in full truckloads only. Deliveries will not be accepted at other times unless scheduled and approved by the Plant Supervisor or designee.
- Z. Contractors shall note that the treatment plants are not serviced by rail. Delivery shall be made in bulk trucks. Trucks shall be fully equipped with the correct unloading equipment, hoses and fittings to transfer the product.

3. **SAMPLES – EXACT REPLICA:**

- A. ***The City reserves the right to conduct sampling analysis throughout the contract period.***
- B. Earth Tec QZ shall contain copper sulfate pentahydrate with a 5% +/-0.25% metallic copper equivalent. If the amount falls below 4.75% or above 5.25% as analyzed by the Austin Water – Water Quality Laboratory, the City shall reserve the right to require the Contractor to remove the chemical and replace with chemical meeting these specifications at no additional charge to the City. The City shall reject any loads with debris and/or suspended particles. If the Earth Tec QZ is provided with debris and/or suspended particles then the City shall require the Contractor to remove the chemical, clean the City's storage tank(s) and replace with clean chemical at no additional charge to the City.
- C. The sample will be tested for compliance with the City specifications. Tests will be performed by the City's laboratory in accordance with ASTM Standards, AWWA B602 and/or Standard Methods.

EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)

- D. Samples will be provided at no cost to the City, may be retained by the City, and may be used for assuring compliance with materials specifications after award. Failure to supply samples when requested shall be considered a breach of contract.
- E. Samples taken at the time of delivery shall be pulled by the truck driver in the presence of AW staff. The Contractor shall be responsible for capture and disposal of any product wasted to flush the truck discharge manifold, not to exceed five (5) gallons.
- i. The truck manifold shall be flushed with up to five (5) gallons of product.
 - ii. Two 0.5-L grab samples shall be collected concurrently by the Contractor and provided to the City. One sample will be tested by City staff at the delivery location to confirm the load will be accepted. At a minimum, City staff will test the specific gravity and pH at the delivery location. If the test results indicate the load does not meet specification requirements, the Contractor may collect a new sample for the City to re-test. The Contractor shall be responsible for capture and disposal of any additional wasted product used to collect the new sample. If the test results still indicate the load does not meet specification requirements, the load will be rejected. Any freight charges associated with rejected loads that do not meet specification requirements shall be borne by the Contractor.
 - iii. The City's Water Quality Laboratory will analyze one of the grab samples within 5 business days of product delivery per AWWA/ASTM standards and Standard Methods. The metallic copper equivalent contained in this sample will be used, if needed, as a basis for payment. If the City's Water Quality Laboratory results demonstrate the load does not meet the City's specification requirements, the City has the option of accepting or rejecting the load of product.
 - iv. The remainder of the samples will be stored by the City for at least 30 calendar days. Should any dispute arise regarding the accuracy of the City's analysis, the remaining sample will be turned over to an independent laboratory, agreed upon by both parties, for analysis per AWWA/ASTM methods, and payment will be made based on the results of this analysis. The cost of the analysis by the independent laboratory will be the responsibility of either the Contractor or the City, depending on whose analysis differs most from the private laboratory's analysis.
- F. All products provided to the City under this offer must meet all requirements of the specification, regardless of whether all requirements are to be evaluated or tested by the City.
- G. If the product does not meet the City's specifications based on the City's Water Quality Laboratory analysis, the Contractor shall identify the reason for the product not meeting city specifications and provide a written justification to the City explaining why the load did not meet the City's specification. If there are more than two occurrences within a consecutive 12-month period of the product quality not meeting the City's specification due to contamination from the delivery truck loading process or from the delivery truck itself, the City reserves the right to put the Contractor on probation for a period not to exceed 90 days after the second occurrence and after each subsequent occurrence. While on probation, the certificate of analysis shall still be required with delivery of each load. The Contractor will be removed from probation after 90 days of continuous performance without any occurrence of contamination from the delivery truck loading process or from the delivery truck itself, at which time the Contractor may revert back to providing sampling from the product batch if the Contractor chooses to do so.
- H. The City reserves the right to reject the product not meeting specifications at any time during the contract period. The Contractor shall remove the product from the storage tanks (including any previously accepted product still in the storage tanks that becomes contaminated by the unacceptable product), clean the tanks, and replace the removed product with product meeting specifications at no additional expense to the City within seven (7) calendar days of both parties agreeing the load did not meet the specification. The Contractor will provide temporary storage if necessary, to avoid disruption in chemical feed while the tank is being emptied, cleaned, and refilled at no additional expense to the City.

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
LIQUID COPPER SULFATE PENTAHYDRATE (EARTH TEC QZ)**

4. HAZARDOUS MATERIALS:

- A. If this Offer involves hazardous materials, the Offeror shall furnish with the Offer Safety Data Sheets (SDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the SDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The SDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

5. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the Austin Water Department facility by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. The Contractor shall submit a complete list of all persons requiring access to the Austin Water facility at least thirty (30) days in advance of their need for access. The City reserves the right to deny access to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. 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) days of the receipt of notification of denial.
- C. Contractor personnel/driver will be required to check in at gate driver must provide a State of Texas issued picture ID to the Plant staff, no exceptions, when entering or leaving the Austin Water facility. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be onsite and the area(s) where they will be working. Only persons previously approved by the City will be admitted to the facility.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

6. 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:

N o t e	Contract Manger:	Contractual Monitor (AW CMS):	Operational Monitor (AW End User):
	Andres Ramirez	Ryan Braziel	Christine Graf
	Andres.ramirez@austintexas.gov	ryan.braziel@austintexas.gov	christinegraf@austintexas.gov
	512-972-0310	512-972-0287	512-972-0171

Chameleon Industries Inc
 313 S. Bryan Beltline
 Mesquite TX 75149
 972-880-1493



COMMERCIAL QUOTE

Bill To:

City of Austin, Austin Water Treatment
 Austin Water Main Building (Waller Creek)
 625 E. 10th St, Austin TX 78701
 Administrative Offices: 512-972-0101

Ship To:

City of Austin WTP #4
 6800 N FM 620
 Austin, TX 78726

Invoice #	Order #	Customer #	Customer P.O.	Terms	Ship Via: Chameleon
Date	Date	Comment			Salesperson
Comm Quote				Net 30	
09/23/2019					
Quantity	U/M	Description	DSC	Unit Price	Amount
1,814,400	lb	EarthTec QZ - Bulk Full Truck Loads FOB Austin WTP		\$1,265 / lb	\$2,295,210
445	Tote	EarthTec QZ - Totes ~275 gal / 2,708 lbs per tote 4 Totes per delivery FOB Austin WTP		\$3,831 / tote	\$1,704,790
Commercial Quote Total					\$4,000,000

EXHIBIT D
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, 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 payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 12th day of February, 2020

CONTRACTOR

Chameleon Industries Inc.

Authorized
Signature



Title

Vice President

Chameleon Industries Inc
 313 S. Bryan Beltline
 Mesquite TX 75149
 972-880-1493



COMMERCIAL QUOTE

Bill To:

City of Austin, Austin Water Treatment
 Austin Water Main Building (Waller Creek)
 625 E. 10th St, Austin TX 78701
 Administrative Offices: 512-972-0101

Ship To:

City of Austin WTP #4
 6800 N FM 620
 Austin, TX 78726

Invoice #	Order #	Customer #	Customer P.O.	Terms	Ship Via: Chameleon
Date	Date	Comment			Salesperson
Comm Quote				Net 30	
09/23/2019					
Quantity	U/M	Description	DSC	Unit Price	Amount
1,814,400	lb	EarthTec QZ - Bulk Full Truck Loads FOB Austin WTP		\$1,265 / lb	\$2,295,210
445	Tote	EarthTec QZ - Totes ~275 gal / 2,708 lbs per tote 4 Totes per delivery FOB Austin WTP		\$3,831 / tote	\$1,704,790
Commercial Quote Total					\$4,000,000

CERTIFICATE OF INTERESTED PARTIES

FORM **1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

Certificate Number:
2020-585787

Date Filed:
02/07/2020

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Chameleon Industries Inc.
Mesquite, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
MA 2200 GS200000003
Earthtec QZ molluscicide

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Garza, Faustino	Mesquite, TX United States	X	
	Garza, Jared	Maineville, OH United States	X	
	Garza, Jason	Dallas, TX United States	X	

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Jason L. Garza, and my date of birth is .

My address is 6252 Llano Ave, Dallas, TX, 75214, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 7th day of February, 20 20.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)