City of Round Rock

City Council

Meeting Agenda

Alan McGraw, Mayor
Craig Morgan, Mayor Pro-Tem, Place 1
Rene Flores, Place 2
Frank Leffingwell, Place 3
Will Peckham, Place 4
Writ Baese, Place 5
Kris Whitfield, Place 6

Tuesday, November 22, 2016 **7:00 PM** **City Council Chambers, 221 East Main St.**

A. CALL REGULAR SESSION TO ORDER – 7:00 P.M.

B. ROLL CALL

C. PLEDGES OF ALLEGIANCE

D. CITIZEN COMMUNICATION

Any citizen wishing to speak during citizen communication regarding an item on or off the agenda may do so after completing the required registration card. All comments must be no more than 3 minutes in length. Any comments regarding items not on the posted agenda may not be discussed or responded to by the City Council. The Mayor may deny any presenter the opportunity to address the City Council if the presentation or comments offered is substantially repetitive of those previous made, per §2-26(b)(d), of the Round Rock Code of Ordinances, 2010 Edition.

E. APPROVAL OF MINUTES:

E.1 2016-3969 Consider approval of the minutes for the November 10, 2016 City Council meeting.

F. RESOLUTIONS:

F.1 2016-3926 Consider public testimony regarding, and a resolution expressing no objection to the creation of an affordable multifamily housing complex known as the Shadow Ridge Apartments.

F.2 2016-3952 Consider a resolution authorizing the Mayor to execute a Funding Approval/Agreement with the U.S. Department of Housing and Urban Development related to the Community Development Block Grant (CDBG) Funds for Program Year 2016-2017.

F.3 2016-3961 Consider a resolution authorizing the Mayor to execute an Agreement with Navia Benefit Solutions, Inc. for administrative services related to employee benefit plans.

F.4 2016-3956 Consider a resolution authorizing the Mayor to execute a Management Agreement with Kemper Sports Management, Inc. for the Forest Creek Golf Club.

F.5 2016-3957 Consider a resolution authorizing the Mayor to execute an Agreement with US Foods, Inc. for the purchase of food and supplies at Round Rock facilities.

F.6 2016-3847 Consider a resolution authorizing the Mayor to execute a Refuse Collection Contract Between the City and Central Texas Refuse, Inc. dba Round Rock Refuse.

F.7 2016-3953 Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Raftelis Financial Consultants, Inc. for a 2017 Water and Wastewater Utility Rate Study.

F.8 2016-3968 Consider a resolution authorizing the Mayor to execute a Contract with Tank Builders, Inc. for the Lake Creek Ground Storage Tank Rehabilitation 2016 Project.

F.9 2016-3954 Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Granicus, Inc. for legislative management software services and video streaming services.

G. COUNCIL COMMENTS REGARDING ITEMS OF COMMUNITY INTEREST

H. EXECUTIVE SESSION:

H.1 2016-3867 Consider Executive Session as authorized by §551.087, Government Code, to deliberate the offer of a financial or other incentive to KR Acquisitions, LLC to locate a facility in the City.

I. ADJOURNMENT

**Pursuant to the terms of Section 3.13 of the Round Rock Home Rule Charter, the second reading of this ordinance may be dispensed with by an affirmative vote of all the City Council members present.*

In addition to any executive session already listed above, the City Council for the City of Round Rock reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code for the following purposes:

§551.071Consultation with Attorney
§551.072 Deliberations regarding Real Property
§551.073 Deliberations regarding Gifts and Donations
§551.074 Personnel Matters
§551.076 Deliberations regarding Security Devices
§551.087 Deliberations regarding Economic Development Negotiations

POSTING CERTIFICATION

I certify that this notice of the Round Rock City Council Meeting was posted on this 17th day of November 2016 at 5:00 p.m. as required by law in accordance with Section 551.043 of the Texas Government Code.

/ORIGINAL SIGNED/
Sara L. White, TRMC, City Clerk

City of Round Rock

Agenda Item Summary

Agenda Number: E.1

Title: Consider approval of the minutes for the November 10, 2016 City Council meeting.

Type: Minutes

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Sara White, City Clerk

Cost:

Indexes:

Attachments: 111016 Draft Minutes

Department: City Clerk's Office

Text of Legislative File 2016-3969

City of Round Rock

Meeting Minutes - Draft
City Council

Thursday, November 10, 2016

CALL REGULAR SESSION TO ORDER – 7:00 P.M.

The Round Rock City Council met in regular session on November 10, 2016 in the City Council chambers at 221 E. Main Street. Mayor Pro-Tem Morgan called the meeting to order at 7:01 pm.

ROLL CALL

Present: 5 - Mayor Pro-Tem Craig Morgan
Councilmember Frank Leffingwell
Councilmember Rene Flores
Councilmember Will Peckham
Councilmember Kris Whitfield

Absent: 2 - Mayor Alan McGraw
Councilmember Writ Baese

PLEDGES OF ALLEGIANCE

Mayor Pro-Tem Morgan led the following Pledges of Allegiance: United States and Texas

CITIZEN COMMUNICATION

Ken Wood spoke to the City Council regarding the Baca Center Christmas Program.

Al Escotaa spoke to the City Council regarding traffic and speeding in his neighborhood.

CONSENT AGENDA:

A motion was made by Councilmember Kris Whitfield and seconded by Councilmember Will Peckham to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

E.1 2016-3898 Consider approval of the minutes for the October 27, 2016 City Council meeting.

The minutes were approved under the consent agenda.

E.2 2016-3913 Consider a resolution authorizing the City Manager to issue a Purchase Order to EST Group for annual maintenance services related to data storage.

The resolution was approved under the consent agenda.

RESOLUTIONS:

F.1 2016-3922 Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Construction Manager at Risk Agreement between the City and Chasco Constructors, Ltd, LLP setting forth the Guaranteed Maximum Price (GMP) for the construction of the Public Safety Training Facility.

Chad McDowell, General Services Director, made the staff presentation.

A motion was made by Councilmember Leffingwell, seconded by Councilmember Whitfield, that this resolution be approved. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

F.2 2016-3901 Consider a resolution authorizing the Mayor to execute a Contract with Cash Construction for the Southwest Downtown District Infrastructure Improvements - Phase 5B Project.

This item was pulled from the agenda at the request of staff.

F.3 2016-3902 Consider a resolution authorizing the Mayor to execute a Contract with Patin Construction, LLC for the 2014 Sidewalk Gap Project.

This item was pulled from the agenda at the request of staff.

F.4 2016-3904 Consider a resolution authorizing the Mayor to execute a Public Highway At-Grade Crossing and Advanced Signal Agreement with Union Pacific Railroad Company for the Burnet Street Quiet Zone Project.

Gary Hudder, Transportation Director, made the staff presentation.

A motion was made by Councilmember Whitfield, seconded by Councilmember Peckham, that this resolution be approved. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

F.5 2016-3905 Consider a resolution authorizing the Mayor to execute a Public Highway At-Grade Crossing Improvement Agreement with Union Pacific Railroad Company for the St. Williams Street Quiet Zone Project.

Gary Hudder, Transportation Director, made the staff presentation.

A motion was made by Councilmember Leffingwell, seconded by Councilmember Flores, that this resolution be approved. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

F.6 2016-3915 Consider a resolution authorizing the Mayor to execute Supplemental Contract No. 3 with Kennedy Consulting, Inc. for the University Boulevard Widening Project.

Gary Hudder, Transportation Director, made the staff presentation.

A motion was made by Councilmember Peckham, seconded by Councilmember Leffingwell, that this resolution be approved. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

F.7 2016-3916 Consider a resolution authorizing the Mayor to execute a Contract for Engineering Services with Halff Associates, Inc. for the SH 45F (Frontage Roads) Project.

Gary Hudder, Transportation Director, made the staff presentation.

A motion was made by Councilmember Whitfield, seconded by Councilmember Flores, that this resolution be approved. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

F.8 2016-3925 Consider a resolution authorizing the Mayor to execute a Real Estate Contract with Yen Chan Kuo for approximately 3.5303 acres needed for the Texas Avenue road connection project.

Gary Hudder, Transportation Director, made the staff presentation.

A motion was made by Mayor Pro-Tem Morgan, seconded by Councilmember Whitfield, that this resolution be approved. The motion carried by the following vote:

Aye: 5 - Mayor Pro-Tem Morgan
Councilmember Leffingwell
Councilmember Flores
Councilmember Peckham
Councilmember Whitfield

Nay: 0

Absent: 2 - Mayor McGraw
Councilmember Baese

COUNCIL COMMENTS REGARDING ITEMS OF COMMUNITY INTEREST

EXECUTIVE SESSION:

H.1 2016-3867 Consider Executive Session as authorized by §551.087, Government Code, to deliberate the offer of a financial or other incentive to KR Acquisitions, LLC to locate a facility in the City.

The Council recessed to Executive Session. Mayor Pro-Tem Morgan called the session to order at 7:33 p.m. and adjourned it at 7:45 p.m.

ADJOURNMENT

There being no further business, Mayor Pro-Tem Morgan adjourned the meeting at 7:46 pm.

Respsectfully Submitted,

Sara L. White, City Clerk

City of Round Rock

Agenda Item Summary

Agenda Number: F.1

Title: Consider public testimony regarding, and a resolution expressing no objection to the creation of an affordable multifamily housing complex known as the Shadow Ridge Apartments.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Brad Wiseman, Planning and Development Services Director

Cost: $0.00

Indexes:

Attachments: Resolution, Map

Department: Planning and Development Services Department

Text of Legislative File 2016-3926

This item is required to be considered by the City Council in accordance with Chapter 2306 of the Texas Government Code. State legislation requires developers seeking tax credits for an affordable housing project to pursue a resolution of non-objection from the local governing body. As it pertains to the City, Pedcor Investments-2016-CLX, L.P. is seeking to construct an income-restricted apartment complex on approximately 23 acres of land at 2250/2300 East Old Settlers Boulevard, which is just northwest of the intersection of E Old Settlers Blvd and N A.W. Grimes Blvd. Shadow Ridge Apartments, as it will be known, is proposed to be financed, in part, by equity generated from low-income housing tax credits issued by the Texas Department of Housing and Community Affairs. Prior to a decision on the resolution, a public hearing must be held.

The complex will contain up to 256 units: 252 of those will be affordable to renters earning 60% of the area median income, while the remaining 4 units will be affordable to renters earning 50% of the area median income. The developer has a site development application currently under review in the Development Services Office. The property is zoned MF-2 (Multifamily - Medium Density), which permits apartment complexes like the one proposed.

Surrounding land uses are as follows:

North: auto service shop - outside city limits

East: agriculture - outside city limits

South: Valero corner store - zoned C-1 (General Commercial)

West: agriculture and Bluffs Landing Senior Village Apartments - zoned SF-R (Single Family - Rural) and PUD 73

City Council has two options regarding this item:

1. ***Express no objection to the application for tax credits for this affordable housing project by passing the resolution; or***
2. ***Choose not to pass the resolution.***

N/A

RESOLUTION NO. R-2016-3926

WHEREAS, Pedcor Investments-2016-CLX, L.P, or its successors, assigns or affiliates (the "Applicant") propose a development for affordable rental housing of up to 256 dwelling units (the "Affordable Housing") that will be located at approximately 2250/2300 Old Settlers Boulevard East in the City of Round Rock, Williamson County, Texas; and

WHEREAS, the Affordable Housing is in the jurisdiction of the City of Round Rock; and

WHEREAS, the Applicant proposes to apply for financing for the Affordable Housing, including Low Income Housing Tax Credits ("Tax Credits") from the Texas Department of Housing and Community Affairs ("TDHCA"); and

WHEREAS, the City of Round Rock has conducted a public hearing to take testimony with regard to the Affordable Housing; Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

SECTION ONE. The City of Round Rock has received notice and information from the Applicant with regard to the Affordable Housing in accordance with Texas Government Code § 2306.67071(a).

SECTION TWO. The City of Round Rock has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns it may have about the Affordable Housing.

SECTION THREE. The City of Round Rock has conducted a public hearing at which public comment may be made in accordance with Texas Government Code § 2306.67071(b) and, after due consideration of the information provided by the Applicant and the comments from the public, the City of Round Rock does not object to the Applicant's application for Tax Credits to TDHCA.

SECTION FOUR. This Resolution shall become effective immediately upon its passage. Sara L. White, City Clerk, is hereby authorized, directed, and empowered to certify these resolutions to TDHCA.

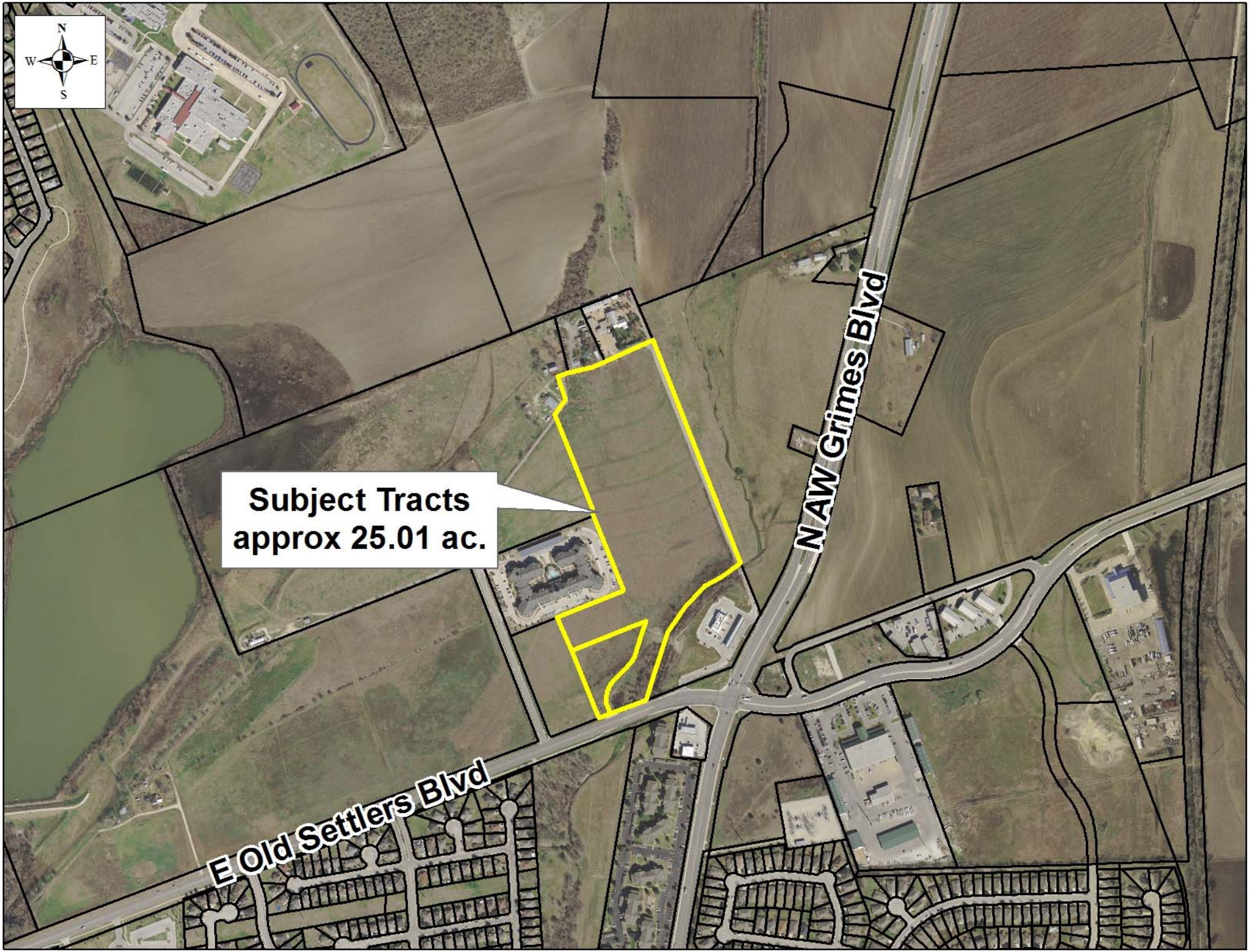
The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

SARA L. WHITE, City Clerk


N
W
E
S
Subject Tracts
approx 25.01 ac.
N AW Grimes Blvd
E Old Settlers Blvd

City of Round Rock

Agenda Item Summary

Agenda Number: F.2

Title: Consider a resolution authorizing the Mayor to execute a Funding Approval/Agreement with the U.S. Department of Housing and Urban Development related to the Community Development Block Grant (CDBG) Funds for Program Year 2016-2017.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Susan Morgan, CFO

Cost:

Indexes:

Attachments: Resolution, Exhibit A, 16-17 FUNDING RECOMMENDATIONS

Department: Finance Department

Text of Legislative File 2016-3952

The Community Development Block Grant Program (CDBG) was developed in 1974 and works to ensure affordable housing and to provide services to the most vulnerable in our communities.

CDBG is an important tool to address serious challenges facing our community. To be eligible for CDBG funding, activities must meet one of the three national objectives of the program which are 1) benefit low to moderate income persons 2) prevent slum or blight 3) meet an urgent need.

This resolution will authorize the Mayor to execute a Funding Approval Agreement with the U.S. Department of Housing and Urban Development Community Development Block Grant Funds for Program Year 2016-2017 in the amount of $572,999. These documents constitute the contract between the U.S. Department of Housing and Urban Development and the City of Round Rock for use of Community Development Block Grant Funds.

The 2016-2017 Program Year is the Third Year in the 2014-2018 Five Year Consolidated Plan. In this 2016-2017 Program Year Annual Action Plan, funds are allocated to Public Services, Neighborhood and Public Facility Improvements and Program Administration. The 2016-2017 Annual Action Plan was approved by City Council by Resolution No.2016-3649 on July 28, 2016. Individual recipient contracts over $50,000 will also come to Council for approval.

Staff recommends approval.

RESOLUTION NO. R-2016-3952

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") has grant funds available to cities through the Community Development Block Grant Program; and

WHEREAS, HUD has submitted to the City for its approval, a Funding Approval/Agreement, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the City Council wishes to approve said Agreement, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the City Manager is hereby authorized and directed to execute on behalf of the City a Funding Approval/Agreement with HUD.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____
ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____
SARA L. WHITE, City Clerk

EXHIBIT "A"

Funding Approval/Agreement

Title I of the Housing and Community Development Act (Public Law 930383)
HI-00515R of 20515R

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant Program

2506-0193 (exp 5/31/2018)

1. Name of Grantee (as shown in item 5 of Standard Form 424) City of Round Rock	3a. Grantee's 9-digit Tax ID Number 746017485	3b. Grantee's 9-digit DUNS Number 102740792
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 221 E Main St Round Rock, TX 78664-5299	4. Date use of funds may begin 10/01/2016	
	5a. Project/Grant No. 1 B-16-MC-48-0514	6a. Amount Approved $572,999.00
	5b. Project/Grant No. 2	6b. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Elva F. Garcia		Grantee Name City of Round Rock	
Title HUD Community Planning and Development Director		Title Alan McGraw, Mayor	
Signature Elva F. Garcia	Date (09/29/2016)	Signature	Date (mm/dd/yyyy)

7. Category of Title I Assistance for this Funding Action (check only one)
- [X] a. Entitlement, Sec 106(b)
- [ ] b. State-Administered, Sec 106(d)(1)
- [ ] c. HUD-Administered Small Cities, Sec 106(d)(2)(B)
- [ ] d. Indian CDBG Programs, Sec 106(a)(1)
- [ ] e. Surplus Urban Renewal Funds, Sec 112(b)
- [ ] f. Special Purpose Grants, Sec 107
- [ ] g. Loan Guarantee, Sec 108

8. Special Conditions (check one)
- [ ] None
- [X] Attached

9a. Date HUD Received Submission: 08/11/2016
9b. Date Grantee Notified: 09/29/2016
9c. Date of Start of Program Year: 10/01/2016

10. check one
- [X] a. Orig. Funding Approval
- [ ] b. Amendment
  Amendment Number

11. Amount of Community Development Block Grant

	FY 2016	FY ( )	FY ( )
a. Funds Reserved for this Grantee	$572,999.00		
b. Funds now being Approved	$572,999.00		
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved
N/A

Loan Guarantee Acceptance Provisions for Designated Agencies:
The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.

12b. Name and complete Address of Public Agency

12c. Name of Authorized Official for Designated Public Agency

Title

Signature

HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153 176											
			Y					Project Number		Amount		
			Y					Project Number		Amount		

Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By

8. Special Conditions.

(a) The period of performance for the funding assistance specified in the Funding Approval ("Funding Assistance") shall begin on the date specified in item 4 and shall end on September 1, 2023. The Grantee shall not incur any obligations to be paid with such assistance after September 1, 2023.

(b) If Funding Assistance will be used for payment of indirect costs pursuant to 2 CFR 200, Subpart E - Cost Principles, attach a schedule in the format set forth below to the executed Grant Agreement that is returned to HUD. The schedule shall identify each department/agency that will carry out activities with the Funding Assistance, the indirect cost rate applicable to each department/agency (including if the de minimis rate is charged per 2 CFR §200.414), and the direct cost base to which the rate will be applied. Do not include indirect cost rates for subrecipients.

Administering Department/Agency	Indirect cost rate	Direct Cost Base*
_____	_____%	_____
_____	_____%	_____
_____	_____%	_____

*Specify the type of cost base utilized - e.g., Modified Total Direct Costs (MTDC). Do not include amounts.

(c) In addition to the conditions contained on form HUD 7082, the grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS), the System for Award Management (SAM.gov), and the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and System for Award Management, and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.

(d) The grantee shall ensure that no CDBG funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water- related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownsfield as defined in the Small Business

Liability Relief and Brownsfield Revitalization Act (Public Law 107–118) shall be considered a public use for purposes of eminent domain.

(e) The Grantee or unit of general local government that that indirectly receives CDBG funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.

(f) E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.

CDBG PROGRAM YEAR 2016-2017 FUNDING RECOMMENDATIONS

AGENCY/DEPARTMENT	PROJECT DESCRIPTION	FUNDING RECOMMENDATION
CASA of Williamson County	Funds will be provided for personnel to pay partial salary of a Volunteer Recruiter/Trainer Coordinator who advocates for the abused or neglected children in court.	$20,000
Round Rock Area Serving Center-Housing Assistance Program	Funds will be provided for housing and emergency shelter needs, help elderly maintain independence, help families avoid eviction and homelessness.	$25,000
Round Rock Area Serving Center-Food Pantry	Funds will be provided to purchase food through the Capital Area Food Bank to provide food to indigent, low-income, homeless, and transient people.	$25,000
Round Rock Housing Authority	Funds will be provided for personnel and supplies for the Neighborhood Outreach Center.	$15,950
City of Round Rock Transportation Department-Street Improvement Project	Funds will be provided to construct 13,235 square feet of 4 feet, and 5 foot wide sidewalks along the west sides of Cameo Drive, Easton Drive, and Farnswood Drive.	$130,740
City of Round Rock Transportation Department-Street Improvements Project	Funding will be provided to construct sidewalks on the south side of Austin Ave from Nelson Street to approximately 100 feet East of Pecan Lane.	$241,709
CDBG Program Administration	Funds will be used for the management and oversight of the CDBG program.	$114,600
	TOTAL:	**$572,999**

City of Round Rock

Agenda Item Summary

Agenda Number: F.3

Title: Consider a resolution authorizing the Mayor to execute an Agreement with Navia Benefit Solutions, Inc. for administrative services related to employee benefit plans.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Valerie Francois, HR Director

Cost: $6,930.00

Indexes:

Attachments: Resolution, Exhibit A, Form 1295

Department: Human Resources Department

Text of Legislative File 2016-3961

This resolution is to change vendors for the medical and dependent care Flexible Spending Accounts (FSA), COBRA and direct billing for retirees. We prepared a RFP for a new vendor to provide administration of these benefits. We received 7 responses to the RFP. Navia is the vendor that we are recommending.

Cost: The annual cost will be approximately $6930.00.
Source of Funds: Health Fund Budget
Staff recommends approval.

RESOLUTION NO. R-2016-3961

WHEREAS, the City of Round Rock has duly sought proposals for administrative services related to employee benefit plans; and

WHEREAS, Navia Benefit Solutions, Inc. ("Navia") has submitted the proposal determined to be the most advantageous to the City considering the price and other evaluation factors included in the request for proposals; and

WHEREAS, the City Council desires to enter into an agreement with Navia, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Administrative Service Agreement with Navia, a copy of said Agreement being attached hereto as Exhibit "A" and incorporated herein.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____
ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____
SARA L. WHITE, City Clerk

EXHIBIT "A"

NAVIA BENEFIT SOLUTIONS ADMINISTRATIVE SERVICES AGREEMENT (v. 2015)

CONTRACT INFORMATION PAGE

This NAVIA ADMINISTRATIVE SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date by and between Navia Benefit Solutions, Inc. ("Navia"), a Washington Corporation, and the below-named Employer ("Employer").

Name of Employer:	City of Round Rock
Effective Date:	1/1/2017
Notices Sent to Employer:	231 East Main Street Suite 100 Round Rock, TX 78664
Notices Sent to Navia	Matt Aitken PO Box 53250 Bellevue, WA 98015-3250

IN WITNESS WHEREOF, Employer and Navia have reviewed the forgoing Agreement in its entirety and have caused their undersigned Representative(s) to execute this Agreement, the same being duly authorized to do so.

EMPLOYER

SIGNATURE: _____

NAME: _____

TITLE: _____

DATE: _____

NAVIA BENEFIT SOLUTIONS, INC.

SIGNATURE: _____

NAME: JAMES AITKEN

TITLE: PRESIDENT

DATE: 11/8/16

TABLE OF CONTENTS

NAVIA ADMINISTRATIVE SERVICE AGREEMENT

Employer has asked Navia to provide administrative services for certain employee Benefit Plans maintained by Employer as described in this Agreement. In consideration of the mutual promises contained in this Agreement, Employer and Navia agree as follows:

GENERAL TERMS AND CONDITIONS

Article I: Definitions

All capitalized terms in this Agreement not defined in this Section shall have the meanings set forth in the Sections or Schedules of this Agreement in which they are defined.

1.1 AFFILIATE

"Affiliate" means a business entity now or hereafter controlled by, controlling or under common control with a Party. Control exists when an entity owns or controls directly or indirectly 50% or more of the outstanding equity representing the right to vote for the election of directors or other managing authority of another entity.

1.2 AGREEMENT

"Agreement" means the following: the Contract Information Page, the General Terms and Conditions, the Schedules and the Exhibits that are specifically incorporated by the Parties into this Agreement by reference.

1.3 BENEFIT PLANS

"Benefit Plan(s)" means one or more employee benefits plans, COBRA Administration, or Retiree Billing Administration established and maintained by Employer for the benefit of its employees and their eligible dependents for which Navia provides Services in accordance with this Agreement.

1.4 BUSINESS DAY

"Business Day" means Monday through Friday, excluding days deemed to be federal holidays.

1.5 CARD RECIPIENT

"Card Recipient" means the individual to whom Card Services Provider issues an Electronic Payment Card in accordance with this Agreement.

1.6 CARD SERVICES PROVIDER

"Card Services Provider" means the third party chosen by Navia to issue Electronic Payment Cards in accordance with this Agreement and/or process electronic payment card transactions.

1.7 CARRIER

"Carrier" means the insurance Carrier or other benefit provider designated by the Employer.

1.8 CLAIMS ADMINISTRATOR

"Claims Administrator" means Navia.

1.9 COBRA ELECTION NOTICE

"COBRA Election Notice" means the election form included in the Specific Rights Notice.

1.10 CODE

"Code" means the Internal Revenue Code of 1986 and the regulations thereunder, as amended from time to time.

1.11 COVERED DEPENDENT

"Covered Dependent" means any person other than the Covered Employee who is covered under a Benefit Plan by virtue of his relationship to the Covered Employee.

1.12 COVERED EMPLOYEE

"Covered Employee" means any of Employer's employees or former employees who are enrolled in a Benefit Plan or who have established a Health Savings Account as defined in Code Section 223.

1.13 COVERED INDIVIDUAL

"Covered Individual" means a Covered Employee or a Covered Dependent.

1.14 DISBURSEMENT REPORT

"Disbursement Report" means a file or report created by Navia, posted to the Website that details the benefit disbursements.

1.15 ELIGIBILITY AND PAYROLL DEDUCTION REPORT ("EDR")

"Eligibility and Payroll Deduction Report" means a file or report created by Navia, posted to the Website, and verified by the Employer against payroll deductions for each processing date.

1.16 ELECTRONIC PAYMENT CARD

"Electronic Payment Card" means a debit card or store value card used to pay for eligible expenses under the Benefit Plan(s).

1.17 ELIGIBLE EMPLOYEE

"Eligible Employee" means an employee that is eligible for the Benefit Plan(s) as determined by the Employer.

1.18 EXHIBIT

"Exhibit" means the document or documents specifically incorporated by the Parties into this Agreement by reference that describe the specific rights, duties, and obligations of the Parties.

1.19 FEES

"Fees" means the amount that must be paid as indicated in each Schedule.

1.20 GRACE PERIOD

"Grace Period" means the 2.5 month period after the end of the Plan Year during which eligible expenses incurred during that time may be applied toward the previous Plan Year.

1.21 INTELLECTUAL PROPERTY RIGHTS

"Intellectual Property Rights" means all intellectual property rights throughout the world, including copyrights, patents, mask works, trademarks, service marks, trade secrets, inventions (whether or not patentable), know how, authors' rights, rights of attribution, and other proprietary rights and all applications and rights to apply for registration or protection of such rights.

1.22 PARTY OR PARTIES

"Party" means Employer or Navia collectively, and Employer and Navia shall be referred to as "Parties".

1.23 PLAN ADMINISTRATOR

"Plan Administrator" means Employer.

1.24 PLAN APPLICATION

"Plan Application" means the online or form questionnaire provided by Navia to Employer used to gather Employer and Plan design information.

1.25 PLAN YEAR

"Plan Year" means a period of time determined by the Employer no longer than 12 months.

1.26 REPRESENTATIVE

"Representative" means an officer, director, or individual with authority to bind the Party.

1.27 RUN-OUT-PERIOD

"Run-out Period" means the period of time after the end of the Plan Year during which Covered Individuals can submit claims.

1.28 SCHEDULE(S)

"Schedule(s)" means the document or documents specifically incorporated by the Parties into this Agreement by reference that describe the specific Services and the specific rights and obligations of the Parties with respect to such Services.

1.29 SERVICES

"Services" means Benefit Plan related administrative services as described specifically in the Schedules, together with any materials, supplies, tangible items or other goods Navia furnishes in connection with the Services.

1.30 SPECIFIC RIGHTS NOTICE

"Specific Rights Notice" means the notice that must be provided to each qualified beneficiary in connection with a COBRA qualifying event.

1.31 SUBCONTRACTOR

"Subcontractor" means a third-party to whom a Party has delegated or subcontracted any portion of its obligations set forth herein.

1.32 WE OR US

"We" or "Us" means Navia.

1.33 YOU OR YOUR

"You" or "your" means Employer.

1.34 YEAR-TO-DATE REPORT

"Year-to-Date Report" means a file or report created by Navia, posted to the Website that details contributions, disbursements, and benefit election, if applicable.

Article II. Relationship and Term

2.1 RELATIONSHIP OF THE PARTIES

Navia is an independent contractor. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment, or joint venture relationship between the Parties, their Affiliates, or any of their Subcontractors or Representatives. There are no third party beneficiaries of this Agreement, and nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, any rights, remedies, obligations, or liabilities whatsoever upon any person, including but not limited to Eligible Employees and Covered Individuals, other than the Parties and their respective successors or assigns. Employer acknowledges that Navia is not an accounting or law firm. No Services, and no written or oral communications made by Navia during the course of providing Services, are or should be construed by Employer as tax or legal advice.

2.2 TERM OF THE AGREEMENT

This Agreement shall be in effect from Effective Date set forth on the Contract Information Page and will continue until such time as the Agreement is terminated as set forth herein ("Term"). Each Schedule may have a later effective date than this Agreement to the extent that Employer and Navia agree to the terms set forth in the Schedule after this Agreement has already become effective.

2.3 TERMINATION WITHOUT CAUSE

Either Party may terminate this Agreement for convenience, without cause, at any time without further charge or expense with at least sixty (60) calendar days prior written notice to the other Party.

2.4 TERMINATION FOR CAUSE

In addition to any other remedies available to a Party, a Party may immediately terminate this Agreement upon the occurrence of a Termination Event by the other Party by providing written notice of termination to the other Party.

The following events constitute a Termination Event:

(a) Employer fails to pay the applicable Fees or satisfy the applicable funding requirements as set forth herein;

(b) Failure of a Party to cure a material breach (to the extent curable) within thirty (30) calendar days after written notice of the breach and intent to terminate is provided by the non-breaching Party;

(c) Employer files for bankruptcy, becomes or is declared insolvent (generally unable to pay its debts as they become due), is the subject of any proceedings (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, takes any corporate action for its winding-up, dissolution or administration, enters into an Agreement for the extension or readjustment of substantially all of its obligations, or recklessly or intentionally makes any material misstatement as to its financial condition. Navia reserves the right to retain as an additional administrative Fee any interest earned on amounts while held in a Navia maintained account.

2.5 POST TERMINATION OBLIGATIONS

(a) If Employer terminates this Agreement, Navia shall reasonably cooperate with Employer to transition information to Employer or a new third party pursuant to the reasonable instructions of Employer, in accordance with the terms of this Agreement, as necessary to enable the new service provider to perform services without disruption to Covered Individuals. Employer is obligated to

reimburse all reasonable costs and expenses incurred by Navia in transitioning such information as set forth herein. Covered Individual claims submitted to Navia after the effective date of the termination will be redirected to Employer and Navia will have no further responsibility with respect to Covered Individual claims submitted after the effective date of termination.

(b) The rights and obligations of the Parties that by their nature must survive termination or expiration of this Agreement in order to achieve its fundamental purposes include, without limitation, Section 5.1 through Section 5.5, Article VI, Section 7.7, and the Business Associate Agreement Exhibit.

(c) Termination of this Agreement shall not terminate the rights or obligations of either Party arising prior to the effective date of such termination. Notwithstanding anything to the contrary herein upon termination of this Agreement, all Fees, funding, and other amounts owed by you will become immediately due and payable.

Article III. Fees

3.1 FEES FOR SERVICES

The Fees that Employer must pay Navia for Services are set forth in the Fee section of each Schedule. To the extent that Navia sends a monthly invoice, all Fees are due upon receipt of the monthly invoice.Failure to timely and completely pay such Fees may also result in suspension of all or part of the Services provided or, in Navia's discretion, termination of the Agreement.

3.2 FEES FOR ADDITIONAL SERVICES

Additional Fees for additional Services not listed in the Schedules shall be as mutually agreed in writing between Employer and Navia prior to performance. Such Fees may result from Employer's specific requests for legal guidance provided by an outside firm, development time, or third-party audit Fees.

3.3 FEE TERMS AND CHANGES IN FEES

(a) Fees are effective beginning with the Effective Date unless otherwise provided herein.

(b) The Parties may agree to change the Fees with no less than sixty (60) days' notice prior to the start of the new agreed upon Fee structure.

(c) In addition, Navia may change Fees to the extent that (i) changes are made in applicable law that materially affect the rights and obligations of Navia set forth herein or (ii) Employer amends the Benefit Plan in a manner that materially impacts the Services provided herein. In the event of such a change, Navia will provide written notice of the proposed Fee changes to Employer. If Employer does not affirmatively reject the proposed Fee changes in writing within thirty (30) days of receiving written notice of the proposed Fee changes from Navia, such proposed Fees will become effective the first day of the month following the end of the thirty day response period. If Employer does not agree with such proposed Fee changes, Employer may terminate the Agreement with no less than thirty (30) days prior written notice from the date that Navia notified Employer of the Fee changes.

Article IV. Warranties and Representations

4.1 MUTUAL WARRANTIES AND REPRESENTATIONS

Each Party represents and warrants the following:

(a) the Party's execution, delivery and performance of this Agreement: (i) have been authorized by all necessary corporate action, (ii) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any material agreement to which the Party or any of its assets may be subject and (iii) are not subject to the consent or approval of any third party;

(b) This Agreement is the valid and binding obligation of the representing Party, enforceable against such Party in accordance with its terms;

(c) Such Party is not subject to any pending or threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder; and

(d) Both Parties will perform their respective obligations under this Agreement in compliance with all laws, rules, regulations, and other legal requirements applicable to the Party.

4.2 NAVIA'S WARRANTIES AND REPRESENTATIONS

(a) Navia represents and warrants that the Services shall reasonably conform to the Schedules described herein.

(b) Other than as specifically set forth herein, Navia makes no representation or warranty, express or implied, written or oral, and, to the full extent permitted by law, disclaims all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose.

Article V: Information and Records

5.1 RECORDS GENERALLY

Employer and Navia shall retain records and supporting documentation sufficient to document its satisfaction of its obligations under this Agreement in accordance with laws and generally accepted accounting principles for at least seven (7) years from the date such record or documentation is created.

5.2 CONFIDENTIAL AND PROPRIETARY INFORMATION - GENERALLY

(a) The term "Confidential Information" shall mean this Agreement and all non-public data, trade secrets, business information and other information of any kind whatsoever that a Party ("Discloser") discloses, in writing, orally, visually or in any other medium, to the other Party ("Recipient") or to which Recipient obtains access and that relates to Discloser or, in the case of Navia, its customers. A "writing" shall include an electronic transfer of information by e-mail, over the Internet or otherwise. Confidential Information shall not include Benefit Plan data (claims, explanation of benefits, and other data subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and Health Information Technology for Economic and Clinical Health Act (HITECH")). Such data will be protected under HIPAA, HITECH and other applicable privacy and security laws as indicated in the Business Associate Agreement.

(b) Each of the Parties, as Recipient, hereby agrees that it will not, and will cause its Representatives, Affiliates, and Subcontractors not to disclose Confidential Information of the other Party, during or after the Term of this Agreement, other than on a "need to know" basis and then only to: (a) Affiliates; (b) Representatives; and/or (c), Subcontractors provided that any third parties who receive Discloser's Confidential Information from Recipient or on behalf of Recipient are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section; (d) as required by law or as otherwise expressly permitted by this Agreement.

(c) Recipient shall not use or disclose Confidential Information of the other Party for any purpose other than to carry out its obligations set forth herein.

(d) Recipient shall treat Confidential Information of the other Party with no less care than it employs for its own Confidential Information of a similar nature that it does not wish to disclose, publish, or disseminate, but not less than a reasonable level of care.

(e) Upon the Discloser's request following expiration or termination of this Agreement for any reason, the Recipient shall promptly return or destroy all Confidential Information in the possession of Recipient or Recipient's Affiliates, Representatives or Subcontractors. If it is determined that returning or destroying all Confidential Information of Employer is infeasible Navia shall extend the protections of this Agreement to such Confidential Information.

(f) The obligations of confidentiality in this Section shall not apply to any information that (i) Recipient rightfully has in its possession when disclosed to it, free of obligation to Discloser to maintain its confidentiality; (ii) Recipient independently develops without access to Discloser's Confidential Information; (iii) is or becomes known to the public other than by breach of this Section or (iv) is rightfully received by Recipient from a third party without the obligation of confidentiality. Any combination of Confidential Information disclosed with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.

(g) A Party's Confidential Information and any results of processing Confidential Information or derived in any way therefrom shall at all times remain the property of that Party.

5.3 MEDIA RELEASES AND PUBLIC ANNOUNCEMENTS

Employer may not issue any media releases, public announcements and public disclosures, relating to this Agreement or use the name or logo of Navia, including, without limitation, in promotional or marketing material or on a list of vendors, provided that nothing in this paragraph shall restrict any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing Party.

5.4 PROTECTED HEALTH INFORMATION

Protected Health Information ("PHI"), as defined by 45 C.F.R. 160.103, if any, that is used or disclosed by the Parties in accordance with this Agreement, will be governed by the terms and conditions set forth in the Business Associate Agreement between the Parties. Employer agrees that Navia may communicate confidential, PHI or otherwise sensitive information to Employer and hold it harmless for any such communications in the event they are misrouted or intercepted from any claim for the improper use or disclosure by Navia where such information is used or disclosed for purposes of administration of the Benefit Plan(s) or used or disclosed for the purposes of carrying out Navia's duties and responsibilities under this Agreement.

5.5 INTELLECTUAL PROPERTY RIGHTS

Each Party shall retain all rights in and/or title to its respective Intellectual Property Rights. Other than as expressly provided in this Agreement, (a) nothing contained herein shall be construed as granting a Party any license, right, title, or interest in or to any of other Party's Intellectual Property Rights and (b) neither Party is developing any work product for the other.

5.6 ONLINE SERVICES

(a) Navia may provide access to a password-protected website maintained by Navia or Navia's Subcontractor(s) in connection with the Services (the "Website"). Navia may unilaterally make reasonable adjustments and improvements to the Website at any time and without prior notice.

Neither Navia nor Navia's Subcontractor is under any obligation to make any adjustments to the Website that are requested by Employer or any other third party.

(b) The Website may include information related to Navia's other services and/or links to other websites to the extent permitted by law. Navia neither grants a license for nor is responsible for any external links to third party websites provided on the Website.

(c) Employer acknowledges that Employer and the Covered Individuals are solely responsible for maintaining the hardware and/or software necessary to access the Website.

Article VI: Liability and Indemnification

6.1 LIMITATION ON LIABILITY

(a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF DATA, OR COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED HEREUNDER UNDER ANY THEORY OF LIABILITY EVEN IF SUCH PARTY ALLEGED TO BE LIABLE HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED, HOWEVER, THAT THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO OR IN ANY WAY LIMIT THE OBLIGATIONS OF THE SECTIONS ENTITLED "INDEMNITY," AND "CONFIDENTIALITY AND PROPRIETARY INFORMATION". IF NAVIA IS FOUND LIABLE TO EMPLOYER FOR ANY DIRECT DAMAGES, SUCH DAMAGES SHALL NOT EXCEED AN AMOUNT EQUAL TO ACTUAL DAMAGES OR THE FEES PAID FOR SERVICES GIVING RISE TO THE CLAIM WITHIN THE TWELVE (12) MONTHS PRECEDING THE CLAIM, WHICHEVER IS LESS.

(b) Navia is not liable for the acts or omissions of a prior administrator or the acts or omissions of Employer if prior administration was conducted by Employer.

(c) Navia shall not be liable for any action, conduct, or activity taken by Navia, or any failure to act at the request of Employer.

(d) Neither party will be liable for and will be excused from any failure or delay in satisfying its obligations set forth herein if such failure or delay is caused by circumstances beyond its control, including but not limited to any natural disaster (such as earthquakes, hurricanes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute), outages, legal constraint or governmental action or inaction, breakdown or failure of equipment not due directly to the negligence of the Party maintaining the equipment, or the act, omission, negligence or fault of the other party. This section does not excuse Employer from its obligations to pay any of the Fees or to fund the Benefit Plans as provided herein.

(e) Navia neither assumes nor underwrites any liability of Employer under the Benefit Plans, and acts only as provider of the services specifically described herein. The Services performed shall be ministerial in nature and shall be performed in accordance with the direction, guidance, framework, and interpretation of the Benefit Plan(s) established and communicated by Employer. Navia shall have no discretionary authority or control over the Benefit Plan(s), funds, and Covered Individuals.

6.2 INDEMNITY

(a) Each Party ("Indemnitor") shall indemnify, defend, and hold harmless the other Party, its Representatives, successors and permitted assigns (collectively, the "Indemnitee") from and

against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' Fees and expenses incurred in investigation or defense ("Damages"), to the extent such Damages arise out of or relate to the following:

(b) Any negligent act or omission or willful misconduct by an Indemnitor, its Representatives or its Subcontractor; or

i. Any material breach in a representation, covenant, or obligation of the Indemnitor contained in this Agreement.

(c) Indemnitee shall give Indemnitor reasonably prompt notice of, and the Parties shall cooperate in, the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that Indemnitee must approve the terms of any settlement or compromise that may impose any un-indemnified or nonmonetary liability on Indemnitee.

(d) Navia shall not be liable to Employer for mistakes of judgment or other actions taken in good faith unless such error results directly from an intentionally wrongful or grossly negligent act of Navia.

6.3 REMEDIES

The remedies under this Agreement shall be cumulative and are not exclusive. Election of one remedy shall not preclude pursuit of other remedies available under this Agreement or at law or in equity.

6.4 STATUTE OF LIMITATIONS

The Parties agree that no legal action may be brought by a Party ("Plaintiff") against the other more than two (2) years after the date the claim giving rise to such action became known by the Plaintiff or, exercising reasonable diligence should have been known by the Plaintiff.

Article VII: Miscellaneous

7.1 AUDIT

During the term of this Agreement, Employer may, at its sole expense, perform a confidential audit of the Services in accordance with the Schedules. Such audits shall be conducted on a mutually agreed upon date during Navia's normal business hours. Only a third party mutually agreed to by the Parties and who has executed a separate confidentiality agreement with Navia may conduct or assist Employer with the Audit. Employer will provide Navia with a summary of the findings from each report prepared in connection with any such audit and discuss results, including any remediation plans. Except as specifically agreed to by the Parties, any audit of claims process by Navia in accordance with this Agreement shall be based on a random representative sampling methodology of Employer's Covered Individual's claims processed within the last 12 months.

7.2 SECTION HEADINGS

Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement and should not be used to construe or interpret this Agreement.

7.3 WAIVER OF RIGHTS

No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or

remedy. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision of this Agreement.

7.4 INVALID/ILLEGAL/UNENFORCEABLE PROVISIONS

If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby.

7.5 AMENDMENT

Except as otherwise set forth herein, no amendments of any provision of this Agreement shall be valid unless made by an instrument in writing signed by both Parties specifically referencing this Agreement.

7.6 AGREEMENT

(a) This Agreement, the Schedules, and any Exhibits reflect the final, full and exclusive expression of the agreement of the Parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral or written, of either Party with respect to the subject matter hereof and the transactions contemplated hereby.

(b) This Agreement may be executed by the Parties in one or more counterparts, and each of which when so executed shall be an original but all such counterparts shall constitute one and the same instrument. The Parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction

(c) Notwithstanding the general rules of construction, both Employer and Navia acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

(d) This Agreement shall be governed by the applicable laws of Washington without regard to any of its conflict of law principles and any dispute arising out of this Agreement will be settled in any court of competent jurisdiction in King County, Washington.

7.7 NOTICES

(a) All legal notices or other communications required to be sent by one Party to the other Party under this Agreement shall be given to the Parties in writing to the addresses identified on the Contract Information Page or to such other addresses as the Parties may substitute by written notice given in the manner prescribed in this Section as follows:

i. By first class, registered or certified United States mail, return receipt requested and postage prepaid,

ii. Over-night express courier,

iii. By hand delivery to such addresses, or

iv. Electronic mail with return receipt.

(b) Such notices shall be deemed to have been duly given (i) five (5) Business Days after the date of mailing as described above, (ii) one (1) Business Day after being received by an express courier during business hours, or (iii) the same day if by hand delivery or by email

7.8 CONSENT

Wherever this Agreement requires either Party's approval or consent such approval or consent shall not be unreasonably withheld or delayed.

7.9 THIRD PARTY BENEFICIARIES

Except as expressly set forth in this Agreement, the Parties do not intend the benefits of this Agreement to inure to any third party, including but not limited to Covered Individuals and Eligible Employees, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such other third party, against either of the Parties hereto.

7.10 ADVERTISING

Navia may indicate in its marketing materials and proposals to other prospective customers that this Agreement has been awarded, and may describe the nature and objective(s) of this engagement. No such statements by, or materials of, Navia will disclose any Employer Confidential Information.

BENEFIT PLAN SERVICE SCHEDULE(S) AND FEES

Employer has established one or more of the following Benefit Plans (the "Plan" or "Plans") for purposes of providing benefits administration and/or reimbursement of certain eligible expenses incurred by Covered Individuals:

- Cafeteria Plan Document and Forms
- Health Flexible Spending Arrangement and Dependent Care Flexible Spending Arrangement
- Health Reimbursement Arrangements
- Section 132 Transportation and Parking Plan
- Code Section 223 Health Savings Account

In addition Employer may offer one or more of the following other Plans for purposes of complying with applicable laws or providing additional benefits.

- Wellness Plan
- Federal COBRA Administration
- Direct Billing or Retiree Billing Administration

Employer has asked Navia to assist it with its administrative obligations under one or more of the Plans identified above. The specific Plan related Services are described in each Schedule. Only those Services chosen by Employer pursuant to an Application and for which the applicable Fee is paid as set forth in the Fee section of each Schedule (or, as set forth below with respect to additional requested Services), will be provided by Navia.

Article I. Standard Benefit Plan Services

1.1. Employer is solely responsible for the operation and maintenance of the Plans. It is Employer's sole responsibility and duty to ensure that each Plan complies with the applicable laws and regulations, and Navia's provision of Services under this Agreement does not relieve Employer of this obligation.

1.2. If applicable to the particular Plan, Navia will provide Navia's standard plan document, summary plan description, and forms to be used by Employer as a template for creating the governing documents for the Plan(s). Such standard documents and forms have been prepared in accordance with the standard of care set forth in the Agreement but are general in nature and do not take into consideration facts and circumstances specific to Employer and Employer's Plans. Consequently, Navia makes no warranties and representations that such documents and forms will comply with applicable law as they relate to the Plan(s). Navia is not responsible for making any changes or amending the documents. It is Employer's responsibility to review the documents and ensure they conform to the facts and circumstances specific to Employer and the Plans, and ensure the documents comply with applicable laws. Employer shall also make such documents available to Covered Individuals as required by law.

1.3. Employer will provide to Navia timely, accurate and complete information relating to the Covered Individuals and the Plans as is necessary for Navia to satisfy its obligations hereunder. Employer will provide such information in a format identified by Navia. In the event that information is not timely reported or verified, and in the event that there are disbursements made by Navia that would not have been made if the occurrence had been reported on the same day of

each such occurrence, then Employer shall be responsible for such disbursements and shall reimburse Navia therefore upon request by Navia. Employer shall be responsible for accurate Participant payroll deductions, reporting of deductions, and W-2 reporting.

Employer understands and agrees that Navia may rely on all information provided to it by Covered Individuals and/or Employer in accordance with this Agreement as true and accurate without further verification or investigation by Navia. Navia shall not be responsible and shall be held harmless for the receipt of inaccurate and/or incomplete information or data files. Navia shall not be responsible for any delays in providing services under this Agreement and any financial or adverse consequences due to the receipt of the inaccurate and/or incomplete information or data files or for Employer's failure to send data files.

1.4 If applicable to the Plan(s), Navia will make enrollment kits (describing the benefit), enrollment forms, online enrollment specification files, and claim forms available on the Website and/or to Employer for distribution to Covered Individuals. Navia is only obligated to process claims submitted to Navia in accordance with the instructions set forth on Navia's claim forms. Navia will process claims in accordance with applicable law, its standard operating procedures, and the terms of the Plan to the extent that such terms are provided to Navia and are consistent with Navia's standard operating procedures. Navia may also provide claims submission capabilities via online and through a smart phone application for certain Plans. If Navia denies a request for reimbursement, Navia will review the 1st level appeal. If the Plan provides for 2 levels of appeal Employer will be responsible for the final determination. Employer shall be the fiduciary and Plan Administrator of the Benefits Plans and shall be responsible for interpreting the Plans, its provisions, terms and conditions and make any and all determinations as to eligibility, appeal, and change in status events, as applicable.

1.5 In the event that a Covered Employee is reimbursed less than is otherwise required by the Plans, Navia will promptly adjust the underpayment to the extent that Employer has satisfied its funding obligations as set forth herein. If it is discovered that a Covered Employee was overpaid, or the Covered Employee fails to substantiate an Electronic Payment Card Transaction as required by applicable rules and regulations, Navia will make reasonable attempts to request repayment of overpaid or unsubstantiated Electronic Payment Card claims or offset the ineligible payment against any claims for future eligible expenses in accordance with applicable rules and regulations. If the Covered Employee fails to repay or offset, Navia will notify Employer upon Employer's written request for such report or data. Employer is responsible for taking any additional action permitted or required by law (e.g., including such amounts in income or garnishing wages consistent with applicable laws). Navia shall have no obligation to request repayment or offset to the extent such overpayment is a result of Employer's acts or omissions, such payments were authorized by Employer or Employer has failed to satisfy its funding obligations.

1.6 The specific funding requirements are set forth in each Schedule. Generally, Employer shall make sufficient funds from its general assets available to pay benefits under the Plan(s). Employer shall grant Navia withdrawal authority over the account sufficient to enable it to pay benefits. If at any time the amount of benefits payable under the Plan exceeds the amount in the account Employer shall transfer an amount necessary to the account to fulfill its funding obligations under the applicable Plan(s). Navia may suspend processing all benefit payments, electronic payment cards, and any other reimbursements, and distributions in the event Employer fails make sufficient funds from its general assets available to pay benefits under the Plan(s)

and/or fails to fund the Plan(s) according to the relevant Schedule. Navia shall not be responsible or liable for the funding of claims for benefits under any Plan.

If at any time Navia has paid out more in benefits than received in funding (based upon either individual Covered Employee accounts or the Plan(s) aggregate balance) Employer shall deliver to Navia an amount equal to that deficit upon Navia's written request. If such funding is not received within two (2) days Navia may suspend all Services including but not limited to suspension of Electronic Payment Cards and benefit reimbursements.

1.7 If relevant to the Plan(s), Navia shall provide on-site enrollment meetings and attendance at benefits fairs, as reasonably requested by Employer, for the Fee and costs set forth in the Schedule.

1.8 Navia shall provide customer support weekdays, 5 a.m. to 5 p.m. Pacific Time, excluding holidays.

1.9 Navia will conduct Nondiscrimination Testing ("NDT") required under the Code for the attached Schedules. Navia will provide Employer with a Request for Information ("RFI") form requesting the data necessary to complete the NDT. Within a reasonable amount of time after receipt of the requested information, Navia will provide test results, which will be based solely on the information provided by Employer and/or information maintained by Navia in accordance with the Schedule. Such test results are not intended as legal or tax advice and shall not be relied upon as legal or tax advice. Navia is under no obligation to advise Employer regarding specific corrective measures beyond providing the test results.

1.10 Employer may review reports summarizing the Plan via the Website. Employer is responsible for reviewing the reports submitted by Navia and notifying Navia of any errors of which it is aware within a reasonable period of time after reviewing them.

Article II. Electronic Payment Card Services

2.1. If applicable to the Plan(s) selected in the attached Schedule(s), at Employer's request and payment of all applicable Fees, the Card Services Provider may make an Electronic Payment Card available to Covered Individuals through which eligible expenses may be paid in accordance with the following terms:

2.2. Covered Employees or Employer shall provide to Navia a valid email address for each Covered Employee requesting an Electronic Payment Card.

2.2.1. The Card Services Provider will issue an Electronic Payment Card to each Card Recipient within thirty (30) days of Navia's receipt of the Covered Employee's enrollment data or the Covered Employee's online, electronic mail or form request. Employer understands and acknowledges that the Card Services Provider issues Electronic Payment Cards based solely on the information provided by Employer. Navia and the Card Services Provider have no obligation to verify or confirm that Card Recipients are Covered Individuals.

2.2.2. Card Recipients must agree to use the Electronic Payment Card in accordance with the terms of the Cardholder Agreement that accompanies the Electronic Payment Card. The Electronic Payment Card will be deactivated if the Covered Individual fails to use the

Electronic Payment Card in accordance with the Cardholder Agreement or as otherwise required by applicable law.

2.2.3. The Electronic Payment Card may be used by Card Recipients to pay for eligible expenses (as defined by applicable law and the applicable Plan to the extent consistent with Navia's standard operating procedures) in accordance with the applicable rules and regulations.

2.2.4. Navia will require substantiation of expenses paid with the Electronic Payment Card in accordance with the requirements set forth in the Code and/or other applicable guidance. The Electronic Payment Card will be deactivated if the Card Recipient fails to provide the requested substantiation in a timely manner as determined by Navia in accordance with Federal guidelines.

2.2.5. All Cards will be deactivated on the date this Agreement is terminated, the date that Employer fails to satisfy its funding obligations as set forth herein, the date Employer files for bankruptcy and/or as necessary to prevent fraud or abuse (as determined by Navia).

2.2.6. A Fee of $5 will be assessed for lost, stolen, replaced, or additional Electronic Payment Card(s). The Fee may be deducted from the Covered Individual's benefit.

CAFETERIA PLAN SERVICE SCHEDULE

Employer has established a Code Section 125 Plan to allow eligible employees to pay for their share of certain Benefit Plan coverage with pre-tax salary reductions (including but not limited to Employer contributions).

This Schedule is incorporated into and made a part of the Agreement. The responsibilities of the Parties set forth in this Schedule are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Schedule and any other part of the Agreement with respect to the subject matter of this Schedule, the Schedule will control. In all other conflicts, the Agreement controls. Capitalized terms not otherwise defined herein are defined as set forth in the Agreement.

Article I. Standard Services

1. Navia will provide a sample Code Section 125 plan document, summary plan description, and forms for review by Employer and Employer's legal counsel. Such standard documents and forms have been prepared in accordance with the standard of care set forth in the Agreement but are general in nature and do not take into consideration facts and circumstances specific to Employer and the Benefit Plans. Consequently, Navia makes no warranties and representations that such documents and forms will comply with applicable law as they relate to the Benefit Plans. Navia is not responsible for making changes or amending the documents.

2. All Benefit Plan elections and changes to elections will be processed as instructed by Employer and in accordance with the terms of the sample plan document referenced in 1.1 above and applicable law. Employer will provide Eligible Employees with election and change of election forms provided by Navia. If necessary for Navia to administer the other Services provided under this Agreement, Employer will collect and submit the completed election forms and/or change of election forms to Navia as soon as possible after receipt of such forms but no later than the effective date of such elections or change of elections. Employer is responsible for determining who is eligible for the Benefit Plan and who has satisfied the requirements to become a Covered Individual in the Benefit Plan. In addition, Employer is ultimately responsible for determining whether a requested change in election is permitted.

HEALTH FLEXIBLE SPENDING ARRANGEMENT ("HEALTH FSA") AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENT ("DAY CARE FSA") SCHEDULE BENEFIT PLAN SERVICE SCHEDULE(S) AND FEES

This Schedule is incorporated into and made a part of the Agreement. The responsibilities of the Parties set forth in this Schedule are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Schedule and any other part of the Agreement with respect to the subject matter of this Schedule, the Schedule will control. In all other conflicts, the Agreement controls. Capitalized terms not otherwise defined herein are defined as set forth in the Agreement.

As part of the Services, Employer has asked Navia to assist it with Flexible Spending Arrangement ("FSA") administration as more particularly described in this Schedule below.

1. RESPONSIBILITIES OF NAVIA

1.1. IMPLEMENTATION

1.1.1. Navia shall implement the Plan subject to the Plan Application and the direction and approval of Employer.

1.2. PLAN PROCESSING AND ADMINISTRATION Navia shall:

1.2.1. Provide claim reimbursements by check or direct deposit. Such claim reimbursements will be issued within two (2) Business Days after the later of: (1) the scheduled processing date; (2) the date Employer reconciles the Eligibility and Payroll Deduction Report ("EDR") or submits an approved payroll report; or (3) the receipt of funds as required in the funding section.

1.2.2. Provide notification of online availability of the EDR, Disbursement, and Year-to-Date report.

1.2.3. Provide annual year-end report within ninety (90) days after the Plan's claims Run-Out Period has expired.

1.2.4. Perform claims adjudication, including verification of date, service, and cost of service.

1.3. PLAN DESIGN OPTIONS

1.3.1. If Employer provides for the Grace Period under IRS Notice 2005-42 (the "Grace Period") Navia shall process claims against the prior Plan Year for services incurred through the 15th day of the third month following the end of the Plan Year. If applicable, apply any residual balance of Grace Period claims against the current Plan Year benefit.

1.3.2. If Employer provides for Carryover Administration under IRS Notice 2013-71 (the "Carryover") Navia shall:

1.3.2.1. Carry over the lesser of the balance in the Health FSA as of the Carryover Date or $500, from the previous year into the immediately

following Health FSA Plan Year. The "Carryover Date" shall mean the date on or about the 15th day after the last day of the Run-Out Period. The "Balance" shall mean Health FSA Plan Year election less disbursements of the Health FSA.

1.3.2.2. Reduce the prior year Health FSA election according to the amount of the Carryover.

1.3.2.3. Establish a Health FSA election for Covered Employees with Carryover amounts that failed to enroll in the Health FSA in the immediately following Health FSA Plan Year. Monthly participant Fees shall apply as of the Carryover Date.

1.3.2.4. Adjudicate and process claims against the carryover amount after the Carryover Date. Upon request, Navia shall apply claims incurred in the immediately following year against unused amounts in the prior year before the Carryover Date. Such adjustments shall be subject to a Fee of $65.00 per adjustment.

2. RESPONSIBILITIES OF EMPLOYER

2.1. IMPLEMENTATION

2.1.1. Employer shall timely provide the Plan Application and any other information reasonably necessary for Navia to satisfy its obligations hereunder.

2.2. REPORTING

2.2.1. Employer shall submit an approved payroll file or reconcile the EDR against payroll deductions for each processing date through the Website. If Employer cannot or does not perform this responsibility, Navia may charge $65.00 per reconciled report. If Employer fails to provide the approved payroll file or reconcile the EDR for more than forty-five (45) days from the pay date deduction Navia may suspend claim processing.

2.3. FUNDING

2.3.1. Employer dollars equal to the amount of Covered Employee deductions are due ten (10) Business Days after the pay date deduction. In the event funding is not received within ten (10) days of the scheduled reimbursement date Navia may suspend claim processing.

3. FEES

3.1. Monthly Processing and Administration Fees:

3.1.1. $3.40 per month per FSA Covered Employee ($50/month minimum).

3.2. Summary Plan Description Fee: $3.50 per Summary Plan description printed and mailed to Employer or Covered Employees. Provided only upon Employer request.

3.3. Electronic Funds Transfer: $10.00 per returned item, from attempted deposit in Covered Employee account.

3.4. Enrollment Meetings and Benefit Fairs: For on-site enrollment meetings and attendance at benefit fairs by Navia:

3.4.1. Employer shall pay to Navia $75.00 per hour, or $300.00 per eight-hour day, whichever is less;
3.4.2. Air travel and lodging expenses shall be charged to Employer at Navia's cost;
3.4.3. Automobile mileage is charged at $ .36/mile, plus $37.50/hour driving travel time.
3.4.4. Air travel time is charged as a full day cost, of $300.00 per day.

3.5. Plan Termination Fees: In the event Employer terminates the Plan, Employer shall pay to Navia the following Fees:

3.5.1. $5.00 per check issued or direct deposit initiated.

3.6. Plan Document amendment Fee: $150 per mid Plan Year Plan Document amendment.

3.7. Ad Hoc Reporting: $75 per hour for manual reports not part of the Navia reporting suite.

OTHER BENEFIT PLAN ADMINISTRATION
FEDERAL COBRA ADMINISTRATION SCHEDULE

Employer has independently concluded that one or more of its plans that provide medical care ("Health Plans") are subject to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), as subsequently amended. Consequently, Employer is required to perform certain acts in order to comply with COBRA.

This Schedule is incorporated into and made a part of the Agreement. The responsibilities of the Parties set forth in this Schedule are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Schedule and any other part of the Agreement with respect to the subject matter of this Schedule, the Schedule will control. In all other conflicts, the Agreement controls. Capitalized terms not otherwise defined herein are defined by COBRA or as set forth in the Agreement.

As part of the Services, Navia will provide COBRA related administrative assistance (the "COBRA Administration") for designated Health Plans as more particularly described in this Schedule below.

1. Responsibilities of Navia

1.1. Navia shall implement the COBRA Administration subject to the Plan Application and the direction and approval of Employer

1.2. Navia will distribute its standard COBRA General Notice by first class mail or other permitted distribution method to the last known address of each Eligible Employee and, when required by applicable law, the spouse or dependent as soon as reasonably possible but no later than fourteen (14) days after receiving the information necessary to complete and send a COBRA General Notice from Employer. Navia will distribute its standard COBRA Specific Rights Notice and COBRA Election Form by first class mail or other permitted distribution method to the last known address of the Qualified Beneficiary as soon as reasonably possible but no later than fourteen (14) days after receiving the information necessary to complete the COBRA Election Form from Employer, or where applicable, from the Qualified Beneficiary

1.3. Navia has no obligation to record, track or resend any COBRA General Notices, COBRA Specific Rights Notice, COBRA Election Forms, late payment reminders, termination notifications, or any other form, document, or communication that is returned undeliverable.

1.4. If Navia receives notice from a Qualified Beneficiary that a qualifying event has occurred or a Qualified Beneficiary has been determined to be disabled by the Social Security Administration, and such Qualified Beneficiary is not eligible for COBRA for any reason, Navia will send a notice of ineligibility by first class mail as soon as reasonably possible but no later than fourteen (14) days after receiving notice from such Qualified Beneficiary.

1.5. Navia will process the COBRA Election Forms submitted by Qualified Beneficiaries in accordance with applicable law and Employer's instructions. Employer is responsible for providing all information not otherwise required to be provided by the Qualified Beneficiary that Navia reasonably believes is necessary to process COBRA Election Forms.

1.6. Upon Employer's written request, Navia will send an open enrollment materials and open enrollment election form to the last known address of the Qualified Beneficiary to the extent Employer has provided the information necessary to complete and distribute the open enrollment election form. Upon Employer's written request, Navia will also

process any mid-year changes in elections in accordance with Employer's Health Plan Document and applicable law.

1.7. Navia will notify the Qualified Beneficiary of the COBRA premium and the applicable due dates, as determined by Employer and the applicable due dates.

1.8. Navia will collect premiums from Qualified Beneficiaries (or third parties on behalf of Qualified Beneficiaries where applicable). All premiums collected by Navia in accordance with this Schedule will be deposited into an account maintained by Navia. Navia will send to Employer all premiums collected in accordance with this Schedule, reduced by a 2% administration Fee, by the 20th day following the end of month in which the premiums were collected. If Employer instructs Navia to send premiums to a third party, Navia may rely on that instruction without further inquiry that such third party is authorized to receive such information.

1.9. Navia will send a notice by first class mail to the last known address of the Qualified Beneficiary indicating that COBRA coverage is terminating or has terminated. The notice of termination will be sent as soon as reasonably possible but no later than a reasonable amount of time after COBRA coverage has ended.

1.10. Navia will provide responses to inquiries by providers and/or insurance Carriers regarding coverage status of Qualified Beneficiaries. All responses will be based solely on the information provided by Employer and maintained by Navia in accordance with this Schedule.

1.11. Navia will provide Employer with monthly remittance reports (an itemized status report of Qualified Beneficiaries). Employer is responsible for reviewing the report submitted by Navia and notifying Navia of any errors of which it is aware within a reasonable period of time after reviewing them.

2. Responsibilities of Employer

2.1. Employer shall timely provide the Plan Application and any other information necessary for Navia to satisfy its obligations hereunder.

2.2. Employer shall notify all relevant Carriers that Navia is the COBRA administrator before the effective date of the COBRA Administration.

2.3. It is Employer's sole responsibility to reconcile the Carrier invoice with the remittance report provided by Navia. Any errors resulting from the failure to do so will be the sole responsibility of Employer.

2.4. Employer will provide the required notice data to Navia within 30 days of the date of COBRA Qualifying Event that is due to:

2.4.1. Termination of an employee's employment.

2.4.2. Reduction in an employee's hours that results in a loss of coverage under the Health Plan.

2.4.3. Employee's death; or

2.4.4. Employee's entitlement to Medicare that results in a loss of coverage under the Health Plan for the employee's spouse or dependent child.

2.4.5. Knowledge of second qualifying event, notice of disability determination and notice of change in disability status.

2.4.6. If Employer does not provide Navia the complete required notice data until after the 30 - day period expires, Navia will provide the Qualified Beneficiaries their Specific Rights Notice within fourteen (14) days after receiving the data, but subject to the following condition: if a Qualified Beneficiary timely elects COBRA, Employer will have sole responsibility (a) for any adverse consequences (including, for example, a Carrier's refusal to provide coverage or a stop-loss insurer's refusal to reimburse claims because the Carrier or insurer deems Employer to have provided untimely notice under COBRA) and (b) for

ensuring the availability of continuation coverage to the Qualified Beneficiary for the maximum coverage period under COBRA.

2.5. Employer will notify Navia, in writing, of the premium rates and will do so at least thirty (30) days before their effective date. If Employer notifies Navia of new premium rates less than thirty (30) days before their effective date, Navia may defer implementing the new premium rates to the first day of the first month that occurs more than thirty (30) days after Employer's notification to Navia.

2.6. If the Carrier requires premium rate payment information within a specific timeframe, it is Employer's responsibility to independently obtain the information from the Website and to provide it to the Carrier.

2.7. Employer will promptly notify Navia in writing when Employer becomes aware of address changes of its employees, their spouses, and/or dependent children who are receiving continuation coverage.

2.8. Employer will promptly notify Navia in writing if it becomes aware that a Qualified Beneficiary who is receiving continuation coverage:

2.8.1. has become entitled to Medicare;

2.8.2. has become covered by another Employer's group Health Plan;

2.8.3. has been determined to be disabled by the Social Security Administration;

2.8.4. has been determined to be no longer disabled by the Social Security Administration;

2.8.5. has become divorced or legally separated; or

2.8.6. no longer is a dependent child according to the terms of the Health Plan.

2.9. Employer will promptly notify Navia in writing when the Employer is no longer subject to COBRA.

3. FEES

The COBRA Services are based on the number of Employer Health Plans, COBRA family units, and benefit eligible employees. The initial set up and annual renewal Fees are based on the number of Employer Health Plan and COBRA family units enrolled. The monthly administration Fee is based on a PEPM rate billed at the start of each Plan Year.

Monthly COBRA Administration	
Base Monthly Administration Fee[1]	$0.50/pepm
Pro-Rated or Age-Banded Health Plan Fee	$20.00/month
Minimum Monthly Fee	$75.00
2% COBRA Administration Fee[2]	Retained or Invoiced by Navia
Miscellaneous Services	
Notifications Required by Legislative Changes	$10.00 per letter or notification
Manual Data Entry Fee	$5.00 per "participant" entered
Special Handling[3]	$15.00 per occurrence plus postage
Optional Services	
Mass mailing of initial general notice to all active employees and covered spouses.	$50.00 Fee plus $5.00 per notice.
Open enrollment services for enrolled COBRA family units	$20 Fee per kit mailed plus postage

[1]This rate is used to calculate the monthly Fee that will be uniform during the guarantee period.

[2]If this Fee is not added to the COBRA rates and paid by participants, Navia will invoice Employer for the 2% allowable COBRA Fee. If Employer subsidizes the COBRA premium, Navia will deduct the

2% from the monthly remittance or invoice Employer for the additional amount.

[3]Includes rush notices, non-standard shipping, Employer invoicing of COBRA premiums, etc…)

RETIREE BILLING ADMINISTRATION SCHEDULE

This Schedule is incorporated into and made a part of the Agreement. The responsibilities of the Parties set forth in this Schedule are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Schedule and any other part of the Agreement with respect to the subject matter of this Schedule, the Schedule will control. In all other conflicts, the Agreement controls. Capitalized terms not otherwise defined herein are defined as set forth in the Agreement.

As part of the Services, Employer has asked Navia to provide retiree billing administration ("Retiree Billing Administration") for designated Health Plans as more particularly described in this Schedule below.

1. Responsibilities of Navia

1.1. Navia shall implement the Retiree Billing Administration subject to the Plan Application and the direction and approval of Employer.

1.2. Navia shall distribute its standard premium invoices for the premium amount specified by Employer by first class mail to the last known address of each individual identified by Employer as a participant ("Retiree Billing Participant") within 14 days of receipt of information necessary to complete and send such invoice.

1.3. Navia shall collect premiums from Retiree Billing Participants (or third parties on behalf of Retiree Billing Participants where applicable). All premiums collected by Navia in accordance with this Schedule will be deposited into a custodial account maintained by Navia on behalf of Employer. Timely receipt of premium is understood to mean a postmark date that is on or before expiration of the deadline specified on the invoice.

1.4. Navia shall remit all premiums received by Navia to Employer by the 20th day following the end of month in which the premiums were collected. The amount submitted shall equal the net amount due Employer. The net amount due Employer is the aggregate of all Retiree Billing Participant premiums timely received by Navia in the preceding month, reduced by a 2% administration Fee. Administrative Fees due from Employer will be charged in accordance with the below Fees. In the event there is insufficient premium collected to offset the administrative Fees due from Employer, a invoice will be sent to Employer itemizing the balance due Navia. If Employer instructs Navia to send premiums to a third party, Navia may rely on that instruction without further inquiry that such third party is authorized to receive such information.

1.5. Navia shall provide a remittance report listing the Retiree Billing Participant premiums timely received for the preceding month, and the itemization of the administrative Fees due from Employer. Employer is responsible for reviewing such report for any inaccuracies and promptly notifying Navia thereof.

1.6. Navia shall make available real-time detailed reports of Navia's Retiree Billing activities during the preceding month. Information reported will include, but is not limited to, Retiree Billing Participant invoices sent, Retiree Billing Participant premiums received, expiration and termination activity, listing of all Retiree Billing Participants, and a list of Retiree Billing Participants whose premiums remains past due.

1.7. Navia shall notify the Retiree Billing Participant of the termination of their coverage should any such Participant be found ineligible to continue coverage as a result of non-payment of premium within Employer's timelines.

1.8. In the event of termination of this Schedule, Navia shall not be responsible for notifying Retiree Billing Participants and eligible participants of such termination and the procedure to be followed to retain or obtain coverage.

2. Responsibilities of Employer

2.1. Employer shall timely provide Navia the Plan Application and any other information reasonably necessary for Navia to satisfy its obligations hereunder.

2.2. Employer shall communicate to Navia all necessary deadlines and timelines (election deadline, payment grace period, etc.) in order for Navia to administer the Retiree Billing Administration. Employer will provide all information reasonably necessary for Navia to satisfy its obligations hereunder.

2.3. Employer shall notify all relevant Carriers that Navia is the Retiree Billing administrator by the effective date of the Retiree Billing Administration.

2.4. It is Employer's sole responsibility to reconcile the Carrier invoice with the remittance report provided by Navia. Any errors resulting from the failure to do so will be the sole responsibility of Employer.

2.5. Employer will notify Navia, in writing, of the premium rates and will do so at least 30 days before their effective date. If Employer notifies Navia of new premium rates less than 30 days before their effective date, Navia may defer implementing the new premium rates to the first day of the first month that occurs more than 30 days after Employer's notification to Navia.

2.6. If the Carrier requires premium rate payment information within a specific timeframe, it is Employer's responsibility to independently obtain the information from the Website and provide it to the Carrier.

2.7. Employer will promptly notify Navia in writing when Employer becomes aware of address changes for a Retiree Billing Participant receiving continuation coverage.

2.8. Employer will promptly notify Navia in writing if it becomes aware that a Retiree Billing Participant who is receiving continuation coverage:

2.8.1. has become entitled to Medicare;

2.8.2. has become covered by another Employer's group Health Plan;

2.8.3. has been determined to be disabled by the Social Security Administration;

2.8.4. has been determined to be no longer disabled by the Social Security Administration;

2.8.5. has become divorced or legally separated; or

2.8.6. no longer is a dependent child according to the terms of the Health Plan.

3. FEES

Monthly Administration	
Base Monthly Administration Fee	$4.00/pppm
Pro-Rated or Age-Banded Health Plan Fee	$20.00/month
Minimum Monthly Fee	$75.00
2% Administration Fee[2]	Retained or Invoiced by Navia
Miscellaneous Services	
Notifications Required by Legislative Changes	$10.00 per letter or notification
Manual Data Entry Fee	$5.00 per individual entered
Special Handling[3]	$15.00 per occurrence plus postage
Optional Services	
Mass mailing of initial general notice to all active employees and covered spouses.	$50.00 Fee plus $5.00 per notice.
Open enrollment services for enrolled family units	$20 Fee per kit mailed plus postage

EXHIBIT A BUSINESS ASSOCIATE AGREEMENT

This Exhibit is incorporated into and made part of the Agreement. The responsibilities of the Parties set forth in this Exhibit are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Exhibit and any other part of the Agreement with respect to the subject matter of this Exhibit, this Exhibit will control. In all other conflicts, the Agreement controls. This Exhibit is intended to comply with the Business Associate Agreement provisions set forth in 45 CFR §§ 164.314 and 164.504(e), and any other applicable provisions of 45 CFR parts 160 and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 as amended, including by the Health Information Technology for Economic & Clinical Health Act of the American Recovery and Reinvestment Act of 2009 ('ARRA"), (collectively "HIPAA").

Navia recognizes that in the performance of Services under the Agreement it may have access to, create, and/or receive from the Benefit Plan(s) or on its behalf Protected Health Information ("PHI'). For purposes herein, PHI shall have the meaning given to such term in 45 CFR § 1640.103, limited to the information created or received from the Benefit Plan(s) or on its behalf by Navia. Whenever used in this Exhibit A other capitalized terms shall have the respective meaning set forth below or in the Agreement, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Exhibit A but not defined herein or in the Agreement, shall have the same meaning as those terms are defined under HIPAA. This Exhibit shall be automatically amended to incorporate changes by Congressional act or by regulations of the Secretary that affect Business Associate or Covered Entity's obligations under this Exhibit.

1. Definitions.

1.1. Breach. "Breach" shall have the same meaning as the term "breach" in 45 CFR 164.402.

1.2. Business Associate. "Business Associate" shall mean Navia Services, Inc. ("Navia").

1.3. Covered Entity. "Covered Entity" shall mean the Benefit Plan(s).

1.4. Electronic Protected Health Information. "Electronic Protected Health Information" ("ePHI") shall have the same meaning as the term "electronic Protected Health Information" in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

1.5. HHS. "HHS" shall mean the Department of Health and Human Services.

1.6. HIPAA. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.

1.7. HITECH. "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act.

1.8. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.9. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.10. Protected Health Information. "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

1.11. Required by Law. "Required by Law" shall have the same meaning as the term "Required by Law" in 45 CFR 164.103.

1.12. Secretary. "Secretary" shall mean the U.S. Secretary of the Department of Health and Human Services or his or her designee.

1.13. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304.

1.14. Security Rule. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subparts A and C.

1.15. Standards for Electronic Transactions Rule. "Standards for Electronic Transactions Rule" means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.

1.16. Subcontractor. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR 160.103.

1.17. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning given the term "unsecured protected health information" in 45 CFR 164.402.

2. Obligations and Activities of Business Associate

2.1. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

2.2. Business Associate agrees to take reasonable efforts to limit its use and disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. The foregoing minimum necessary standard does not apply to: 1) disclosures or requests by a health care provider for treatment purposes; (2) disclosures to the Individual who is the subject of the information; (3) uses or disclosures made pursuant to an Individual's authorization; (4) uses or disclosures required for compliance with HIPAA; (5) disclosures to HHS when disclosure of information is required under the Privacy Rule for enforcement purposes; (6) uses or disclosures that are required by other law.

2.3. Business Associate agrees to develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of PHI and comply with applicable requirements under the Security Rule.

2.4. Business Associate shall notify Covered Entity of any Breach of Unsecured PHI of which it becomes aware. Such notice shall include, to the extent possible, the information listed in Section 2.6. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the individual committing the Breach, who is an employee, officer, or other agent of Business Associate.

2.5. Notice shall be made without unreasonable delay and in no case later than sixty (60) calendar days after the discovery of a Breach by Business Associate.

2.6. Notice of a Breach shall include, to the extent possible the following:

2.6.1. Identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, used, or disclosed as a result of the breach.

2.6.2. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known.

2.6.3. A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, or account number).

2.6.4. The steps Individuals should take to protect themselves from potential harm resulting from the Breach.

2.6.5. A brief description of any action taken to investigate the Breach, mitigate losses, and to protect against any further Breaches.

2.6.6. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.

2.7. If a law enforcement official determines that a notification or notice would impede a criminal investigation or cause damage to national security, such notification, notice or posting shall be delayed in accordance with 45 CFR 164.412.

2.8. Upon Covered Entity's request, Business Associate will provide notice of Breach to the Individual(s) affected and such notice shall include, to the extent possible, the information listed in 2.4.2, unless, upon occurrence of a Breach, Covered Entity requests to disseminate or Navia and Covered Entity agree that Covered Entity will disseminate the notice(s). Any notice provided by Covered Entity to the Individual(s) shall comply with the content requirements listed in section 2.4.2., as well as any requirements provided under HIPAA, HITECH, and other applicable government guidance. Any notice required to be provided to HHS will be provided by Covered Entity.

2.9. Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement and/or any Security Incident of which it becomes aware.

2.10. Business Associate shall require each of its subcontractors, agents, or brokers, that creates, receives, maintains, or transmits PHI on behalf of Covered Entity to enter into a written agreement with Business Associate that provides satisfactory assurances that the subcontractor will appropriately safeguard that information, including without limitation the subcontractor's agreement to be bound by the same restrictions and conditions that apply to Business Associate with respect to such information.

2.11. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI relating to the use and disclosure of PHI available to the Secretary, within ten (10) Business Days after receipt of written request or otherwise as designated by the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule

2.12. Business Associate agrees to document disclosures of PHI and information related to such disclosures as required for Covered Entity to respond to a written request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate will not be obligated to record disclosures of PHI or otherwise account for disclosures of PHI if neither Covered Entity not Business Associate is required to account for such disclosures pursuant to the Privacy Rule.

2.13. Business Associate agrees to provide to Covered Entity or, upon Covered Entity's request, to an Individual, within ten (10) Business Days after receipt of written request, information collected in accordance with Section 2.8 of this Agreement, in order to permit Covered Entity to respond to a written request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

2.14. Business Associate agrees to provide access, at the request of Covered Entity and within ten (10) Business Days after receipt of written request, to PHI in the custody and control of Business Associate in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. If PHI is maintained in a Designated Record Set electronically, and an electronic copy of such PHI is requested, Business Associate will provide an electronic copy in the form and format requested if it is readily producible in such form and format. If it is not readily producible in such format, Business Associate will work with the Covered Entity or, at the Covered Entity's request, the individual to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR 164.524.

2.15. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set in the custody or control of Business Associate within ten (10) Business Days after receiving written request from the Covered Entity or, upon Covered Entity's request, as requested in writing by an Individual pursuant to 45 CFR 164.526.

2.16. In the event that Business Associate transmits or receives any Covered Electronic Transaction on behalf of the Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any subcontractors or agents that assist Business Associate in conducting Covered Electronic Transactions on behalf of the Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.

2.17. Business Associate shall not directly or indirectly receive payment in exchange for any PHI of an Individual unless Covered Entity or Business Associate received a valid authorization from the Individual, in accordance with 45 CFR 164.508, unless permitted under the HIPAA rules.

2.18. Business Associate shall not use PHI for marketing purposes without a valid authorization from the affected Individuals, unless such communication is permitted under the HIPAA rules

2.19. Business Associate shall not use or disclose genetic information for underwriting purposes in violation of the HIPAA rules.

3. **Permitted Uses and Disclosures by Business Associate**

3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity related to the Administrative Services Agreement between Business Associate and Covered Entity.

3.2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instance of which it is aware in which the confidentially of the information has been Breached.

3.3. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).

3.4. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

3.5. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 164.502(j)(1).

3.6. Except as expressly permitted by this Agreement, Business Associate shall not use or disclose PHI in any manner that would violate the requirements of the Privacy Rule if done by Covered Entity.

4. Obligations of Covered Entity and Employer

4.1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.4. Employer acknowledges and agrees that Business Associate may disclose PHI in its possession to Employer's workforce as necessary to administer the Plan(s). Employer shall timely notify Business Associate in writing of any terminations or changes of such employees. Employer shall indemnify and hold harmless Business Associate and its employees for any and liability Business Associate may incur as a result of any improper use or disclosure of PHI by or caused the Plan, Employer, or Employer's Workforce.

5. Permissible Requests by Covered Entity

5.1. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for uses or disclosures for the purposes of data aggregation, management, and administrative activities of Business Associate.

6. Miscellaneous

6.1. It is agreed that due to the manner in which PHI is retained and the retention requirements of the Internal Revenue Service, returning or destroying all of the PHI received from Covered Entity or created or received by Navia on behalf of Covered Entity, is infeasible. Therefore, Navia shall extend the protections of this Agreement to such PHI, and shall limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Navia maintains such PHI.

EXHIBIT B EMPLOYER CERTIFICATION

This Exhibit is incorporated into and made part of the Agreement. The responsibilities of the Parties set forth in this Exhibit are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Exhibit and any other part of the Agreement with respect to the subject matter of this Exhibit, this Exhibit will control. In all other conflicts, the Agreement controls.

Employer sponsors a Benefit Plan or Benefit Plans where certain members of Employer's workforce perform services in connection with administration of the Benefit Plan(s). Employer acknowledges and agrees that the Standards for Privacy of Individually Identified Health Information (45 CFR Part 164, the "Privacy Standards"), prohibit the Benefit Plan(s) or its Business Associates from disclosing Protected Health Information (as defined in Section 164.501 of the Privacy Standards) to members of Employer's workforce unless Employer agrees to the conditions and restrictions set out below. To induce the Benefit Plan(s) to disclose Protected Health Information to members of Employer's workforce as necessary for them to perform administrative functions for the Benefit Plan(s), Employer hereby accepts these conditions and restrictions and certifies that the Benefit Plan(s) documents have been amended to reflect these conditions and restrictions. Employer agrees to:

1. Not use or further disclose the information other than as permitted or required by the Plan Document or as required by law;

2. Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Benefit Plan(s), agrees to the same restrictions and conditions that apply to Employer with respect to such information;

3. Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee Benefit Plan of Employer;

4. Report to the Benefit Plan(s) any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by the Benefit Plan(s) or required by law;

5. Make available Protected Health Information to individuals in accordance with Section 164.524 of the Privacy Standards;

6. Make available Protected Health Information for amendment by Covered Individuals and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;

7. Make available the Protected Health Information required to provide an accounting of disclosures to Covered Individuals in accordance with Section 164.528 of the Privacy Standards;

8. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Benefit Plan(s) available to the Department of Health and Human Services for purposes of determining compliance by the Benefit Plan(s) with the Privacy Standards;

9. If feasible, return or destroy all Protected Health Information received from the Benefit Plan(s) that Employer still maintains in any form, and retain no copies of such Information when no

longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

10. Ensure the adequate separation between the Benefit Plan(s) and members of Employer's workforce, as required by law.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-135510

Date Filed:
11/10/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Navia Benefit Solutions, Inc.
Bellevue , WA United States

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

The City of Round Rock

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.

Project Name: COBRA Admin
COBRA Administration.

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Notary Public
State of Washington
MISAKO D. NAKASHIMA
MY COMMISSION EXPIRES
SEPTEMBER 19, 2018

AFFIX NOTARY STAMP / SEAL ABOVE

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said James Aitken, this the 14 day of November, 2016, to certify which, witness my hand and seal of office.

Signature of officer administering oath | Misako D Nakashima — Printed name of officer administering oath | Notary — Title of officer administering oath

City of Round Rock

Agenda Item Summary

Agenda Number: F.4

Title: Consider a resolution authorizing the Mayor to execute a Management Agreement with Kemper Sports Management, Inc. for the Forest Creek Golf Club.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Chad McKenzie, Sports Management and Tourism Director

Cost: $96,000.00

Indexes: Golf Course Revenue Fund

Attachments: Resolution, Exhibit A, Form 1295

Department: Sports Management and Tourism

Text of Legislative File 2016-3956

The City of Round Rock is seeking to contract with KemperSports Management to provide management and operations of all facets of the Forest Creek Golf Course.

KemperSports Management will supervise all play on the course - tee time reservations, driving range, lessons, starting, etc., including retail operations in the pro shop. KemperSports will also provide all grounds, building maintenance services and all on site equipment maintenance and repair at the golf course on both play and non-play areas; including all landscape features, trees and irrigation systems, consistent with maintenance practices at a high-end, municipal golf course, providing quality golf experiences.

KemperSports Management will also be responsible for assisting the City in managing the future renovation of the golf course. This responsibility shall include reviewing the requisite construction documents, coordinating the proposals received with the City's Purchasing Department and managing the renovation process in coordination with the City.

All renovation work to be undertaken will be the result of an additional Request for Proposal specifying the scope of services to be undertaken.

The agreement begins January 1, 2017 and is for 5 years with the ability to automatically renew on a two year basis after the first three years of the agreements as long as both parties are in agreement. The City will pay an initial base management fee of $96,000 to Kemper with a 3% increase of that fee every year on the anniversary date.

Cost: $96,000 base management fee plus 5% of gross revenues
Source of Funds: Golf Course Revenue Fund

Staff recommends approval.

RESOLUTION NO. R-2016-3956

WHEREAS, the City of Round Rock ("City") is the owner of a public golf club and related facilities located in Round Rock, Texas, known as the Forest Creek Golf Club ("Club"), and desires to contract for management services for the Club; and

WHEREAS, Kemper Sports Management, Inc. ("KSM") has submitted an Agreement to provide said services, and

WHEREAS, the City and KSM wish to enter into a Management Agreement to provide management services for the Club, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City a Management Agreement with Kemper Sports Management, Inc., a copy of said agreement being attached hereto and incorporated herein.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____
ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____
SARA L. WHITE, City Clerk

EXHIBIT "A"

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of November __, 2016 ("Effective Date"), by and between the City of Round Rock, Texas, a Texas home-rule municipality ("Owner") and Kemper Sports Management, Inc., an Illinois corporation ("KSM").

W I T N E S S E T H:

WHEREAS, Owner owns the public golf club and related facilities located in Round Rock, Texas known as "Forest Creek Golf Club" (the "Club") and desires to contract for management services for the Club; and

WHEREAS, Owner and KSM desire for KSM to provide management services for the Club as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, for and in consideration of the mutual covenants, promises and agreements herein contained, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

1.1. Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the meanings set forth in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

ARTICLE 2

APPOINTMENT AND TERM

2.1. Appointment. Owner hereby retains, engages and appoints KSM to perform the Management Services during the Term, as more fully described herein, and KSM hereby accepts said appointment upon and subject to the terms hereof.

2.2. Term. This Agreement shall be effective as of the Effective Date, but the initial term (the "Initial Term") for performance of the Management Services under this Agreement shall begin on January 1, 2017 (the "Commencement Date") and unless sooner terminated as provided in Article 13 below, shall terminate on the fifth (5th) anniversary of the Commencement Date (the "Termination Date").

2.3. Automatic Renewal. At the end of the third calendar year of the Initial Term, and at the end of each calendar year thereafter, unless either party shall have given written notice of

termination to the other party prior to the end of the then calendar year as set forth in 14.1, the term shall automatically renew such that the balance of the term remains two (2) years.

2.4. Termination Notice. At any time after the end of the Initial Term, either party shall have the option to terminate the Agreement for any and no reason by giving the other party two (2) years written notice of its option to terminate. Receipt by either party of the aforesaid written notice shall service to terminate the automatic renewal provision.

ARTICLE 3

MANAGEMENT SERVICES

3.1. Management of the Club and Property. During the Term, KSM shall perform the management services described in this Article 3 in order to supervise, manage, direct and operate the Club and the Property on behalf of and for the account of Owner (collectively, the "Management Services"), subject to the terms of this Agreement and consistent with the Business Plan approved by Owner. Owner hereby delegates to KSM, subject to the (i) Business Plan, (ii) Capital Budget, (iii) Owner's approval rights specifically described in this Agreement (the "Approval Rights")and (iv) other terms and conditions set forth herein, the discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing, and other policies, rules, and regulations affecting the Club or the Property or the operation thereof, to implement all of the foregoing, and to perform any act on behalf of Owner deemed by KSM to be necessary or desirable for the operation and maintenance of the Club and the Property subject to the Owner's Approval Rights.

3.2. Use of the Property. Owner hereby grants to KSM the right to use and occupy the Property during the Term for the purposes set forth herein. KSM shall, upon the expiration or prior termination of the Term, vacate and surrender the Club and Property to Owner.

3.3. The Scope of Services. KSM will manage all activities of the Club that are included in the annual Business Plan and approved by Owner. KSM will operate the Club consistent with the vision and mission statements contained within the Business Plan, the tactical resources determined, and the appropriate operating policies and policies specified therein. Subject to the terms of this Agreement and the approved Business Plan, which shall include the Operating Budget, KSM shall have the authority and responsibility to:

3.3.1. Manage the Club and use commercially reasonable efforts to achieve the approved Business Plan;

3.3.2. Implement the policies and standards of the Club, as approved by Owner;

3.3.3. Establish golf course maintenance standards approved by Owner and funded appropriately in the Operating Budget;

3.3.4. Manage and supervise all day-to-day operations of the Club, including but not limited to, tee time reservations, collecting green and cart fees, clubhouse operations,

outside services, course maintenance, managing tournaments and events, food and beverage services, payroll, benefits administration, accounting, and financial reporting;

3.3.5. Hire, train, and supervise all employees required to carry out KSM's responsibilities;

3.3.6. Manage payment of all Club operating expenses as identified in the Operating Budget;

3.3.7. Acquire all goods and services necessary to carry out KSM's responsibilities;

3.3.8 Market the Club to achieve targeted objectives utilizing a transactional based website with the ability of the golfer to enter date desired, group size and time on the home page. The marketing plan will include email and text communication and the adoption of social media tools (i.e., Hootsuite, Leadlander, Sumo.me). Advertising will include the adoption of various media including Google Adwords or similar media as recommended by Owner or included in the Business Plan. Specific social media tools will be reviewed and updated on an annual basis to keep up with advances in the industry.

3.3.9. Develop a customer database recording the email addresses or text phone numbers for a minimum of 60% of the customers who remit a green fee, or sponsor a tournament or outing at the golf course.

3.3.10. Obtain licenses and other operating permits;

3.3.11. Negotiate contracts for maintenance equipment and carts to be executed by Owner; and

3.3.12. Make repairs and other improvements to keep the Club in good order.

3.3.13. Conduct annual electronic survey of golfers to determine habits, preferences and loyalty.

3.3.14. Participate in industry benchmarking services to include Golf Datatech Rounds and Merchandise Sales Reporting, Links Insights and ORCA Reports.

3.3.15. Implement a non-barter based technology golf management system that features table based software, yield management with automatic dynamic pricing options and an executive reporting modules facilitating database segmentation of customers.

3.3.16. Subscribe to Weather Trends International 11 monthly weather forecasting reporting service and adjust agronomic practices, rate schedules and planned events based on the insights available.

3.3.17. Prepare a Market Analysis and Rebranding Proposal concurrent with the renovation of the Club to include consideration and recommendations regarding the viability of renaming the Club as determined by Owner.

3.4. Business Plan. Within forty-five (45) days after the Commencement Date, KSM shall submit to Owner, for Owner's review and written approval, a 5-year pro forma that includes forecasts of rounds played, revenues and operating expenses for the upcoming five (5) years ("Business Plan"). The following will be set forth in the Business Plan:

1) A vision and mission statement developed predicated on the golf course's potential from as reflected in a comprehensive geographic local market analysis;

2) A proposed rate structure taking into consideration the optimum playing season based on a 10-year playable days report as the foundation for setting a proposed rate structure;

3) The organizational structure and staff with associated payroll requirements;

4) Incorporation of operating standards to be implemented as outlined in the Request for Proposal dated June 22, 2016 and added here as Exhibit "D" (Golf Operations), Exhibit "E" (Golf Course Maintenance), and Exhibit "F" (Food and Beverage and Catering Requirement);

5) Technology to be implemented, financial benchmarking standards, capital reserve requirements and customer service operating standards;

6) An annual budget setting forth the forecasted revenues and expenses associated with the operations of the Club for the current fiscal year or part thereof within the Term ("Operating Budget");

7) A budget setting forth the proposed capital improvements (including equipment purchases and leases) within and to the Property for the current fiscal year or part thereof within the Term ("Capital Expenditures Budget"); and

8) A 5-year capital improvements plan that will begin initially with the planned program for Year 2 of this Agreement ("Capital Improvements Plan"). The Capital Improvements Plan will be assessed an updated each year as a component of the annual Business Plan.

3.4.1. Annual Update of Business Plan. At least ninety (90) days prior to the first day of each fiscal year thereafter during the Term, KSM shall submit to Owner, for Owner's review and written approval, an updated Business Plan including the Annual Operating Budget of the Club for the upcoming fiscal year or part thereof during the Term.

3.4.2. Preparation and Presentation of Business Plan. The Business Plan and updates to the Business Plan shall be prepared with the advice and counsel of Owner, based on what KSM believes to be reasonable assumptions and projections. All Business

Plans shall be presented in reasonable detail. All budgets shall be prepared consistent with other comparable courses within the region regarding agronomic and maintenance expenses, payroll and general and administration expenses. KSM shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance outlined in the Business Plan and the Parties acknowledge that the Business Plan are based solely upon KSM's judgment and the facts and circumstances known by KSM at the time of preparation.

3.4.3. Owner's Review and Written Approval. The Business Plan shall be for Owner's review and written approval, subject to the terms of this Agreement, which approval shall not be unreasonably withheld. Owner shall give its written comments and/or approval within sixty (60) days after KSM delivers the Business Plan to Owner. If Owner fails to provide any comments or approval on a Budget within such time period, then the Owner shall be deemed to have approved the Budget. In the event of disapproval of any Business Plan, KSM shall continue operating the Club pursuant to the Business Plan then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Revenues or (ii) weather or other matters beyond the control of KSM, until such time as Owner and KSM agree upon the appropriate replacement Business Plan.

3.5 Unanticipated Expenditures and Reallocation of Funds. Owner agrees that the Business Plan are intended to be reasonable estimates, and, accordingly, KSM shall be entitled from time to time to revise the Business Plan to cover any expenditures that were unanticipated at the time of preparation of the Business Plan but are reasonable and necessary to carry out the provisions of this Agreement; provided, however, that except as otherwise set forth in this Agreement, KSM shall be required to obtain Owner's prior written approval of any expenditures that would result in the total budgeted expenditures exceeding the total approved Annual Operating Budget by any amount without prior written approval of the Owner. KSM is authorized to take all action reasonably deemed necessary by KSM to implement, perform, or cause the performance of the items outlined in the Business Plan. Owner acknowledges that KSM has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Business Plan, or (ii) the amounts of Gross Revenues or Operating Expenses to be generated or incurred from the operation of the Club.

3.6 Club Operations. KSM shall use commercially reasonable efforts to perform all acts that are necessary in the opinion of KSM to operate and manage the Club, subject to the Business Plan, the Approval Rights and terms and conditions set forth herein, on behalf of and for the account, and at the sole cost and expense of, Owner, in accordance with the standards of quality expected at high quality golf courses in the vicinity of the Club. KSM shall have the authority and responsibility for the administration, operation, and management of the Club and the Property. At a minimum, KSM shall perform the following acts and services:

3.6.1 Financial Management, Accounting Records and Reporting. KSM will employ an on-site accountant or bookkeeper (the cost of which shall be an Operating Expense) for the Club whose duties shall include: (i) maintaining all books, records, and other data associated with the financial activities of the Club, (ii) preparing all operating budgets, cash flow budgets, and other financial forecasts, and (iii) being responsible for

the day-to-day financial affairs of the Club. All accounting records shall be maintained in a format consistent (in all material respects) with generally accepted accounting principles.

(A) Financial Reporting. During the Term, KSM shall provide the following financial statements in a format reasonably specified by Owner:

1) KSM shall submit to Owner, within twenty (20) days after the close of each calendar month, a financial statement showing in reasonably accurate detail the financial activities of the Club for the preceding calendar month and the fiscal year to date.

2) KSM shall submit to Owner, within sixty (60) days after the close of each fiscal year, a financial statement showing in reasonably accurate detail the financial activities of the Club for the fiscal year then ended.

(B) Internal Control. KSM agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Club, such controls to be consistent (in all material respects) with generally accepted accounting principles.

(C) Records and Inspection. KSM shall maintain a set of all financial, vendor and operating records relating to the Club at the Property. At any time during the Term, Owner shall have the right, after three (3) days prior written notice to KSM, to inspect the books, records, invoices, deposits, canceled checks, or other financial data or transactions of the Club at reasonable times and during normal business hours; provided, however, Owner shall use its best efforts to not cause any disruptions in the operations of the Club in connection with such inspections. Notwithstanding the preceding, such inspection rights shall not extend to any inspection of KSM corporate records at its corporate office or any records relating to any other projects or locations. Upon expiration or termination of this Agreement, KSM will promptly turn over all such Club records to Owner; however, KSM may retain copies as required by applicable records retention policies or law.

3.6.2 Bank Accounts. KSM shall assist Owner in establishing, in Owner's name, utilizing the federal tax identification number of Owner, a deposit account (the "Deposit Account") and an operating expense account (the "Operating Expense Account"). Owner agrees that individuals designated by KSM, and approved in writing by Owner, shall be signatories on the accounts and that Owner will not change the signatories of such accounts or close such accounts without the prior written consent of KSM. Additionally, KSM shall establish a payroll account (the "Payroll Account") in KSM's name. The records and bank statements shall be subject to inspection by Owner under the terms recited herein. All Gross Revenues of the Property shall be collected, received, and deposited by KSM exclusively through the Deposit Account by the terms of this Agreement. All Operating Expenses shall be handled and expended exclusively through

the Operating Expense Account. All Gross Payroll for the Club shall be handled and expended exclusively through the Payroll Account.

3.6.3. Employees. As part of the Business Plan, KSM shall (i) determine personnel requirements, recruitment schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and Club incentive programs. KSM shall hire, promote, discharge, and supervise all employees performing services in and about the Club. All of the employees of the Club shall be employees of KSM.

3.6.4 Marketing. KSM shall make recommendations to Owner as to green fees and other fees and rates. KSM shall develop the ongoing marketing plan for the Club and define a schedule of marketing and advertising activities, which shall be submitted to Owner as part of the Operating Budget. KSM shall indicate on the premises that the Club is being operated by KSM in a manner as approved by the Owner.

3.7 Environmental Remediation. Throughout the Term, if KSM becomes aware of the presence of any Hazardous Material in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under the Property or if KSM, Owner, the Club, or the Property becomes subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up the Property, KSM shall, at Owner's request and sole expense, use all commercially reasonable efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification, decontamination or other cleanup of the Property; provided that such remediation activities shall be at KSM's expense if such activities are required as a direct consequence of Hazardous Material being present in, on or under the Property solely as a result of grossly negligent actions undertaken by KSM. Owner acknowledges and agrees that Owner shall be solely responsible for any legal or other liability arising out of the presence of any Hazardous Material in, on or under the Property, except to the extent such Hazardous Material is present in, on or under the Property solely as a result of grossly negligent actions undertaken by KSM.

3.8 Contracts. KSM shall negotiate, consummate, enter into, and perform, in the name of Owner, such agreements as KSM may deem necessary or advisable for the furnishing of all food, beverages, utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as KSM determines are needed from time to time for the management and operation of the Club. Any expected agreements over Twenty-Five Thousand Dollars ($25,000) should be included in the Business Plan submitted under Section 3.4 of this Agreement. Notwithstanding the above, any contract that exceeds Twenty-Five Thousand Dollars ($25,000) in total payments over the term of such contract or which has a term of over one (1) year shall require the prior written consent of Owner, which consent shall be deemed to have been given if Owner neither consents nor disapproves in writing within thirty (30) business days after KSM's written request for approval if noted and approved as part of the Business Plan. Unexpected circumstances or significant changes will be submitted to the Owner for consideration.

3.9 Licenses, Permits, and Accreditations. KSM shall apply for and use its commercially reasonable efforts to obtain and maintain, in Owner's name (or, if otherwise required by applicable law, in KSM's name), all licenses, permits, and accreditations required in connection with the management and operation of the Club, the cost of which shall be an Operating Expense. Owner will cooperate with KSM in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations.

3.10 Legal Action. KSM may not institute any legal action by or on behalf of Owner or the Club without the prior written consent of Owner and Owner may not institute any legal action on behalf of KSM without the prior written consent of KSM.

3.11 Emergency Expenditures. In the event, at any time during the Term, a condition should exist in, on, or about the Property of an emergency nature which, in KSM's sole and absolute discretion, requires immediate action to preserve and protect the Property, to better assure the Club's continued operation, or to protect the Club's customers, guests, or employees, KSM is authorized to take all steps and to make all reasonable expenditures necessary to repair and correct any such condition, whether or not provisions have been made in the applicable Business Plan for any such expenditures. Owner shall be notified of the need for, and estimated amount of, any such emergency expenditures as soon as reasonably practical.

3.12 Compliance with Laws. KSM shall, at Owner's expense, use commercially reasonable efforts to (i) comply in all material respects with all federal, state and local laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer (collectively "Laws") applicable to the use, operation, maintenance, repair and restoration of the Club and Property, whether or not compliance therewith shall interfere with the use and enjoyment of the Club and Property; and (ii), except for those which are the obligation of Owner or Owner's separate contractors, procure, maintain and comply with all licenses and other authorizations required for any use of the Club and Property then being made, and for the operation and maintenance of the Club and Property or any part thereof, the costs of which shall be Operating Expenses. Notwithstanding the preceding, Owner acknowledges and agrees that Owner or its construction contractors shall be responsible for procuring, maintaining and complying with all licenses and other authorizations relating to design, construction, zoning, erection, installation and similar matters relating to any construction at the Club. If at any time during the Term KSM is notified or determines that repairs, additions, changes, or corrections in the Property of any nature shall be required by reason of any Laws, KSM shall notify Owner and request Owner's consent to take all reasonable steps and to make all reasonable expenditures necessary to repair and correct any such repairs, additions, changes or corrections whether or not provisions have been made in the applicable Business Plan for any such expenditures, the costs of which shall be Operating Expenses. If Owner withholds such consent, KSM shall not be liable for any failure of the Property to be in compliance with such Laws and Owner shall indemnify KSM under Article 9 hereof in connection with any such withholding of consent.

3.13 Renovation of the Club. During the Term of this agreement, it is anticipated the Club will undergo a renovation of the facility. As mutually agreed by the parties from time to time, KSM shall assist Owner with Owner's oversight and management of the renovation of the Club, including the review of construction and bid documents; and review of services performed

by third party contractors retained, including monitoring expenditures incurred versus budget and compliance with the building standards outlined in the constructions documents.

3.14 Other Duties and Prerogatives. KSM shall use commercially reasonable efforts to perform any act that KSM determines is necessary to operate and manage the Club and the Property during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder, KSM shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection of proceeds from the operation of the Club and the Property, the incurring of trade debts in Owner's name (other than mortgage indebtedness), the approval and payment of obligations, and the negotiating and signing of leases and contracts. KSM shall not be obligated to advance any of its funds to or for the account of Owner nor to incur any liability unless Owner shall have furnished KSM with funds necessary for the full discharge thereof. Further, KSM shall not be obligated to sign any leases, contracts or other agreements in KSM's name. However, if for any reason KSM shall have advanced funds in payment of any reasonable expense in connection with the maintenance and operation of the Club or the Property, Owner shall reimburse KSM within thirty (30) days after invoice for the full amount of such payments. Owner's failure to reimburse KSM as provided herein for any such payment shall be an Event of Default by Owner.

ARTICLE 4

RESPONSIBILITIES OF OWNER

4.1 Expenditures. Owner acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Club, provided that such Operating Expenses and capital expenditures are made by the terms of this Agreement. Owner shall be responsible for all other expenditures and obligations in connection with the Club and the Property, including without limitation, all federal, state and local taxes and all principal and interest payments on indebtedness.

4.2 The Owner's Advances. Owner shall advance funds to the Operating Expense Account, and the Payroll Account described in Section 3.6.2, to conduct the affairs of the Club and maintain the Property ("Owner's Advances") as set forth below. Such Owner's Advances shall be paid in the form and manner as shown on Exhibit "C", through Automated Clearing House ("ACH"), or by wire transfer or authorization to apply funds from the Deposit Account towards the payment of such Owner's Advances. Owner acknowledges and agrees that it has sole responsibility for providing Owner's Advances, and KSM shall have no responsibility to provide funds for the payment of any Operating Expenses, Gross Payroll, debts or other amounts payable by or on behalf of the Club, the Property or Owner.

4.2.1. Operating Expense Account. On or before the Commencement Date (and in any event, prior to KSM's incurrence of any Operating Expenses), Owner shall remit to KSM for deposit into the Operating Expense Account, Owner's Advances equal to one month's estimated Operating Expenses (as specified in the approved Budget) ("Operating Expense Minimum"). Owner shall replenish the Operating Expense Account to maintain the Operating Expense Minimum in the Operating Expense Account as described below. KSM shall use the funds in the Operating Expense Account to pay the Operating

Expenses of the Club. On a monthly basis, KSM shall provide Owner with a statement describing the anticipated source and use of funds for the Club for the next monthly period. Within five (5) days after Owner's receipt of such statement from KSM, Owner shall remit to the Operating Expense Account the amount set forth in such statement, less the amount, if any, then on deposit in the Deposit Account to the extent Owner authorizes the transfer of such amount to the Operating Expense Account. The Parties agree to adjust the Operating Expense Minimum seasonally, or as otherwise required from time to time, in order to reflect the then-current payment obligations of the Club.

4.2.2. Payroll Account. On or before the Commencement Date (and in any event, prior to KSM's incurrence of any Gross Payroll obligations), Owner shall remit to KSM for deposit into the Payroll Account, Owner's Advances equal to $75,000.00 or at least one month's estimated Gross Payroll obligations (as specified in the approved budget) ("Payroll Expense Minimum"), whichever amount is greater. Owner shall replenish the Payroll Account to maintain the Payroll Expense Minimum in the Payroll Account as described below. On a bi-weekly basis, KSM shall fund payroll and the Gross Payroll obligations from the Payroll Account and concurrently provide Owner with a statement containing such funded Gross Payroll obligations of the Club. Within five (5) days after Owner's receipt of such statement from KSM, Owner shall remit to the Payroll Account the amount outlined in such statement, less the amount, if any, then on deposit in the Deposit Account to the extent Owner authorizes the transfer of such amount to the Payroll Account. The Parties agree to adjust the Payroll Expense Minimum seasonally, or as otherwise required from time to time, to reflect the then-current payroll obligations of the Club.

ARTICLE 5

FEES, EXPENSES. AND RECEIPTS.

5.1 Management Fee. Owner shall pay KSM management fees as follows (collectively, the "Management Fee"):

5.1.1 Base Management Fee. During the Term, Owner shall pay KSM an annual fee of Ninety-Six Thousand Dollars ($96,000.00) ("Base Management Fee"), which fee shall be paid in equal monthly installments in advance, no later than the first day of each calendar month. The Base Management Fee shall be increased each year on the anniversary of the Commencement Date by three percent (3%). Payment of the Base Management Fee may be made directly from the Operating Expense Account.

5.1.2 Incentive Management Fee. In addition to the Base Management Fee described above, Owner shall pay KSM an annual incentive management fee (the "Incentive Management Fee") calculated as follows:

> Five percent (5%) of the amount by which the Gross Revenues for the applicable fiscal year exceeds Two Million Five Hundred Thousand Dollars ($2,500,000) for first $500,000 of such excess amount and seven percent (7%) of any such excess amount that exceeds $500,000.

For example, if in a given fiscal year Gross Revenues are $3,200,000 (i.e. exceeds $2,500,000 by $700,000) then the Incentive Management Fee would be calculated as (.05 x $500,000) + (.07 x $200,000) = $39,000

In no event shall the annual Incentive Management Fee paid to KSM exceed the annual Base Management Fee. The Incentive Management Fee shall be paid to KSM within sixty (60) days after the end of the fiscal year to which the Incentive Management Fee relates.

5.2 Out-of-Pocket Expenses. In addition to all other fees and expenses recited herein payable to KSM, and subject to Owner's approval of same in the Business Plan, it is agreed that Owner shall reimburse KSM within fifteen (15) days of invoice for all actual out-of-pocket expenses incurred by KSM in the performance of this Agreement. Out-of-pocket expenses shall include, but shall not be limited to, reasonable travel, air express, courier service, costs of recruitment (including applicable agent's fees), and other incidental expenses. In addition, the costs of an interim General Manager, including but not limited to, compensation, reasonable travel, temporary housing, etc., shall be included as Operating Expenses. Reimbursement for such out-of-pocket expenses will be made at actual cost and may be made directly from the Operating Expense Account. KSM agrees that planned out-of-pocket expenses will be included in the Annual Operating Budget for discussion with the Owner in advance. The annual amount of Out-of-Pocket expenses will not exceed $10,000 in years one and two of the Term, and will not exceed $7,500 for years three through five and any additional renewal periods. Any amount above these figures must be pre-approved by Owner.

5.3 Late Fees. Owner shall pay to KSM all of the fees described above, and any other sums due KSM, at the times, at the places, and in the manner herein provided. If any payment or any part thereof to be made by Owner to KSM pursuant to the terms hereof shall become overdue for a period of thirty (30) days, KSM may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). Nothing herein shall be construed as waiving any rights of KSM arising out of any Events of Default of Owner by reason of KSM assessing or accepting any such late payment or late charge; the right to collect the late charge is separate and apart from any rights relating to remedies of KSM after default by Owner in the performance or observance of the terms of this Agreement. Owner shall bear the costs of any legal or collection fees and expenses incurred by KSM in attempting to enforce Owner's payment obligations hereunder. Owner understands and agrees that KSM reserves the right to suspend further services until such time as payment is received on past due invoices. In the event that KSM suspends its services as permitted in this paragraph, Owner understands and agrees that KSM shall not be responsible or liable for any resulting loss, damage or expense due to such suspension.

5.4 Owner's Receipts. During the Term, in each calendar month Owner shall receive the Positive Net Cash Flow for such calendar month after payment of the Management Fee and any other fees or out-of-pocket expenses owed to KSM, which amount shall be distributed, to the extent requested by Owner, within fifteen (15) days following the close of each calendar month ("Owner's Receipts"); provided, however, that a minimum balance of at least the Operating

Expense Minimum and the Payroll Expense Minimum is maintained in the Operating Expense Account and the Payroll Account at all times.

5.5 Automatic Withdrawal. In the reasonable discretion of KSM, upon the occurrence of an Insecurity Event and for so long as such Insecurity Event shall exist, Owner shall take all necessary steps to initiate and authorize payment of the Management Fee, the Incentive Management Fee, and the out of pocket expenses of KSM through automatic withdrawal from an account designated by Owner and wire transfer to an account designated by KSM. Such automatic withdrawal shall occur on or before the first day of each month for services to be rendered during the upcoming month.

5.6 Deposit. In the reasonable discretion of KSM, upon the occurrence of an Insecurity Event and for so long as such Insecurity Event shall exist, KSM will require the payment of a security deposit which will not be applied against amounts owing by Owner to KSM and will be retained by KSM as security for the payment of fees and expenses and returned to Owner at the end of the engagement. The terms and conditions applicable to the retainer are set forth in this Section.

5.6.1 Amount of Deposit. The initial deposit ("Deposit") shall be set at an amount equal to the aggregate the Management Fee plus the Incentive Management Fee plus the expected out-of-pocket expenses of KSM, each to be estimated by KSM in its reasonable discretion based on expected amounts due and owing from Owner to KSM during a one (1) month period. KSM shall have the right to request that Owner add to the Deposit in the event that, at any time, KSM's monthly Management Fee plus the monthly Incentive Management Fee plus the monthly expected out of pocket expenses exceeds the amount of the Deposit.

5.6.2 Security Interest in Deposit. The Deposit is a separate obligation of Owner and Owner understands and agrees that KSM will be under no obligation to perform any services under the Agreement until payment in full of the Deposit is received. The Deposit shall not be applied or credited to amounts due from Owner as they come due, but will be returned to Owner once all amounts due hereunder are paid in full. Owner hereby grants a security interest in the Deposit to KSM to secure payment of all amounts due hereunder and expressly authorizes KSM to pay itself any amounts past due from the Deposit. Owner acknowledges and agrees that this security interest is perfected by virtue of KSM's possession of the Deposit.

5.6.3. Interest on Deposit. Interest earned on the Deposit is the property of Owner and shall be returned to Owner once all amounts due under the Agreement are paid in full. The Deposit is not intended to be an estimate for the total cost of the work to be performed.

5.7 Payment Prior to Insolvency Proceeding. Prior to the initiation of an Insolvency Proceeding (as defined below) by Owner, if applicable, Owner shall pay all amounts then outstanding and owing to KSM in immediately available funds by wire transfer.

5.8 Third Party Services.

5.8.1. Should KSM utilize the services of a tee time broker, any and all compensation that KSM may receive from said third party related to tee times sold at the Club shall be remitted in its entirety to Owner.

5.8.2 Any rebates or discounts received by KSM resulting from its national contracts for cart rental fleets, maintenance equipment, etc. purchased on behalf of the Club shall inure to the sole benefit of Owner.

5.8.3. If KSM elects to offer a reservation/discount card that entitles buyers to preferred access and discounted fees at the courses managed by KSM, KSM and Owner shall use good faith efforts to agree upon a mutually beneficial revenue share and pricing structure. If no such agreement is reached, Owner shall have the option to opt out of such a program.

ARTICLE 6

COVENANTS AND REPRESENTATIONS

6.1 Owner's Covenants and Representations. Owner makes the following covenants and representations to KSM, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.1.1. Political Subdivision. Owner is a home-rule municipality duly organized, validly existing, and in good standing under the laws of Texas with full power and authority to enter into this Agreement.

6.1.2. Authorization. The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by all requisite action, and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable by its terms.

6.1.3. Effect of Agreement. Neither the execution and delivery of this Agreement by Owner nor Owner's performance of any obligation hereunder (a) shall constitute a violation of any law, ruling, regulation, or order to which Owner is subject, or (b) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (i) to which Owner is a party or is otherwise bound, or (ii) to which the Club, the Property or any part thereof is subject.

6.1.4. Ownership Rights. Owner currently possesses, and shall retain during the Term, all of the property interests in the Club and the Property necessary to enable KSM to perform its duties under this Agreement peaceably and quietly. Such property interests shall include all trade names and logos Owner uses in the operation of the Club. Owner represents and warrants that KSM's performance of the services required by this Agreement shall not violate the property rights or interests of any other Person.

6.1.5. No Litigation. There are no actions, suits or proceedings pending, or to the best of Owner's knowledge, threatened against Owner that may adversely affect the Club, the Property or the Owner in connection with the operations of the Club.

6.1.6. No Violation. There is no existing violation or breach of any ordinance, code, law, rule, requirement or regulation applicable to the Club or the Property, and Owner is not aware of the basis for any such violation or breach.

6.1.7. Hazardous Material. Owner is not aware of the presence of any Hazardous Material in, on or under the Property in a quantity sufficient to require remediation or to report under any Environmental Law, and Owner has not received notice of any violation or alleged violation of any Environmental Law with respect to the Property.

6.1.8. Documentation. If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to KSM, on or after the Commencement Date, any and all other instruments, documents, conveyances, assignments, and agreements which KSM may reasonably request in connection with the operation of the Club.

6.2. KSM's Covenants and Representations. KSM makes the following covenants and representations to Owner, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.2.1. Corporate Status. KSM is a corporation duly organized, validly existing, and in good standing under the laws of Illinois, and authorized to transact business in Texas, with the full corporate power to enter into this Agreement and execute all documents required hereunder.

6.2.2. Authorization. The making, execution, delivery, and performance of this Agreement by KSM has been duly authorized and approved by all requisite action of the board of directors of KSM, and this Agreement has been duly executed and delivered by KSM and constitutes a valid and binding obligation of KSM, enforceable in accordance with its terms.

6.2.3. Effect of Agreement. Neither the execution and delivery of this Agreement by KSM nor KSM's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which KSM is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which KSM is a party or is otherwise bound.

ARTICLE 7

INSURANCE

7.1 Club Insurance. During the Term, KSM shall secure, the cost of which shall be an Operating Expense, the following insurance covering its on-site activities under this Agreement:

(A) Property Insurance covering loss or damage to the buildings, structures or other Improvements, contents, equipment and supplies. Owner shall provide KSM with the appropriate written specifications for all property to be insured under such policy. Owner understands that coverage for flood, earthquake or wind damage shall be excluded from coverage and damages connected with such events shall be an Operating Expense. Upon Owner's written request, KSM will attempt to obtain coverage for flood, earthquake and/or wind damage and, if available, such coverage shall be an Operating Expense.

The preceding Property Insurance shall include Business Interruption, Loss of Income and Extra Expense Insurance that will reimburse Owner and KSM for direct and indirect loss of earnings attributable to six months of business interruption and for the actual loss sustained until the structures are substantially rebuilt after an insured property loss.

(B) Commercial General Liability and Umbrella/Excess Liability Insurance providing coverage for bodily injury and property damage arising in connection with the operation of the Club or on the Property and including coverage for contractual liability providing limits of not less than:

Bodily Injury and Property Damage Liability -	$5,000,000 each occurrence
Personal Injury and Advertising Liability -	$5,000,000 per person or per organization
General Policy Aggregate -	$5,000,000
Products Liability/Completed Operations Aggregate -	$5,000,000

(C) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than $1,000,000.

(D) Commercial Liquor Liability including coverage for damages arising out of the selling, serving or furnishing of any alcoholic beverage with a limit of $5,000,000 per occurrence/$5,000,000 aggregate limit or the minimum limits required by statute if higher.

Special Note: the limits of liability specified in B, C and D above can be satisfied through a combination of primary, umbrella or excess liability policies, provided that the coverage under such umbrella or excess liability policies is at least as broad as the primary coverage.

(E) Employment Practices ("EPLI") of not less than $5,000,000 each occurrence.

(F) Crime Liability Insurance covering all employees who have access to or responsibility for or who handle Owner funds of not less than $3,000,000 each occurrence.

(G) Workers' Compensation Insurance in such amounts that comply with applicable statutory requirements, and Employer's Liability limits, of not less than $1,000,000 per accident, $1,000,000 disease-policy limit, and $1,000,000 disease each employee.

(H) Pollution Liability/Environmental Impairment of not less than $3,000,000 per accident/aggregate limit.

All such insurance coverage maintained by KSM (except as set forth in (E), (F), (G) and (H)) shall name Owner as additional insured to the extent of the indemnification by KSM under Section 9.2 and shall be maintained with insurance companies rated at least A- by Best Key Rating Guide and shall be licensed to do business in the state in which the Property is located. KSM shall deliver to Owner certificates of such insurance evidencing the required policies. Property insurance shall include a waiver of all recovery by way of subrogation against KSM and Owner about any damage covered by such policy. Owner acknowledges that KSM has made no representations or warranties that the above coverages are sufficient to protect Owner fully.

The expenses for all the coverages outlined above shall be Operating Expenses.

7.2 Owner Provided Insurance. Upon mutual written agreement between the parties, Owner may procure and maintain, at Owner's sole cost and expense, with insurance companies rated at least A- by Best's Key Rating Guide, and licensed to do business in the State of Texas, sufficient insurance fully covering the Property and operation of the Club, in at least the amounts specified in Section 7.1 (A) through (D), and (H) above. All such insurance shall name KSM and its shareholders, officers, directors, employees, agents and representatives as additional insureds. Owner shall deliver to KSM certificates of insurance evidencing the above-required policies. Property insurance shall include a waiver of all recovery by way of subrogation against KSM about any damage covered by such policy. The insurance coverage described in (B), (C) and (D) above shall be Primary and Non-Contributory. Within fifteen (15) days following the parties' written agreement as contemplated above and receipt of the appropriate certificates of insurance, KSM shall no longer secure the coverage specified above; as applicable, provided, however, that KSM shall continue to secure the coverage specified in Section 7.1 (E), (F), (G), and (H) above. The expenses for the coverages provided by KSM shall be Operating Expenses.

7.3 Waiver of Subrogation. Notwithstanding anything else contained in this Agreement, Owner and KSM each hereby waive all rights of recovery against the other and their Affiliates, and against each of their officers, employees, agents and representatives, on account of loss by or damage to the waiving party's property or the property of others under its control, to the extent that such loss or damage is (i) insured against under any insurance policy which either may have in force at the time of the loss or damage; or (ii) is required to be insured against in accordance with this Agreement; or (iii) given the facts and circumstances surrounding the Property and the Club, should reasonably be insured against by the Owner (in any case, regardless of whether or not such insurance policy is in effect). Owner shall, upon obtaining any policies of insurance required under this Agreement, give notice to its insurance carrier or carriers that the preceding mutual waiver of subrogation is contained in this Agreement. This waiver of subrogation shall survive the expiration or termination of this Agreement.

ARTICLE 8

DAMAGE AND CONDEMNATION

8.1 Substantial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements are damaged or destroyed by fire or another casualty to the

extent that the damage cannot be materially restored with due diligence within two hundred seventy (270) days following such event, either Party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the date of such destruction. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both Parties shall pay all amounts due to the other Party up to such effective date of termination, or, on amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Club.

8.2 Partial Destruction. In the event the Real Property, Tangible Personal Property, and/or Improvements, or any portion thereof, is damaged or destroyed by fire or other casualty and such damage can be materially restored with due diligence within two hundred seventy (270) days following such event, Owner shall have an obligation to repair the damaged Real Property, Tangible Personal Property, and/or Improvements as nearly as practicable to the condition the same were in prior to such damage. Owner shall cause such repair to be made with all reasonable dispatch so as to complete the same at the earliest possible date.

8.3 Substantial Condemnation. In the event (i) all or substantially all of the Real Property is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, or (ii) a substantial portion of the Real Property is so taken, but the result is that it is unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, then either Party hereto may terminate this Agreement upon written notice to the other Party given within ninety (90) days following the conclusion of the condemnation proceedings. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the effective date of termination specified in the termination notice (which shall in no event be prior to the date of receipt of the termination notice) as though such date were the date originally fixed for the expiration of the Term. Both Parties shall pay all amounts due to the other Party up to the date of termination, or, on amounts due to KSM, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Club.

8.4 Partial Condemnation. In the event a portion of the Real Property shall be taken by any of the events described in Section 8.3 above, or is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate the Property for the purposes contemplated by this Agreement, this Agreement shall not terminate. It is further agreed that any portion of any award, damages or other compensation paid to Owner on account of such partial taking, condemnation, or sale as is necessary to render the Property equivalent to its condition before such event shall be used for such purpose. The balance of such award, if any, shall be fairly and equitably apportioned between the Parties by their respective interests.

ARTICLE 9

INDEMNIFICATION

Owner's Indemnification Obligations. To the extent permitted by law, and except as provided in Section 7.3, Owner shall defend, indemnify and hold KSM and its Affiliates and each of their shareholders, members, officers, directors, managers, employees, agents, and representatives (the "KSM Related Parties") harmless of and from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) arising from or relating to (i) the performance of the Management Services on behalf of Owner; (ii) the ownership, leasing, organization, development or construction of the Club or the Property; (iii) Hazardous Materials or other conditions existing at the Club or the Property; (iv) the use by KSM of Club trade names, trademarks, logos or other intellectual property used in connection with the Club; (v) any acts or omissions of Owner (or its officers, directors, agents, employees, representatives, contractors and others for whom Owner is responsible); (vi) any activities in connection with the transition of the management of the Club to KSM; (vii) any acts or omissions occurring in connection with the operation or management of the Club prior to the Term; (viii) any labor or employment condition or situation occurring or existing prior to the Term; (ix) the relationship between Owner or any of Owner's Affiliates and the prior management company of the Club or any acts or omissions of the prior management company; and (x) any breach by Owner of any of Owner's covenants, representations, and warranties herein; except to the extent such liabilities were caused by KSM's willful or criminal misconduct, gross negligence or fraud.

9.2 KSM's Indemnification Obligations. Except as provided in Section 7.3, KSM shall indemnify Owner and Owner's shareholders, officers, directors, employees, agents, and representatives ("Owner Related Parties") from all liability, loss, damage, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses) caused by the grossly negligent acts or omissions of KSM (or its officers, directors, agents, employees, representatives, contractors and others for whom KSM is responsible), to the fullest extent permitted by law, except to the extent such acts or omissions were directed or approved by Owner, or such liabilities were caused by Owner's willful or criminal misconduct, gross negligence or fraud. KSM's duty to indemnify Owner and the Owner Related Parties shall extend to all liability, loss, damage, cost, or expenses hereunder arising from or relating to any event or occurrence taking place before, during, or after the Term. Notwithstanding anything else contained herein, Owner acknowledges that KSM shall not be responsible for any damage to property under its care custody and control and that Owner shall ensure that all such damage is covered by appropriate insurance coverage.

9.3 Survival. The defense and indemnification obligations contained in this Article 9 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 10

RIGHT TO CURE

10.1 Performance. Other than with respect to Owner's obligations pursuant to Sections 5.5 to 5.7 hereof, if, after the expiration of any permitted grace period or notice and cure period, a Party hereto shall have failed to cure any default in the performance of any representation, covenant, or obligation on its part to be performed, then the other Party may, at any time thereafter, without further notice, perform the same for the account and at the expense of the other Party. Notwithstanding the above, in the case of an emergency, either Party may, after notice to the other Party, so reasonably perform in the other Party's stead prior to the expiration of any applicable grace period; provided, however, the other Party shall not be deemed in default under this Agreement.

10.2 Reimbursement. If, pursuant to this Article, either Party at any time is compelled or elects (as permitted by the immediately preceding Section) (i) to pay any sum of money, (ii) to do any act which will require the payment of any sum of money, or (iii) to incur any expense (including reasonable attorneys' fees) in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of the other Party's failure to perform, as described in the immediately preceding Section, the sum or sums paid or payable by such Party, with all interest, cost, and damages, shall be immediately due from the other upon receipt of a statement and reasonable documentation therefor.

ARTICLE 11

EVENTS OF DEFAULT

The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an "Event of Default"):

11.1 Failure to Pay Sums Due. Either Party's failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of five (5) days after written notice (specifying the item not paid) thereof from the other Party to the defaulting Party.

11.2 Failure to Comply. Either Party's material failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other Party to the defaulting Party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such 30-day period, if the defaulting Party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting Party to cure the failure.

11.3 Bankruptcy. If either Party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general

assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing (collectively, an "Insolvency Proceeding").

11.4 Reorganization; Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either Party by any court of competent jurisdiction approving a petition seeking reorganization of said Party or appointing a receiver, trustee, or liquidator of said Party, or of all or a substantial part of any of the assets of said Party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

ARTICLE 12

REMEDIES

12.1 Owner's Remedies. Upon the occurrence of an Event of Default by KSM, Owner may:

12.1.1 Seek specific performance of KSM's obligations or injunctive relief, as applicable;

12.1.2 Demand and receive payment of all amounts due Owner under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys' fees of Owner arising due to KSM's Event of Default;

12.1.3 Proceed to remedy the Event of Default, and in connection with such remedy, Owner may pay all expenses and employ counsel. All sums so expended or obligations incurred by Owner in connection therewith shall be paid by KSM to Owner, upon demand by Owner, and on failure of such reimbursement, Owner may, at Owner's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to KSM from Owner under the terms of this Agreement; and

12.1.4 Terminate this Agreement by written notice of termination to KSM. Upon proper termination of this Agreement, KSM shall surrender occupancy of the Property to Owner.

No remedy granted to Owner is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by Owner to exercise any right accruing upon an Event of Default shall impair Owner's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence to it.

IN NO EVENT SHALL KSM BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OR NON-PERFORMANCE HEREUNDER, EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 KSM's Remedies. Upon the occurrence of an Event of Default by Owner, KSM may:

12.2.1 Seek specific performance of Owner's obligations or injunctive relief, as applicable;

12.2.2 Demand and receive payment of all amounts due KSM under the terms of this Agreement and the payment of all costs, damages, expenses, and reasonable attorneys' fees of KSM due to Owner's Event of Default;

12.2.3 Proceed to remedy the Event of Default, and in connection with such remedy, KSM may pay all expenses and employ counsel. All sums so expended or obligations incurred by KSM in connection therewith shall be paid by Owner to KSM, upon demand by KSM, and on failure of such reimbursement, KSM may, at KSM's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to Owner from KSM under the terms of this Agreement; and

12.2.4 Terminate this Agreement by KSM's written notice of termination to Owner. In such event, Owner shall pay to KSM within ten (10) days of termination an amount equal to the total unpaid Management Fees that KSM would have earned had the Agreement remained in effect until the Termination Date.

No remedy granted to KSM is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by KSM to exercise any right accruing upon an Event of Default shall impair KSM's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence to it.

IN NO EVENT SHALL OWNER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OR NON-PERFORMANCE HEREUNDER, EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 Litigation. In the event of any litigation under or respecting this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and court costs.

ARTICLE 13

TERMINATION

13.1 Events of Termination. This Agreement shall terminate upon the occurrence of any of the events set forth below:

13.1.1 An Event of Default by KSM, and Owner sends to KSM a notice of termination for cause (after the expiration of any applicable cure period);

13.1.2 An Event of Default by Owner, and KSM sends to Owner a notice of termination for cause (after the expiration of any applicable cure period);

13.1.3 Both Parties agree in writing to terminate this Agreement;

13.1.4 Upon the expiration or termination of this Agreement according to its terms.

13.2 Employee and Other Obligations Upon Termination. Upon a termination of this Agreement for any reason, Owner shall remain responsible for payment of obligations connected with the Management Services rendered through the effective date of termination (including all Operating Expenses, all Gross Payroll obligations, as well as the Management Fee and all out of pocket expenses). Such obligations shall include all amounts to become due and owing to the terminated staff of KSM at the Club through the effective date of termination. Owner shall pay all accrued wages for the terminated staff through such termination date and shall reimburse and/or hold harmless KSM for workers compensation insurance and other employee benefits paid or accrued by KSM on behalf of Owner to the terminated staff as of the termination date. Additionally, Owner shall be responsible for the payment of any earned and accrued vacation owed or due to the terminated staff as a result of the termination as well as any manual adjustments of wages and any unclaimed wages due the terminated staff accruing prior to the termination date and shall, if requested by KSM, reimburse KSM for any such payments made by KSM. Any amounts owed to KSM pursuant to this Section shall be paid to KSM within ten (10) days of written request therefor.

13.3 Other Payments Upon Termination. Upon expiration or termination of this Agreement, all sums owed by either Party to the other shall be paid within ten (10) days of the effective date of such termination.

ARTICLE 14

NOTICES

14.1 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, postage prepaid ("Mail"), or sent by nationally-recognized overnight mail or courier service ("Overnight Courier"), addressed as shown below, or to such other address as the Party concerned may substitute by written notice to the other. Any notice will be deemed received (A) upon the date personal delivery is made, (B) three (3) business days after the date it is deposited in the Mail, (C) one (1) business day after it is deposited with an Overnight Courier, or (D) the date upon which attempted delivery of such notice, whether by Mail, Overnight Courier or personal delivery, is refused or rejected.

If to Owner:	City Manager 221 East Main Street Round Rock, TX 78664
with a copy to:	Stephan Sheets, City Attorney Sheets & Crossfield, P.C. 309 East Main Street Round Rock, Texas 78664
If to KSM:	Kemper Sports Management, Inc. 500 Skokie Boulevard, Suite 444 Northbrook, Illinois 60062 Attention: Steven K. Skinner, Chief Executive Officer
with a copy to:	Kemper Sports Management, Inc. 500 Skokie Boulevard, Suite 444 Northbrook, Illinois 60062 Attention: General Counsel

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

ARTICLE 15

MISCELLANEOUS

15.1 Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein. If any Exhibits are subsequently changed by the mutual written agreement of the Parties, the Exhibits shall be modified to reflect such change or changes and dated and initialed by the Parties.

15.2 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding between the Parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

15.3 Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all Parties hereto; provided, however, either Party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the Party so waiving of any of its obligations under this Agreement.

15.4 Proprietary Information. KSM shall be permitted to use the trade names, trademarks and logos of Owner (collectively, "Owner Marks") in connection with the performance of the services provided under this Agreement and as otherwise provided in this Agreement or as agreed upon by Owner; provided, however, that Owner agrees that KSM may use the Owner Marks in its marketing and promotional materials as a Club managed by KSM. All specifically identifiable information developed by KSM for Owner at the expense of Owner shall be the property of both KSM and Owner, and such information may continue to be used by Owner at the Club beyond any expiration or termination of this Agreement; provided, however, that Owner may not use or grant others the right to use such information at any other location nor disclose or grant any rights to such information to any third party. All of KSM's proprietary information, including (i) trade names, trademarks and logos as well as programs that have been or may be developed by KSM, and (ii) software and technology, shall remain the exclusive property of KSM and neither Owner nor any of its affiliates or successors may use or disclose such proprietary information without the advance written consent of KSM. The obligations and restrictions contained in this Section shall survive the expiration or termination of this Agreement for any reason.

15.5 Intangible Property. KSM hereby acknowledges that the Club's website url, the customer database to include email addresses, and the Owner's accounts on Facebook, Twitter, Linked-In and all other software media platforms shall remain the exclusive property of Owner, and neither KSM nor any of its affiliates or successors may use or disclose such proprietary information without the advance written consent of Owner. The obligations and restrictions contained in this Section shall survive the expiration or termination of this Agreement for any reason.

15.6 No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the Parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the Parties hereto shall be deemed to create any relationship between the Parties hereto other than the relationship of independent contractor.

15.7 Restrictions as to Employees. During the Term and for a period of two (2) years after the end of the Term, it is agreed that Owner and/or its agents and contractors shall not, directly or indirectly, seek to contact, entice, or discuss employment or contracting opportunities with any Key Employee of KSM nor shall Owner, its agents and/or contractors employ or otherwise engage or seek to employ or otherwise engage, directly or indirectly, any such Key Employee, without first obtaining the written consent of KSM. For purposes hereof, a "Key Employee" of KSM shall mean any individual holding any of the following positions at any time during the Term: the general manager, superintendent, accountant/bookkeeper, director of golf, head professional of the Club, or any employee of KSM's corporate office.

15.8 Assignment; Successors and Assigns. This Agreement may not be assigned by either Party hereto without the express written consent of the other Party, except that KSM may assign this Agreement to any of its Affiliates. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.

15.9 Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the Parties hereto, and said invalid sections, parts, terms, or provisions should not be deemed to be a part of this Agreement.

15.10 Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith, and shall continue in full force and effect.

15.11 Accord and Satisfaction; Allocation of Payments. No payment by Owner or receipt by KSM of a lesser amount than that which is owed to KSM shall be deemed to be other than on account of such amounts owed to KSM, nor shall any endorsement or statement on any check or letter accompanying any check or payment to KSM be deemed an accord and satisfaction, and KSM may accept such check or payment without prejudice to KSM's right to recover the balance of the amounts owed to KSM or pursue any other remedy provided for in this Agreement or as otherwise provided at law or in equity. In connection with the foregoing, KSM shall have the absolute right in its sole discretion to apply any payment received from Owner, regardless of Owner's designation of such payments, to any outstanding amount of Owner then not current and due or delinquent, in such order and amounts as KSM, in its sole discretion, may elect.

15.12 Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws and court decisions of the State of Texas. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all Parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each Party before the execution of this Agreement.

15.13 Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

15.14 Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto or any other document or instrument executed or delivered pursuant hereto or in connection herewith.

15.15 Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any Party or any Party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments, nor shall

Owner or KSM have any right to share or participate in any such other businesses or investments of the other Party.

15.16 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Agreement. Facsimile signature or scanned and e-mailed signature shall be as effective as an original signature.

15.17 Unavoidable Delays. The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions beyond the reasonable control of the Party obligated to perform. If either Party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then such failure shall be excused and not be a breach of this Agreement by the Party claiming an unavoidable delay (an "Unavoidable Delay"), but only to the extent the delay is occasioned by such event. If any right or option of either Party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not apply to either Party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid under the terms of this Agreement.

15.18 No Third-Party Beneficiaries. Nothing herein contained shall be deemed to establish any rights of third parties against the Parties hereto; it being the intent that the rights and obligations set forth herein are those of the Parties hereto alone, with no third party beneficiary rights intended.

15.19 Certain Services Excluded. Notwithstanding anything else contained in this Agreement to the contrary, KSM's services are limited to those specifically noted in the Agreement and do not include, among others and without limitation, architectural, engineering, design or general contracting services, facility planning services, accounting or tax-related assistance or advice, legal advice or services, expert witness services, cost report preparation, data processing or information services, or feasibility studies. KSM's services will not constitute an audit, review or compilation or any other type of financial statement reporting or consulting engagement subject to the rules of the AICPA or other similar bodies. KSM will not be expressing any professional opinions and makes no representations or warranties in conjunction with this engagement.

15.20 Bankruptcy Obligations. KSM shall have no obligation to provide any services under the Agreement if Owner becomes a debtor under the Bankruptcy Code, and, by Section 12 hereof, may terminate this Agreement in such event. If Owner is or becomes a debtor under Chapter 11 of the Bankruptcy Code and KSM agrees to provide services to Owner post-petition, the Parties shall enter into a revised written agreement or an amendment to this Agreement to govern their respective rights and obligations as part of Owner's bankruptcy case.

Notwithstanding the foregoing, Owner expressly agrees that KSM shall be compensated by Owner for any and all efforts by KSM to comply with all requirements or requests for information placed upon KSM in an Insolvency Proceeding by Owner, any receiver, trustee or liquidator for Owner or any property of Owner, any assignee for the benefit of creditors, or any trustee in any case under Chapter 7 of the Bankruptcy Code, at an hourly rate set by KSM in its reasonable discretion, in addition to the out-of-pocket expenses incurred by KSM in connection with the Insolvency Proceeding (the "Insolvency Administration Fees"). All such Insolvency Administration Fees shall be considered "Operating Expenses" under this Agreement.

15.21 Confidentiality. The terms and provisions of this Agreement shall be released to third parties only in connection with carrying out their respective duties and obligations described herein, in connection with any order of court or in order to comply with governmental rules and regulations, and as required by any proposed purchaser or mortgagee of all or any portion of Owner's interest in the Club or Property, and then only to the extent as may be reasonably necessary. Certain terms and provisions or books and records maintained throughout the term of this Agreement may contain confidential information of KSM that is exempt from the Texas Public Information Act. In the future, if the City receives a request for public information it believes may be confidential in nature, the City will (1) immediately notify KSM, as required by Section 552.305(d) of the Texas Public Information Act, of the request for information; (2) withhold the requested information from disclosure pending a Texas Attorney General determination requiring disclosure; and (3) notify the requestor of the withholding pending the Texas Attorney General's determination. The notice to KSM will include a copy of the written request for information and a statement that KSM may, within 10 business days of receiving the notice, submit to the Texas Attorney General its reasons why the information in question should be withheld and explanations in support thereof. KSM, respectively, has 10 business days after receiving notice from the City of the request for public information to assert an exception from disclosure under Section 552.101, 552.110, 552.113, or 552.131 of the Texas Public Information Act and present its arguments to the Texas Attorney General for nondisclosure. The preceeding shall not be construed to limit KSM's ability to announce both privately and publicly that it manages the Club and Property.

15.21 Dispute Resolution. Owner and KSM expressly agree that no claims or disputes between the Parties arising out of or relating to this Agreement. or a breach thereof, shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

15.22 Non-Appropriation of Fiscal Funding. This Agreement is a commitment of Owner's current revenues only. It is understood and agreed that Owner shall have the right to terminate this Agreement at the end of any fiscal year if the Owner's governing body does not appropriate funds sufficient to purchase the services as determined by the Owner's budget for the fiscal year in question. Owner may effect such termination by giving KSM a written notice of termination at the end of its then-current fiscal year.

15.23 Applicable Law; Enforcement and Venue. This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

KEMPER SPORTS MANAGEMENT, INC.

By:_____
Steven K. Skinner
Chief Executive Officer

City of Round Rock, Texas

By:_____
Name: _____
Title:_____

For City Attest:

By:_____
Sara L. White, City Clerk

For City, Approved as to Form:

By:_____
Stephan L. Sheets, City Attorney

EXHIBIT "A"
DEFINITIONS

All capitalized terms referenced or used in the Management Agreement (the "Agreement") and not specifically defined therein shall have the meaning set forth below in this Exhibit "A", which is attached to and made a part of the Agreement for all purposes.

- Affiliate(s). The term "Affiliate(s)" shall mean a Person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with the Person in question and any officer, director, or trustee, and any stockholder or partner of any Person referred to in the preceding clause owning fifty percent (50%) or more of such Person. For purposes of this definition, the term "control" means the ownership of fifty percent (50%) or more of the beneficial interest of the voting power of the appropriate entity.

- Approval Rights. The term "Approval Rights" shall have the meaning described in Section 3.1 of the Agreement.

- Business Plan. The term "Business Plan" shall have the meaning described in Section 3.4 of the Agreement.

- Capital Expenditures Budget. The term "Capital Expenditures Budget" shall have the meaning described in Section 3.4 of the Agreement

- Club. The term "Club" shall mean the golf club to be operated as "Forest Creek Golf Club" located on and operated from the Real Property.

- Commencement Date. The term "Commencement Date" shall have the meaning described in Section 2.2 of the Agreement.

- Deposit Account. The term "Deposit Account" shall have the meaning described in Section 3.5.2 of the Agreement.

- Environmental Laws. The term "Environmental Laws" shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, release, or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including, without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto, all regulations promulgated thereunder, and their state or local statutory and regulatory counterparts.

- Event of Default. The term "Event of Default" shall have the meaning described in Article 11 of the Agreement.

- Gross Revenues. The term "Gross Revenues" shall mean all monthly receipts related to or derived from the operation of the Club from cash or credit transactions recognized during the Term, computed on an accrual basis, including, but not limited to, greens fees, cart rental fees, guest fees, membership initiation fees and/or membership dues, income derived from the investment of Gross Revenues, the amount of all sales (wholesale or retail) of food, beverages, goods, wares, or merchandise on, at, or from the Property, or for services of any nature performed on, at, or from the Property, determined in accordance with generally accepted accounting principles applied on a consistent basis. Gross Revenues shall be reduced by any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by KSM or Owner in the Club of obtaining such Gross Revenues.

  Gross Revenues shall not include:

  - Applicable gross receipts taxes, admission, cabaret, excise, sales, and use taxes, or similar governmental charges collected directly from customers or their guests or as a part of the sales price of any goods or services;

  - Service charges that are percentage gratuities added to billings, to the extent paid to employees of the Club;

  - Proceeds of borrowings by Owner;

  - Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, to the extent such sums are used to remedy said loss;

  - Membership assessments

  - Interest or investment income earned on distributed Positive Net Cash Flow to Owner or KSM under the terms of the Agreement; or

  - Owner's Advances.

  Any of the above provisions resulting in a double exclusion from Gross Revenues shall be allowed as an exclusion only once.

- Hazardous Material. The term "Hazardous Material" shall mean any solid, liquid, or gaseous substance, chemical, compound, product, byproduct, waste, or material that is or becomes regulated, defined, or designated by any applicable federal, state, or local governmental authority or by any Environmental Law as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant or contaminant, and shall include, without limitation, asbestos, polychlorinated biphenyls, and oil, petroleum, petroleum products and petroleum byproducts.

- Improvements. The term "Improvements" shall mean the improvements, structures, and fixtures placed, constructed, or installed on the Real Property for the Club, and any additions or subsequent modifications to it.

- Insecurity Event. The term "Insecurity Event" shall mean the occurrence of any one or more of the following events: (a) there shall occur a default under any agreement, document or instrument, other than this Agreement, to which Owner is a party, the consequences of which could reasonably be expected to have a Material Adverse Effect; (b) any written statement, report, financial statement or certificate made or delivered by Owner, or any of its officers, employees or agents, to KSM is untrue or incorrect in any material respect; (c) any of Owner's assets are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and the same is not cured within thirty (30) days thereafter; (d) an application is made by any person, other than Owner, for the appointment of a receiver, trustee, or custodian for any of Owner's assets and the same is not dismissed within thirty (30) days after the application therefor; (e) any material change in Owner's capital structure or in any of its business objectives, purposes and operations which might in any way adversely effect the repayment of its obligations to KSM pursuant to this Agreement; or (f) any other event or occurrence, which, in the reasonable discretion of KSM, could materially and adversely affects Owner's ability to repay its obligations to KSM pursuant to this Agreement.

- Intangible Personal Property. The term "Intangible Personal Property" shall mean all intangible property or rights owned or held by Owner in connection with the Club, including, but not limited to, security deposits, prepaid rents, liquor and operating licenses, website url addresses, customer databases to include e-mail addresses, and all trademarks related to the Club.

- Key Employee. The term "Key Employee" shall have the meaning described in Section 15.6 of the Agreement.

- KSM. The term "KSM" means Kemper Sports Management, Inc., an Illinois corporation, and its successors, legal representatives, and permitted assigns.

- Laws. The term "Laws" shall have the meaning described in Section 3.12 of the Agreement.

- Management Fee. The term "Management Fee" shall have the meaning described in Section 5.1 of the Agreement.

- Management Services. The term "Management Services" shall mean the services provided by KSM under Article 3 of the Agreement.

- Material Adverse Effect. The term "Material Adverse Effect" shall mean any event that has a material adverse effect on (i) the business, assets, operations or financial or other condition of Owner, and (ii) Owner's ability to pay the amounts owed to KSM by the terms hereof.

- Net Operating Income. The term "Net Operating Income" or "NOI" shall be computed as the sum of Gross Revenues less cost of goods sold, payroll, other Operating Expenses and the Base Management Fees. Such calculation shall not include payments associated with maintenance equipment leases treated as capital leases, capital expenditures, interest expense, income taxes, depreciation and amortization.

- Operating Budget. The term "Operating Budget" shall have the meaning described in Section 3.4 of the Agreement.

- Operating Expense Account. The term "Operating Expense Account" shall have the meaning described in Section 4.2.1 of the Agreement.

- Operating Expense Minimum. The term "Operating Expense Minimum" shall have the meaning described in Section 4.2.1 of the Agreement.

- Operating Expenses. The term "Operating Expenses" shall be included in the Business Plan and shall mean all operating expenses of the Club incurred or paid on behalf of Owner during the Term, computed on an accrual basis, including, but not limited to, the following items:

    - Salaries, wages, employee benefits, and payroll expenses, including without limitation, payroll service bureau fees, payroll taxes, Club profit sharing programs, and insurance for all employees employed on-site in the direct operation of the Club, excluding, however, service charges, which are defined as percentage gratuities added to billings and paid to employees (collectively, the "Gross Payroll");

    - Marketing, advertising, and promotional expenses;

    - Purchase and replacement, as necessary, of inventories of maintenance parts and supplies, food stores and bar supplies;

    - Purchase and replacement, as necessary, of silver, chinaware, glassware, cooking utensils, and other similar items of equipment;

    - Purchase and replacement, as necessary, of office supplies, computers, printers, facsimile machines, photocopiers, postage, printing, routine office expenses, and lease payments on any item of furniture, fixtures or equipment to the extent not excluded below from Operating Expenses, and accounting services incurred in the on-site operation of the Club;

    - The costs of IT consultants and other consultants utilized for the Club;

    - Reasonable travel expenses of on-site employees incurred exclusively in connection with the business of the Club;

    - Accrual of a reserve for insurance (including workers' compensation) and property taxes each month in an amount or at a rate that is sufficient to pay

such insurance premiums or property taxes when they become due and payable;

- Insurance premiums, administrative and financing charges and expenses, property taxes, to the extent not provided for in the reserve established therefore and any deductible amounts required to be paid under Club insurance coverage;

- Accounts receivable previously included within Gross Revenues, to the extent they remain unpaid ninety (90) days after the first billing;

- Auditing, accounting costs, computer fees (including costs to license and maintain accounting software), and legal fees incurred in respect of the operation of the Club, including any reasonable financial management and reasonable accounting fees paid to third party accounting firms, if included in the Business Plan;

- Costs incurred for utilities, including, but not limited to, all electric, gas, and water costs, and any other private utility charges incurred in connection with the operation of the Club;

- Ordinary maintenance and repairs, exclusive of any capital improvements or capital replacements, which are hereby excluded;

- All out-of-pocket expenses incurred by KSM in providing the services under the terms of the Agreement, including without limitation, reasonable travel for employees employed on-site at the Property and KSM's other employees while engaged in performing the obligations of KSM hereunder, air express, costs of recruitment (including applicable agent's fee), and other incidental expenses included in the Budget;

- Expenses, including legal fees, damages or other costs, involved in defending any employment-related lawsuits, charges or claims involving personnel of the Club;

- All expenses outlined in the approved Business Plan; and

- All other customary and reasonable expenses incurred in the operation of the Club and the Improvements.

Any of the above provisions resulting in a double inclusion as an Operating Expense shall be allowed as an inclusion only once.

Operating Expenses shall not include (i) depreciation or amortization, (ii) principal or interest payments on indebtedness, (iii) rental or lease payments for major items of furniture, fixtures, or equipment which, in accordance with generally accepted accounting principles, are purchased and capitalized as fixed assets, and (iv) federal, state and local income taxes of any nature or kind incurred by Owner or KSM.

- Owner. The term "Owner" means the City of Round Rock, Texas and its successors, legal representatives, and permitted assigns.

- Owner's Advances. The term "Owner's Advances" shall have the meaning described in Section 4.2 of the Agreement.

- Owner's Receipts. The term "Owner's Receipts" shall have the meaning described in Section 5.4 of the Agreement.

- Person. The term "Person" shall mean any individual, partnership, corporation, association, or other entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits; and, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and the neuter, and vice versa.

- Personal Property. The term "Personal Property" shall mean the Intangible Personal Property and the Tangible Personal Property.

- Positive Net Cash Flow. The term "Positive Net Cash Flow" shall mean the amount, if any, by which Gross Revenues exceed Operating Expenses for the particular period being measured.

- Property. The term "Property" shall mean (i) the Improvements, (ii) the Personal Property, and (iii) the Real Property.

- Real Property. The term "Real Property" shall mean that certain parcel of land upon which the Club is located, the legal description of which is attached hereto as Exhibit "B."

- Tangible Personal Property. The term "Tangible Personal Property" shall mean all equipment, machinery, fixtures, furnishings, accessories, and other tangible personal property placed or installed, or to be placed or installed, on or about the Real Property and used as a part of or in connection with the operation of the Club.

- Term. The term "Term" shall have the meaning described in Section 2.2 of the Agreement.

- Termination Date. The term "Termination Date" shall have the meaning described in Section 2.2 of the Agreement.

- Unavoidable Delay. The term "Unavoidable Delay" shall have the meaning described in Section 15.17 of the Agreement.

EXHIBIT "B"

LEGAL DESCRIPTION OF REAL PROPERTY

FIELD NOTES

FOREST CREEK GOLF CLUB

BEING 185.25 acres of land out of the E. W. Matthews Survey, Abstract No. 449, and the John H. Randall Survey, Abstract No. 531, Williamson County, Texas, being all of that certain 15.25 acre tract of land described in a deed to the City of Round Rock recorded in Volume 1853 at Page 855, Official Records, Williamson County, and 170.00 acres out of that certain 582.35 acre tract of land described in a deed to the Ben Franklin Corporation recorded in Volume 1020 at Page 812, Official Records of Williamson County, and being more particularly described by metes and bounds as follows, to wit:

TRACT 1

BEGINNING at the most northerly northeast corner of said 582.35 acre tract, said Beginning Point also being the southeast corner of Oak Bluff Estates, Phase 2, a subdivision of record filed in Cabinet F, Slide 253, Plat Records of Williamson County;

THENCE S 11° 59' 28" W a distance of 241.09 feet with the east line of said 582.35 acre tract to an iron rod set at the most northerly corner of said 15.25 acre tract;

THENCE S 44° 23' 26" E a distance of 362.62 feet to an iron rod set at the northeast corner of said 15.25 acre tract;

THENCE S 12° 43' 00" W a distance of 1068.00 feet to an iron rod at the southeast corner of said 15.25 acre tract in the north line of said 582.35 acre tract;

THENCE N 89° 17' 00" W a distance of 250.00 feet with the north line of said 582.35 acre tract and the south line of said 15.25 acre tract to an iron rod, from which an iron rod at the southwest corner of said 15.25 acre tract bears N 89° 17' W a distance of 490.00 feet;

THENCE traversing the interior of said 582.35 acre tract, the following described courses and distances to iron rods set:

(1) S 00° 00' 00" W a distance of 185.00 feet;

(2) S 73° 08' 37" E a distance of 491.70 feet;

(3) N 87° 47' 51" E a distance of 910.67 feet;

(4) S 71° 18' 25" E a distance of 702.03 feet;

(5) S 41° 49' 46" E a distance of 249.69 feet;

(6) S 12° 06' 57" W a distance of 428.54 feet;

(7) S 63° 30' 59" E a distance of 192.50 feet;

(8) S 06° 19' 50" W a distance of 195.32 feet;

(9) S 67° 12' 02" W a distance of 209.34 feet;

(10) S 03° 27' 20" E a distance of 133.67 feet;

(11) S 70° 46' 37" W a distance of 337.32 feet;

(12) N 37° 21' 55" W a distance of 80.59 feet;

(13) N 73° 21' 35" W a distance of 861.06 feet;

(14) N 79° 41' 42" W a distance of 479.02 feet;

(15) N 85° 13' 05" W a distance of 113.57 feet;

(16) N 73° 15' 50" W a distance of 97.58 feet;

(17) S 61° 31' 35" W a distance of 59.27 feet;

(18) S 14° 32' 49" W a distance of 629.23 feet;

(19) S 35° 34' 39" W a distance of 665.09 feet;

(20) N 83° 58' 40" W a distance of 213.16 feet;

TRACT I (Continued)

(21) N 55° 02' 00" W a distance of 167.70 feet;

(22) N 03° 13' 30" E a distance of 592.02 feet;

(23) N 62° 54' 16" E a distance of 231.51 feet;

(24) N 00° 00' 00" E a distance of 215.00 feet;

(25) N 43° 36' 10" E a distance of 290.00 feet;

(26) N 08° 12' 44" W a distance of 115.12 feet;

(27) N 32° 48' 33" W a distance of 477.18 feet;

(28) N 01° 50' 47" W a distance of 532.27 feet;

(29) N 47° 40' 35" W a distance of 118.82 feet;

(30) N 09° 17' 54" W a distance of 310.19 feet;

(31) N 07° 12' 51" E a distance of 786.85 feet;

(32) N 50° 33' 43" W a distance of 146.28 feet;

(33) N 77° 28' 40" W a distance of 129.26 feet;

(34) S 54° 45' 43" W a distance of 574.87 feet;

(35) S 41° 49' 01" W a distance of 674.91 feet;

(36) S 03° 16' 37" E a distance of 73.15 feet to an iron rod set in the north line of Golf Road;

(37) N 59° 49' 56" W a distance of 405.72 feet with the north line of said Golf Road to an iron rod set;

(38) N 30° 10' 04" E a distance of 42.96 feet;

(39) N 07° 40' 14" W a distance of 299.68 feet;

(40) N 00° 39' 17" E a distance of 175.01 feet;

(41) N 32° 12' 39" E a distance of 118.19 feet;

(42) N 61° 45' 31" E a distance of 111.23 feet;

(43) N 79° 39' 30" E a distance of 231.84 feet;

(44) N 58° 08' 42" E a distance of 351.95 feet;

(45) N 24° 26' 38" E a distance of 226.91 feet to an iron rod set in the south line of Golf Road;

TRACT 1 (Continued)

THENCE along and with the southerly line of Golf Road, the following described four (4) courses and distances:

(1) S 88° 54' 23" E a distance of 236.04 feet to an iron rod found at the beginning of a curve to the right;

(2) An arc distance of 138.62 feet with said curve to the right, said curve having a central angle of 6° 59' 52", a radius of 1134.99 feet, tangents of 69.40 feet, and a chord bearing and distance of S 85° 24' 27" E 138.53 feet, to an iron rod found at the point of tangency of said curve;

(3) S 81° 54' 31" E a distance of 84.27 feet to an iron rod found at the beginning of a curve to the left;

(4) An arc distance of 240.06 feet with said curve to the left, said curve having a central angle of 59° 48' 05", a radius of 230.00 feet, tangents of 132.26 feet, and a chord bearing and distance of N 68° 11' 27" E 229.31 feet, to an iron rod found at the intersection of the southerly line of said Golf Road and the north line of said 582.35 acre tract;

THENCE along and with the north line of said 582.35 acre tract and the south line of said Oak Bluff Estates, Phase 2, the following described three (3) courses and distances:

(1) S 88° 53' 40" E a distance of 89.20 feet to an iron rod found;

(2) S 88° 47' 57" E a distance of 380.72 feet to an iron rod found, and;

(3) S 89° 02' 29" E a distance of 501.86 feet to the Place of Beginning, containing 145.4457 acres of land.

SAVE AND EXCEPT PARCEL 1, described as follows, to wit:

BEGINNING at an iron rod set in the interior of the above described Tract 1, from which the northeast corner of said 582.35 acre tract described in Volume 1020, Page 912, Official Records of Williamson County, (also being the northeast corner of Tract 1), bears N 10° 12' 08" E a distance of 2008.84 feet;

THENCE traversing the interior of said 130.1957 acre tract, the following described courses and distances to iron rods set;

(1) S 59° 10' 43" E a distance of 286.11 feet;

(2) S 82° 42' 15" E a distance of 256.26 feet;

(3) N 84° 11' 36" E a distance of 593.04 feet;

(4) N 65° 03' 22" E a distance of 237.12 feet;

(5) S 53° 33' 39" E a distance of 665.02 feet;

(6) S 10° 14' 05" E a distance of 365.82 feet;

(7) S 20° 33' 22" W a distance of 170.88 feet;
(8) S 59° 51' 31" W a distance of 115.00 feet;

(9) N 68° 55' 55" W a distance of 397.09 feet;

(10) N 50° 37' 50" W a distance of 252.24 feet;

PARCEL 1 (Continued)

(11) N 86° 18' 31" W a distance of 621.29 feet;

(12) N 70° 27' 48" W a distance of 164.47 feet;

(13) S 61° 08' 59" W a distance of 190.66 feet;

(14) N 66° 43' 30" W a distance of 153.10 feet;

(15) N 36° 08' 31" W a distance of 220.42 feet;

(16) N 25° 06' 53" W a distance of 168.12 feet, and;

(17) N 18° 35' 36" E a distance of 286.88 feet to the Place of Beginning, containing 25.2753 acres of land.

AND ALSO TRACT 2, described as follows, to wit:

BEGINNING at an iron rod set in the southerly line of Golf Road, from which the northeast corner of said 582.35 acre tract bears N 55° 29' 40" E a distance of 2490.84 feet;

THENCE traversing the interior of said 582.35 acre tract, the following described courses and distances to iron rods set;

(1) S 03° 16' 42" E a distance of 172.03 feet;

(2) S 65° 02' 25" W a distance of 323.33 feet;

(3) S 10° 27' 36" W a distance of 400.32 feet;

(4) S 18° 21' 32" E a distance of 548.24 feet;

(5) S 00° 00' 00" E a distance of 161.86 feet;

(6) S 45° 35' 55" W a distance of 328.92 feet;

(7) S 62° 39' 48" W a distance of 132.83 feet;

(8) S 19° 44' 27" W a distance of 48.14 feet to an iron rod set in the northerly line of Golf Road;

(9) N 70° 15' 53" W a distance of 146.91 feet with the north line of Golf Road to an iron rod set;

(10) N 19° 44' 10" E a distance of 96.36 feet;

(11) N 19° 13' 50" W a distance of 227.71 feet;

(12) N 48° 14' 23" W a distance of 187.68 feet;

(13) N 90° 00' 00" W a distance of 260.00 feet;

(14) S 81° 47' 34" W a distance of 475.50 feet;

(15) S 64° 17' 29" W a distance of 95.14 feet;

(16) S 46° 47' 24" W a distance of 85.12 feet;

(17) S 28° 48' 59" W a distance of 293.23 feet to an iron rod set in the north line of Golf Road;

TRACT 2 (Continued)

(18) An arc distance of 210.00 feet with the north line of said Golf Road, said north line being a curve to the left having a central angle of 23° 08' 19", a radius of 520.00 feet, tangents of 106.45 feet, and a chord bearing and distance of N 77° 58' 57" W 208.58 feet, to an iron rod set;

(19) N 08° 31' 04" W a distance of 103.05 feet;

(20) N 57° 08' 21" W a distance of 191.67 feet;

(21) N 61° 28' 37" W a distance of 471.77 feet;

(22) N 01° 09' 00" E a distance of 224.77 feet;

(23) N 30° 05' 17" E a distance of 269.28 feet;

(24) N 09° 10' 59" W a distance of 626.69 feet;

(25) N 18° 49' 17" W a distance of 132.25 feet;

(26) S 75° 00' 00" W a distance of 20.00 feet;

(27) N 27° 19' 05" W a distance of 115.46 feet;

(28) N 08° 41' 22" E a distance of 117.28 feet;

(29) N 73° 36' 11" E a distance of 200.60 feet;

(30) N 25° 15' 48" E a distance of 96.35 feet;

(31) N 52° 48' 39" E a distance of 177.48 feet;

(32) N 46° 31' 54" E a distance of 437.22 feet;

(33) N 52° 16' 52" E a distance of 494.26 feet;

(34) N 05° 41' 35" W a distance of 286.74 feet;

(35) N 89° 49' 52" E a distance of 228.02 feet;

(36) S 75° 38' 46" E a distance of 75.39 feet;

(37) S 61° 23' 10" E a distance of 75.22 feet;

(38) S 26° 08' 10" E a distance of 79.27 feet;

(39) S 07° 51' 10" W a distance of 81.81 feet;

(40) S 54° 17' 36" E a distance of 174.08 feet;

(41) S 19° 39' 22" E a distance of 420.78 feet;

(42) S 54° 28' 33" E a distance of 475.71 feet;

(43) N 36° 09' 31" E a distance of 26.21 feet to an iron rod set in the south line of Golf Road;

(44) An arc distance of 210.32 feet with the south line of said Golf Road, said south line being a curve to the left having a central angle of 22° 16' 25", a radius of 541.03 feet, tangents of 106.51 feet, and a chord bearing and distance of S 48° 41' 44" E 209.00 feet, to an iron rod found at the point of tangency of said curve;

(45) S 59° 49' 56" E a distance of 530.52 feet with the south line of said Golf Road to the Place of Beginning, containing 118.4600 acres of land.

SAVE AND EXCEPT PARCEL 2, described as follows, to wit:

BEGINNING at an iron rod set in the interior of the above described Tract 2, from which the northeast corner of said 582.35 acre tract described in Volume 1020, Page 812, Official Records of Williamson County, bears N 63° 22' 40" E a distance of 2903.79 feet;

THENCE traversing the interior of said 118.4600 acre Tract 2, the following described courses and distances to iron rods set;

(1) S 15° 56' 43" W a distance of 136.00 feet;

(2) S 32° 29' 26" W a distance of 154.35 feet;

(3) S 10° 50' 05" W a distance of 425.59 feet;

(4) S 00° 47' 07" E a distance of 221.07 feet;

(5) S 68° 36' 00" W a distance of 1177.19 feet;

(6) N 71° 50' 18" W a distance of 120.23 feet;

(7) N 49° 32' 18" W a distance of 198.82 feet;

(8) N 22° 49' 00" W a distance of 90.58 feet;

(9) S 67° 11' 00" W a distance of 152.19 feet;

(10) N 28° 27' 38" W a distance of 48.46 feet;

(11) N 30° 21' 46" E a distance of 310.60 feet;

(12) N 21° 00' 23" W a distance of 772.36 feet;

(13) N 49° 18' 38" E a distance of 676.38 feet;

(14) N 43° 37' 01" E a distance of 556.66 feet;

(15) S 66° 18' 34" E a distance of 107.02 feet;

(16) S 17° 41' 23" E a distance of 396.44 feet;

(17) S 67° 22' 48" E a distance of 825.00 feet to the Place of Beginning, containing 53.3804 acres of land.

COALTER & ASSOCIATES, SURVEYORS

Stan Coalter

Stan Coalter, RPS, LSLS
7-21-91

STATE OF TEXAS
STAN COALTER
1401
REGISTERED PUBLIC SURVEYOR

STATE OF TEXAS COUNTY OF WILLIAMSON
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me, and was duly RECORDED in the Volume and Page of the named RECORDS of Williamson County, Texas, as stamped hereon by me, on

SEP 26 1991

COUNTY CLERK
WILLIAMSON COUNTY, TEXAS

FILED FOR RECORD
1991 SEP 26 PM 4:23

COUNTY CLERK

EXHIBIT "C"

ACH FORM

EXHIBIT "D"

GOLF OPERATIONS SCOPE OF WORK

The scope of work covered by these Golf Operations Specifications consists of providing labor; services; materials; supplies; golf carts; selecting golf shop furniture, fixtures, equipment, inventory for sale; and other items as may be required to support the operation of a quality, municipal golf course, golf shop, and practice facility. Services according to these specifications shall commence at a time necessary for the Contractor to adequately prepare for the start of revenue producing operations and will continue until termination of the agreement between the golf operations Contractor and the City.

A. PERSONNEL & SUPERVISION

Golf operations as identified herein will be conducted under the direct supervision of an experienced, qualified, onsite operations Manager.

The Contractor will be responsible for hiring, training, managing, and compensating the necessary personnel for the performance of the work according to these specifications and other terms contained in the agreement documents. A Staffing plan may include a PGA/LPGA Class "A" Professional, who is onsite a minimum of 40 hours per week and will provide staff on duty during pro shop operating hours.

B. HOURS OF OPERATION

In the event play and/or use must be temporarily suspended on the golf course due to inclement weather conditions, the decision on when to allow use and/or play to resume, and when to allow golf carts to go on the course, will be made by the Contractor and the City will be notified.

C. CLUBHOUSE AND GOLF SHOP

Merchandise Quality/Quantity:

a. Contractor shall agree, on behalf of the City, to purchase the existing pro shop inventories from the current operator by actual cost and consistent with a physical inventory of such items.
b. Contractor shall provide and maintain such inventory of golf merchandise as is deemed necessary by mutual consent of the Contractor and the City.
c. Contractor shall provide a point-of-sale system, and all fixtures necessary for the display and sale of merchandise. Costs will be part of the annual budget.
d. The Contractor shall offer for sale goods of premium quality consistent with the quality of goods sold at the equivalent daily-fee golf course.
e. Contractor shall not offer for sale or rental any item of merchandise which the City deems objectionable or beyond the scope of the agreement.

Pricing:

The Contractor shall charge competitive prices for the same or similar goods sold at the equivalent quality, daily fee golf course in the area consistent with the cost to provide such goods.

D. GOLF AND OTHER SERVICES

Required Operating Responsibilities:

The Contractor will be responsible for providing all Golf Services at the Course including, at a minimum, the following services, and activities:

a. Manage golf cart and equipment rentals.
b. Supervise and control the starting time and reservation system.
c. Collect and deposit all daily revenues, including, but not limited to, monies from green fees, merchandise sales, cart and equipment rentals, lessons, tournaments, gift certificate sales, resident and multi-play cards, and membership programs.
d. Provide quality golf lessons and instruction for all levels of play.
e. Promote golf and golf-related activities in cooperation with existing golf clubs, organizations, tourist development, and the City of Round Rock.
f. Schedule and facilitate golf tournaments, clinics, and junior golf promotions that meet with the City's image and priorities.
g. Provide, schedule, and supervise course marshal and starter services.
h. Attend monthly meetings, as requested, with the City to provide updates on golf course matters.
i. Work cooperatively and collaboratively with the supervision of maintenance, food, and beverage, and City management staff to provide a positive golf experience for all users.
j. The contractor will make a representative available for meetings with local Men's and Women's Golf Associations.
k. The contractor will maintain signage and advertisement for the Men's and Women's Golf Associations (memberships).

Reservations:

a. The Contractor shall provide, maintain, and upgrade reservation systems as needed to include a website.
b. Group and tournament events shall be handled by qualified, experienced personnel.
c. Restricted walking will be permitted; Contractor to determine.

Starter/Player Assistants:

a. The Contractor shall provide a Starter and a plan for the Starter to monitor play and provide a quality experience as players begin each round of golf.

Pace of play objectives shall be established by the Contractor, approved by the City and communicated to players before they begin each round of golf.

b. The Contractor shall submit a plan to the City for Golf Course marshal services to promote a comfortable yet brisk pace of play. Any subsequent curtailment or decrease of this service shall be reasonably justified by the Contractor and approved by the City.

c. Any special requirements for group/tournament play will be established by the Contractor, conveyed when reservations are booked and communicated by golf operations staff as groups are checked in.

d. The Contractor shall provide all complimentary, necessary and consumable golf supplies including scoring pencils and "logo" scorecards.

e. The Contractor shall provide cart assignment sheets, scoreboards, and other special materials to support group/tournament events. The support materials shall be consistent with quality and "logo" identification with other daily fee play materials.

Rentals:

a. The Contractor shall provide and maintain for rental an inventory of quality, recognized brand sets of golf clubs, with bags, sufficient to meet player's demands. Costs will be included in the annual budget

b. The Contractor shall provide and maintain for rental a supply of pull carts sufficient to meet player's demands. Costs will be included in the annual budget

c. The Contractor shall ensure an adequate number golf carts are available. The contractor will maintain an adequate number of this supply in a clean, fully-charged manner sufficient to meet player's demand. Costs will be included in the annual budget

Practice Areas:

a. The Contractor shall be responsible for the quality operation of the practice facility.

b. The Contractor shall be responsible for maintaining a high quality and sufficient quantity of all elements used at the practice facility including balls, hitting surfaces, landing area, cups, and flags.

Lessons:

The Contractor shall provide golf lessons and training by qualified instructors under the supervision of a Class "A" professional whose qualifications have been approved by the City.

Group Tournament Services:

a. The Contractor shall provide group event, tournament, and outing scheduling services without discrimination consistent with the City standards and image.
b. The Contractor shall promote the use of all other fee services and sale of goods.
c. Existing tournament schedules and annual tournaments run by the local golf associations will have preferred scheduling.
d. The contractor may negotiate fees for group/tournament activity or other special uses.

Equipment Repair:

a. If the City and the Contractor together determine that there is a demand for equipment repair service, the Contractor shall submit a plan to maintain all City-owned and leased equipment . (Referenced equipment includes items such as ID card printers, push carts, club fitting equipment, etc.)

Golf Green Fees:

a. Fees and Charges
    1. Contractor shall keep current a comprehensive schedule of fees for golf play and cart rentals. Standard fees shall be displayed and posted on the website.
b. Establishing of Fees

    1. Contractor shall conduct an annual, comprehensive survey of green fee and rental rates at comparable golf course within the market area and submit recommendations for fee changes to the City.
    2. The City must approve all green fee and rental rate changes, for which approval will not be unreasonably withheld.
    3. The contractor may run fee discounts and special pricing packages at their discretion.

Cash Handling and Reporting

a. The Contractor shall keep complete records of all transactions concerning all monies for fees and goods collected.
b. The Contractor shall be responsible for and keep neat, accurate, auditable records of reservations made and fulfilled, and fees charged for every individual and group who use the golf course.
c. The Contractor shall, throughout the term of this agreement, comply with City's policy regarding the collection of all fees, reporting requirements for fees collected, and the system of accountability and procedures thereof.

d. At the City's request, all accounting records and starting sheets shall be available for examination by the City, its auditor, and any 3rd parties so designated by the City.

e. All green fees and sales & rental transactions must be entered into Point of Sale Systems. A register receipt, showing a correct date and time of issue, and amount paid, shall be tendered to every person paying for fees or services.

EXHIBIT "E"

GOLF COURSE MAINTENANCE

Golf Course Maintenance Requirements

Listed below are the standard maintenance guidelines and requirements to be performed. The addition or deletion of services necessary to maintain the course to USGA standards should be clearly identified in the Proposer's proposed Maintenance Plan.

A. Soil Analysis

1. Soil samples shall be taken at least once a year on greens, tees, and fairways.
2. A certified laboratory shall analyze the samples, and the resulting report will be used to make treatment decisions.
3. Fertilizer applications will be tailored to the soil/plant needs.

B. Fertilization Requirements (by USGA recommendations)

1. Greens shall be fertilized to promote playability, and a healthy grass and root system.
2. Tees shall be fertilized as needed.
3. Fairways, roughs, driving range, and clubhouse turf shall receive necessary applications to promote maximum turf coverage per year based upon a standard level set for the particular course.
4. Landscape, ornamentals, and shrubbery to receive at least one application a year. Mulching must be maintained and replenished to maintain appearance standards.

C. Mowing Requirements

These activities shall be scheduled at such a time as to limit the interference with play.

1. Greens:
   a. Greens to be mowed on a daily basis, weather permitting and seasonally adjusted.
   b. Mowing heights of the greens shall be consistent and be maintained on a daily basis to keep a smooth rolling service to USGA standards.
   c. Collars will be maintained at less than 750/1000 inch weather permitting and seasonally adjusted

2. Tees, Fairways, and Aprons. These areas will be mowed as needed and be consistent with a maximum of 5/8 inch for the tees.

3. Roughs and other areas:

   a. Roughs will be mowed as needed to help maintain an acceptable pace of play and golfer enjoyment.

b. Bunker slopes, clubhouse turf, and all other turf areas shall be mowed as needed.
c. Sand traps are to be raked daily weather permitting and seasonally adjusted
d. During colder months it may be acceptable to mow bi-weekly.
e. Clubhouse flowerbeds will be maintained and kept free of weeds.
f. Leaf removal to be conducted to facilitate play.

D. Cultural Practices

1. Aerification:
   a. Greens are required to be aerified a minimum of two times a year.
   b. Tees and aprons are required to be aerified once a year.
   c. Fairways are required to be aerified once a year.
   d. Rough is to be aerified at the discretion of the Contractor.
   e. Topdressing is required as needed; topdressing material shall meet the requirements of the USGA specifications. Vendor information will be supplied to maintain consistent material to avoid creating a perch water table.

2. Verti-cutting:
   a. Aprons and greens are to be verti-cut from April through October, twice a month. The greens mower shall follow immediately after verti-cutting. The height of the greens mower should be the same as the height of your everyday green setting.
   b. Tees and fairways may be verti-cut bi-annually as conditions dictate, and based on a mutual agreement between the two parties.

E. Over-seeding

1. Greens: Only necessary if there is turf loss during the season.
   2. Tees and Fairways: tees, aprons, and fairways may be over seeded with
   turf-type perennial rye grass to be applied in late August and no later than the last week of September or as conditions dictate, and based on a mutual agreement between the two parties

F. Chemical Program

1. Contractor Must Provide a Detailed Agronomic Plan for Cultural Activities and Chemical Applications

G. Cups and Pins

1. Pin locations shall be changed as appropriate, most likely seven days a week during the prime season.
2. Cups shall be replaced and painted as needed.

3 Pins will be placed a least 10 feet from the previous location and at least three (3) paces from the edge of the green.

H. Repairs

1. Repair all ball marks, divots, and other damaged turf on greens including chipping area & practice greens as needed.
2. Out of bounds and hazard stakes will be replaced and maintained as needed and placed to USGA standards.

I. Cart Paths

1. Following the renovation of the course, it will be the responsibility of the Contractor to maintain the cart paths and the turf entering and exiting the cart paths.

J. Irrigation

1. It will be the responsibility of the Contractor to ensure that all of the equipment required to irrigate the golf course is maintained in good repair.
2. It will be the Contractor's responsibility to determine the frequency and the amount of irrigation used in each application.

K. Lake and Ditch Maintenance

1. It will be the responsibility of Contractor to maintain the lakes and ditches including culvert pipes and headways on the golf property.
2. Contractor shall provide a plan for maintaining ditches and lakes as part of the proposal.

L. Personnel

1. The Contractor shall provide adequate staffing to carry out services on a timely basis stated in finalized contract.

2. The Contractor shall provide a qualified golf course superintendent who holds a Class A Golf Course Superintendent Association of America (GCSAA) professional license or certification and local chapter of Superintendent Association with a license to apply chemicals normally used in the geographical area and approved by the City.

EXHIBIT "F"

FOOD, BEVERAGE & CATERING REQUIREMENTS

A. Licenses and Permits

The Contractor must obtain and keep current all licenses and permits necessary to run an indoor and outdoor food service facility at the City of Round Rock Golf Course. In accordance with the Texas Alcohol Beverage Commission (TABC), the current license is non-transferable and would have to be reissued under a change of ownership if the golf course managed by a company other than the current licensee. The Contractor shall be held responsible for the legal serving of all patrons and customers, in accordance with all TABC rules, statutes and the Texas Alcoholic Beverage Code. Costs associated with obtaining a new license will be an operating expense of the golf course

C. Staffing

The Contractor must provide all necessary staff to prepare and serve the menu and adhere to current Health Department regulations and standards.

D. Hours of Operation

1. The food and beverage operation are expected to operate seven days a week during the golf season in a casual environment to meet the needs of the golf course patrons, visitors, and the surrounding community. At a minimum the food and beverage operation are expected to be open when the Pro Shop is open. The Contractor can, of their choosing, be open outside the operating hours of the Pro Shop. The contractor will work with the Golf Pro and Golf Course Director in scheduling events to ensure the best use of the facility is allowed. Non-golf events will be welcome but are secondary to golf events.

E. Beverage Cart Service

The Contractor will be expected to provide roving beverage cart service during the hours of popular demand as determined by patron utilization.

F. Operating Costs

The Contractor will be responsible for ensuring the availability of all merchandise and supplies necessary for the production of the food and beverage menu, ensuring that an adequate level of supplies is kept stocked at all times, and accounting for all revenues and expenses. The Contractor is responsible for maintaining an accurate perpetual inventory system of all items held for food or beverage consumption. Such inventory levels will be verified on a regular basis as deemed appropriate based on accuracy and experience, and shall be reported to the City.

G. Supplies and Equipment

All equipment will be inventoried when the Contractor commences operation. The Contractor shall replace any equipment that has been destroyed, damaged, or worn beyond its useful life, with like equipment after consulting with the City and obtaining written approval. Expenses will be part of the golf course operating budget or annual capital expenditure plan. Upon the expiration of this Agreement, the Contractor shall relinquish inventoried equipment to the City in good and working order.

H. Financial Reporting

1. The Contractor shall maintain a system of accounting that accounts for all monies received at the time of sale and at any time be prepared to submit accurate records of all transactions.
2. The Contractor shall offer to provide receipts to customers for all goods and services sold in the restaurant.
3. The Contractor shall keep and maintain **all** required financial records in accordance with established City retention policies and procedures, while utilizing accounting procedures compatible with the City's financial system. The City will consider alternative procedures and reports proposed by the prospective Contractor, provided they assure adequate internal controls, compliance with State laws and City regulations, and the safeguarding of City assets.
4. The City shall have the right, and plans to exercise that right, to request and audit performed by an independent Certified Public Accountant selected by the City.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-126075

Date Filed:
10/19/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

KemperSports Management Inc
Northbrook, IL 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 Round Rock

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.

Forest Creek Golf Club
Golf Course Management

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

OFFICIAL SEAL
LAURA A PINTER
Notary Public - State of Illinois
My Commission Expires Apr 2, 2017

AFFIX NOTARY STAMP / SEAL ABOVE

James R. Stegall
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said JAMES R. STEGALL, this the 19 day of October, 20 16, to certify which, witness my hand and seal of office.

Laura A. Pinter — Signature of officer administering oath
LAURA A. PINTER — Printed name of officer administering oath
Executive Assistant — Title of officer administering oath

City of Round Rock

Agenda Item Summary

Agenda Number: F.5

Title: Consider a resolution authorizing the Mayor to execute an Agreement with US Foods, Inc. for the purchase of food and supplies at Round Rock facilities.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Chad McKenzie, Sports Management and Tourism Director

Cost:

Indexes:

Attachments: Resolution, Exhibit A, Form 1295

Department: Sports Management and Tourism

Text of Legislative File 2016-3957

The City is looking at entering into a 5-year agreement with US Foods, Inc. to be the food and supplies provider for various City facilities. This agreement works with our membership with the National Joint Powers Alliance (NJPA) Cooperative and allows for the purchase of these items at a discounted rate through this vendor. The Sports Center and Multipurpose Complex will use this agreement immediately, however it is setup for the flexibility for any department to utilize the discounted rates. Therefore, there is no set maximum price as the money spent will determine on who is utilizing the agreement in the future. Concession line item budgets will be approved on a yearly basis.

Source of Funds: Hotel Occupancy Tax Fund, General Fund

Staff recommends approval.

RESOLUTION NO. R-2016-3957

WHEREAS, the City of Round Rock ("City") desires to contract for the purchase of food supplies and services at various City facilities, and

WHEREAS, the City is a member of National Joint Powers Alliance (NJPA) Cooperative, and

WHEREAS, U.S. Foods, Inc. is an approved vendor of the NJPA, and

WHEREAS, the City wishes to purchase certain goods and services from U.S. Foods, Inc. through NJPA Cooperative, Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Agreement for Purchase of Food Supplies and Services at Round Rock Facilities With U.S. Foods, Inc., a copy of said Agreement being attached hereto as Exhibit "A" and incorporated herein.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____

ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____

SARA L. WHITE, City Clerk

EXHIBIT

"A"

CITY OF ROUND ROCK AGREEMENT
FOR PURCHASE OF FOOD SUPPLIES AND SERVICES
AT ROUND ROCK FACILITIES
WITH
U.S. FOODS, INC

THE STATE OF TEXAS	**§**	
	§	
CITY OF ROUND ROCK	**§**	**KNOW ALL BY THESE PRESENTS:**
	§	
COUNTY OF WILLIAMSON	**§**	
COUNTY OF TRAVIS		

This Agreement for provision of uniform food supplies and services, referred to herein as the "Agreement," is made and entered into on this the _____ day of the month of _____ , 2016, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664, referred to herein as "City," and U.S. FOODS, INC, with offices located at 2150 Firecracker Drive, Buda, Texas 78610, referred to herein as "Vendor or US Foods." This Agreement supersedes and replaces any previous agreements between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City desires to contract for the purchase of food supplies and services at various City facilities, and City desires to purchase same from Vendor; and

WHEREAS, City is a member of National Joint Powers Alliance (NJPA) Cooperative and Vendor is an approved NPJA vendor; and

WHEREAS, the City desires to purchase certain goods and services from Vendor through NPJA Cooperative to receive pricing and services as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified goods and Vendor is obligated to sell same.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services** mean work performed to meet a demand or effort by Vendor to comply with promised delivery dates, specifications, and technical assistance specified.

G. **Vendor** means U.S. Foods, Inc. or any of its corporate structures, successors or assigns.

2.01 EFFECTIVE DATE, INITIAL TERM, AND ALLOWABLE RENEWALS

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The term of this Agreement shall be for five (5) consecutive twelve-month periods from the effective date hereof. The NJPA food contract # 090414-USF was awarded on October 21, 2014 and remains in effect until October 21, 2018. To meet the City's requirements, NJPA and Vizient have authorized US Foods to offer the program specifics detailed in Exhibit A for the term requested.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement and the Vizient Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 SCOPE OF WORK

Vendor shall satisfactorily provide all deliverables and services described in Exhibit "A" as requested by the City within the contract term specified. A change in the Scope of Services and any additional fees related thereto must be negotiated and agreed in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

5.01 COSTS

City shall receive the appropriate discounts set forth in Exhibit "A" for the various bid items listed in Exhibit "A."

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

A. Name and address of Vendor;

B. Purchase Order Number;

C. Description and quantity of items received or services provided; and

D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then-current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Vendor will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City if:

A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor, or supplier about goods delivered or the service performed that causes the payment to be late; or

B. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or

C. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or

D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without incurring any liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

11.01 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain same from another source or supplier(s).

12.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements set forth in Exhibit "B."

13.01 CITY'S REPRESENTATIVE

City hereby designates the following representative(s) authorized to act in its behalf with regard to this Agreement:

Chad McKenzie
Sports Management and Tourism Director
City of Round Rock
221 E. Main Street
Round Rock, Texas 78664
(512) 218-5488

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the

reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults hereunder and is a cause of City purchasing the specified services elsewhere, Vendor agrees that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed. Vendor shall be declared in default of this Agreement if it does any of the following:

A. Fails to make any payment in full when due;

B. Fails to fully, timely and faithfully perform any of its material obligations hereunder;

C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or

D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to City.

D. Vendor has the right to terminate this Agreement for cause, in the event of material and substantial breach by City.

E. In the event of a termination under this section, the following shall apply: Upon delivery of the referenced notice to the applicable party, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after notice of termination, Vendor shall submit a statement detailing the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement.

18.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising directly out of, or incident to, concerning or resulting from the gross negligence or willful misconduct of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

19.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use reasonable efforts to comply with all federal and state laws, City's Charter and Ordinances, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. Vendor acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Services Provider agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Services Provider agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Services Provider agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

20.01 ASSIGNMENT AND DELEGATION

The parties hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

21.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

A. When delivered personally to recipient's address as stated in this Agreement; or

B. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

U.S. Foods, Inc
2150 Firecracker Drive
Buda, TX 78610

Notice to City:

City Manager		Stephan L. Sheets, City Attorney
221 East Main Street	AND TO:	309 East Main Street
Round Rock, TX 78664		Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

22.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between City and Vendor. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

As a participating member of NJPA, your purchases of food and food related products from US Foods are made under and subject to that certain Authorized Distributor Agreement between US Foods and Vizient, Inc. (Vizient f/k/a Novation), effective as of July 1, 2009 (as amended, supplemented, restated or otherwise modified from time to time, the "Vizient Agreement").

24.01 DISPUTE RESOLUTION

City and Provider hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25.01 SEVERABILITY

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

26.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Each party understands and agrees that time is of the essence and that any failure to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Each party shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused due to failure to perform, each party may pursue any remedy available without waiver of any of its additional legal rights or remedies.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures appear of the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

U.S. Foods, Inc

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Food and Food Related Solutions and Services Contract Overview

NJPA Awarded Supplier:
US Foods

Contract #090414-USF

EXHIBIT "A"

CONTRACT NO.	# 090414-USF
SUPPLIER	US Foods 9399 W. Higgins Road, Suite 800 Rosemont, IL 60018
TIME FRAME	10/21/2014-10/21/2018
PRODUCTS	Food and Food Related Solutions and Services
CONTACTS	NJPA, Tom Morgan *tom.morgan@njpacoop.org* National IPA, *info@nationalipa.org* US Foods, Kathy Anthony- West *kathy.anthony@usfoods.com* US Foods, Paula Bruck- East *paula.bruck@usfoods.com*
DISTRIBUTION	Products will be distributed through the US Food's distribution network. US Foods currently operates more than 60 wholly owned primary ordering locations, or POLs.
PRICING	The price to Participating Members for all products sold (the "Sell Price") will be calculated on the basis of Delivered Price to US Foods. Please refer to the pricing section of this contract summary for complete information.
CONFIDENTIALITY NOTICE	US Foods regards contract information as proprietary and confidential. We have attempted to balance the Participating Member's needs for contract information by providing in this document a summary of the Participating Member's affirmative obligations under this particular contract. If a Participating Member has specific needs beyond this summary, US Foods is prepared to work with the Participating Member to address these needs. The Participating Member should contact US Foods to initiate such a request.
NJPA VENDOR CONTRACT SUMMARY AND RFP DOCUMENTATION	NJPA VENDOR CONTRACT SUMMARY AVAILABLE AT *WWW.NJPA.ORG* CONTRACT SUMMARY CONSISTS OF THE FOLLOWING DOCUMENTS: • REQUEST FOR PROPOSAL (RFP) • BID ACCEPTANCE AND AWARD • BID EVAULATION • BID COMMENT AND REVIEW • AFFIDAVIT OF ADVERSTISEMENT • BID OPENING WITNESS PAGE • BOARD MINUTES

EXHIBIT "A"

As a participating member of NJPA, your purchases of food and food related products from US Foods, Inc. ("US Foods") are made under that certain Authorized Distributor Agreement between US Foods and Vizient (formerly known as Novation) , effective as of July 1, 2009 (as amended, supplemented, restated or otherwise modified from time to time, the "Vizient Agreement").

PRICING
Definition of Sell Price

The price to Participating Members for all products sold under the Vizient Agreement (the "Sell Price") will be calculated on the basis of Delivered Price to US Foods. For the purposes of the Vizient Agreement, "Delivered Price" to US Foods is defined as follows:

1. In the case of contract products, the amount provided in the applicable supplier agreement as the national or regional contract price to be billed to Participating Member s without the subtraction for cash discounts allowed by suppliers for prompt payment and prior to the addition of the markup.
2. In the case of non-contract products, the manufacturer's (supplier, packer or any other vendor) Delivered Price on the manufacturer's invoice, if available from manufacturer, or unit price FOB manufacturer's dock plus standard freight (as hereinafter defined) to US Food's distribution center, less off-invoice discounts or off-invoice allowances (to mean manufacturer-generated discounts or allowances on particular items for set periods of time, which are specifically reflected on the invoice).
3. Where a Participating Member, or US Foods on behalf of a Participating Member, has negotiated a price for any product directly with its supplier, the Delivered Price for all such products shall be that negotiated price.

Standard freight, in those cases where the invoice cost to the delivering primary ordering location is not a Delivered Price, means a reasonable freight charge to transport a product from the supplier to the primary ordering location based on market tariff conditions. Freight charges may include common or contract carrier charges imposed by the manufacturer (supplier, packer or any other vendor) or a carrier or charges billed by US Food's freight management service. Standard freight for any product will not exceed (a) the manufacturer freight price normally payable by the US Food's distribution center for inbound shipments of regular quantity requirements of such products for such distribution center that would have been paid had freight not been managed by US Foods or its affiliates; or (b) if there is no manufacturer price, an average price based on market conditions for freight in the same market for the same type of freight service for like products, shipping methods and quantities, which may include consideration of standard tariff rates.

The Sell Price of each product priced under the Vizient Agreement will equal (a) the Delivered Price of such product, plus (b) the percentage of markup or fixed fee specified on the Distribution Markup Schedule for the product category, less (c) off-invoice discounts or off-invoice allowances (as defined above).

Except as otherwise specified, the price for each product on an order guide will be calculated on a monthly basis at the time the order guide is prepared. Prices for all products on the order guide will be maintained until the next order guide is prepared and sent to the Participating Members, such to the price changes as described in the Price Change Frequency Schedule. If the Delivered Price of any monthly priced product increases by more than 10 percent, US Foods may immediately recalculate the Delivered Price, provided it notifies Participating Members (via electronic or other means determined by US Foods) of adjustment to Delivered Price at least 48 hours prior to implementation of the adjustment.

Due to the added handling and damage costs associated with handling less than full cases of the product, a special handling charge of 1 percent will be added to the markup of all products sold by individual container or in less than full cases. This special handling charge will be applied to the markup as defined above.

Price Changes

US Foods will make every effort to provide 10 days' prior notification to any change in pricing terms except where price changes occur more frequently than every 30 days. Prices for non-contract products shall not change more frequently than noted below:

PRODUCT CATEGORY	PRICE CHANGE FREOUENCY
Beef	Weekly
Cheese	Weekly
Coffee (Including Frozen)	Weekly
Dairy	Weekly
Disposables	Monthly
Dry Goods and Refrigerated Goods	Monthly
Flour	Weekly
Foodservice Chemicals	Monthly
Frozen Goods	Monthly
Frozen Juice (other than Orange Juice)	Monthly
Lamb	Weekly
Mayonnaise	Weekly
Nutritionals	Monthly
Oils and Shortening	Weekly
Orange Juice	Weekly
Pork	Weekly
Poultry	Weekly
Produce	Weekly
Rice	Weekly
Seafood	Weekly
Shell Eggs	Weekly
Small Wares/Equipment	Monthly
Specialty Meats	Weekly
Sugar	Weekly
Veal	Weekly

US Foods will provide an order guide to each Participating Member listing current pricing at the beginning of each month, or at any other time requested by the Participating Member , provided that Participating Member receives an updated order guide no less than once every 30 days. Weekly updates to the order guide will be provided to Participating Members for items in product categories with weekly price change frequency.

Mark Up Schedule

Product Category	HC / C&U / Muni /CORP under 2500	HC / C&U / Muni /CORP over 2500	Preschool over $1,000	Preschool under $1,000
Boxed Meats	6.10%	4.55%	6.10%	10.04%
Coffee (Inc Frz)	9.60%	8.05%	9.60%	13.54%
Dairy	8.10%	6.55%	8.10%	12.04%
Disposables	10.15%	9.55%	11.10%	15.04%
Dry/Refrig Goods	8.15%	7.55%	9.10%	13.04%
Foodservice Chemicals	13.60%	12.05%	13.60%	17.54%
Fresh/Frozen Poultry, Seafood, Beef, Pork, Deli Meats (Exl Boxed)	7.15%	6.55%	8.10%	12.04%
Frozen Goods	9.15%	8.55%	10.10%	14.04%
Frozen Juice	8.10%	6.55%	8.10%	12.04%
Nutritionals	6.10%	4.55%	6.10%	10.04%
Produce	9.60%	8.05%	9.60%	13.54%
Frozen Vegetables	9.10%	7.55%	9.10%	13.04%
Shell Eggs	9.60%	8.05%	9.60%	13.54%
Processed Eggs (Refrig and Froz)	9.10%	7.55%	9.10%	13.04%
Smallwares/Equipment	11.00%	11.00%	11.00%	11.00%
Equipment (single items >$1,000)	8.00%	8.00%	8.00%	8.00%

Mark Up Schedule (Fee per Case)

2016 Fee Schedules			2016 Fee Schedules with Volume Incentive							
Contract #	15010098	25010098	55010365		65010365	35010098	45010098		55010098	
Product Category	K-12 Over $2500	K-12 Under $2500	K-12 Over $2500 $1M+	K-12 Under $2500 $1M+	K-12 Over $2500 $2M+	K-12 Under $2500 $2M+	K-12 Over $2500 $3M+	K-12 Under $2500 $3M+	K-12 Under $2500 $5M+	K-12 Over $2500 $5M+
Boxed Meats	$2.10	$3.01	$2.04	$2.95	$2.01	$2.87	$1.96	$2.87	$2.83	$1.92
Coffee (Inc Frz)	$3.04	$3.73	$2.98	$3.67	$2.95	$3.59	$2.90	$3.59	$3.55	$2.86
Dairy	$1.73	$2.01	$1.67	$1.95	$1.64	$1.87	$1.59	$1.87	$1.83	$1.55
Disposable Cutlery	$1.05	$1.11	$0.99	$1.05	$0.96	$0.97	$0.91	$0.97	$0.93	$0.87
Disposables	$2.51	$2.86	$2.45	$2.80	$2.42	$2.72	$2.37	$2.72	$2.68	$2.33
Dry/Refrig Goods	$1.61	$1.72	$1.55	$1.66	$1.52	$1.58	$1.47	$1.58	$1.54	$1.43
Foam Trays	$1.74	$1.98	$1.68	$1.92	$1.65	$1.84	$1.60	$1.84	$1.80	$1.56
Foodservice Chemicals	12.05%	13.60%	11.77%	13.32%	11.60%	13.15%	11.38%	12.92%	12.75%	11.21%
Fresh/Frozen Poultry, Seafood, Beef, Pork, Deli Meats (Exl Boxed)	$2.07	$2.22	$2.01	$2.16	$1.98	$2.08	$1.93	$2.08	$2.04	$1.89
Frozen Goods	$2.56	$2.72	$2.50	$2.66	$2.47	$2.58	$2.42	$2.58	$2.54	$2.38
Frozen Juice	$1.05	$1.18	$0.99	$1.12	$0.96	$1.04	$0.91	$1.04	$1.00	$0.87
Frozen Potatoes	$1.61	$1.85	$1.55	$1.79	$1.52	$1.71	$1.47	$1.71	$1.67	$1.43
Portion control condiments	$1.05	$1.19	$0.99	$1.13	$0.96	$1.05	$0.91	$1.05	$1.01	$0.87
Produce	$1.83	$2.10	$1.77	$2.04	$1.74	$1.96	$1.69	$1.96	$1.92	$1.65
Frozen Vegetables	$1.61	$1.88	$1.55	$1.82	$1.52	$1.74	$1.47	$1.74	$1.70	$1.43
Shell Eggs	$2.40	$2.63	$2.34	$2.57	$2.31	$2.49	$2.26	$2.49	$2.45	$2.22
Processed Eggs (Refrig and Froz)	$1.61	$2.04	$1.55	$1.98	$1.52	$1.90	$1.47	$1.90	$1.86	$1.43
Smallwares/ Equipment	11.00%	11.00%	10.72%	10.72%	10.56%	10.56%	10.34%	$10.34	10.17%	10.17%
Equipment (single items >$1,000)	8.00%	8.00%	7.73%	7.73%	7.57%	7.57%	7.35%	7.35%	7.20%	7.20%

Volume Incentive Discount Schedule

NOTE: Incentive discounts have been built into the foregoing K-12 Fee/Case Mark Up Schedule.
The Volume Incentive described above will apply to qualified single and multi-unit accounts:

- For all new accounts and/or bids effective October 1, 2013
- For accounts that meet all Agreement requirements and Authorized Distributor is their primary distributor
- For multiple-units that have direct control of the purchasing behavior and act as a single purchasing entity
- Multiple-units that participate in one bid/RFP process and are committed to act and held accountable to make a unified single decision on the outcome of the RFP.

Annual Fee Per Case Review Process:
On an annual basis, the fee per case amount for all applicable contracts shall be reviewed, and decreased or increased based on the following methodology:
Authorized Distributor shall provide the new fee per case to Vizient by March 1st of each year for review and acceptance by March 31st for all bids effective July 1st.
Information provided will include:

- CPI Index increase or decrease shall account for 60% of the calculation. This will be based upon the average for last 12 months compared to prior year. Example: February 2012 – January 2013 compared to February 2013 – January 2014.
- Average Case cost increase or decrease shall account for 40% of the calculation. The average case cost will be based upon Vizient K12 volume over the last 13 weeks average. Example: November 2012 – January 2013 compared to November 2013 – January 2014.

*The blended result of this equation will equal the % decrease or increase to the fee per case structure.

Non-Price Specifications

Any upcharges and/or discounts will be applied as a percentage to each invoice as a final total volume adjustment. For the purpose of calculating discounts, total monthly volume, average order size, and DSO will be determined and maintained for a period of one quarter, based on purchasing practices for the previous quarter.

Total Monthly Volume

MONTHLY VOLUME	TRANSLATES TO QUARTERLY	INCENTIVE %
$83,000-$175,999	$249,000-$527,997	-0.25%
$176,000-$268,999	$527,997-$806,997	-0.40%
$269,000-$423,999	$806,997-$1,271,997	-0.60%
$424,000 +	$1,271,997 +	-0.75%

Average Order Size

AVERAGE ORDER SIZE	INCENTIVE %
$3,000-$3,499	-0.15%
$3,500-$3,999	-0.25%
$4,000-$5,499	-0.35%
$5,500-$6,999	-0.50%
$7,000-$10,999	-0.65%
$11,000-$15,999	-0.95%
$16,000+	-1.20%

(The average order size maintained during the prior quarter will be the basis for the discount qualification.)

Prompt Payment/Prepayment

PROMPT PAYMENT/PREPAY	INCENTIVE %
Prepayment	-0.60%
0-10 days	-0.30%
11-15 days	-0.25%
16-20 days	-0.10%
21-30 days	0.00%
31-45 days (upcharge)	0.25%
46-60 days (upcharge)	0.50%
Each additional 15 days greater than 60	0.25%

(For new participating members, payment terms will be assigned by US Foods based on a fully completed and executed credit application and US Foods good-faith analysis of member's credit and financial status. Payment terms may range from COD to Net 30 days.)

Minimum Order Requirements

US Foods may impose a $600 minimum order requirement for Participating Members (the "Minimum Order Requirement")

REBATE AND PAYMENT

New Member Rebate
US Foods will offer a rebate (the "New Member Rebate") to any customer that elects to transition from another distributor to US Foods under the terms and conditions of the Vizient Agreement. The New Member Rebate will be calculated at eighty-five basis points (.85%) of total purchases for the first twelve (12) months starting from the date of the first delivery from US Foods under the Vizient Agreement. For purposes of this provision New Member(s) are those customers who have not purchased Products from US Foods in 26 weeks (seasonal business 52 weeks) or current Participating Members buying less than 20% of total food and supply budget from US Foods.

New Member Rebate	-0.85%
Paid in two six month installments for new customers	

The New Member Rebates will be paid to each applicable Participating Member in two (2) installments within forty-five (45) days of the conclusion of each six (6) month period during the discount period.

Payment Terms

Payment terms will be assigned by US Foods based on a fully completed and executed credit application and US Food's good faith analysis of each Participating Member's credit and financial status. Standard payment terms shall be Net 30 days, subject to each Participating Member's creditworthiness.

SERVICES TO PARTICIPATING MEMBERS

Services to Participating Members
The following services shall be provided to Participating Member s at no additional fee:

A. **Local Representative**
US Foods will appoint for each Participating Member a local representative in its area with a background in the industry. This US Food's representative will be responsible for the following activities:

- visit each member as needed, or at the frequency agreed to by US Foods and the Participating Member
- address and be empowered to solve the following:
    - fill rate issues
    - invoice accuracy
    - pricing issues
    - product stocking issues
    - delivery scheduling issues
    - days sales outstanding (DSO) issues (accounts payable/receivable issues)
    - electronic order entry issues
    - contract/data file and customer order guide accuracy
    - delivery issues
    - review of backorder report
    - review of product return status

- review all sales data
- review product usage and items
- assist with and suggest pre-approved substitute products
- assist with customized distribution solutions
- review logistical needs of the Participating Member

- review utilization of Vizient contracted products and assist with conversion opportunities
- support the Participating Member 's initiatives for achieving the lowest total Delivered Price of product and services

B. **Customer Service**

US Foods shall provide a customer service representative during normal business hours. The customer service representative should be familiar with the Participating Member 's account and shall, at a minimum, be able to assist the Participating Member with:

- order placement and status of pending orders
- status and resolution of backorders
- status of all pertinent account information, including DSO
- suggested substitutions for backordered products
- advanced notification of delivery issues
- expediting orders (Hot Shots)
- notification of potential backorders
- Participating Member's usage of electronic order entry

C. **Business Reviews**

US Foods will meet with each Participating Member at least four times per year, or as often as the Participating Member may request, to discuss participation in the Vizient Agreement. The US Food's representative will encourage the attendance of key personnel from the Participating Member's administration, materials management, and other appropriate staff, as well as the Participating Member's account executive.

.

US Foods and each Participating Member shall meet to discuss at a minimum the following topics:

- review prior quarter's sales
- review discounts earned and opportunities for maximizing discounts for the following:
    - total monthly volume
    - average order size
    - prompt payment or prepayment (DSO)
    - electronic order entry
    - weekend/night delivery
    - US Food's label (if applicable)
    - integrated system performance
- provide information on and assistance with implementation of value-added programs
- review prior quarter's service levels:
    - fill rates
    - invoice accuracy
    - product substitutions
- discuss opportunities for product standardization and utilization

RETURNS

Product Return Policy

From time to time customers need to return product to US Foods due to product damage, defective merchandise, quality issues, shipping the wrong product, an unwanted product, out-of-date product, or an order error. To comply with food safety regulations, and to insure product safety, quality and packaging integrity; and to minimize temperature shock exposure, the following policy is in place:

Refused Product – credits at the time of delivery

It is essential that Participating Members check-in all orders to verify the accuracy and completeness of the invoice. From time to time it may be necessary to refuse product at the time of delivery.

Exceptions: Credit will not be issued on made-to-order products such as fresh-cut meat, seafood, and poultry; special or custom print paper goods, or equipment, unless such products are:

- received outdated or received otherwise unusable
- received damaged, or received defective or nonconforming to supplier specifications
- specifically authorized for return by supplier through US Foods
- recalled

In the case of fresh meat, poultry, or seafood, returns will not be accepted if the sealed box is opened, unless there is concealed damage or quality issues.

Product Returns – pick-up and credit requests

Should a product pick-up be necessary, Participating Member should notify US Foods customer service or your local representative immediately. Returned merchandise must be in resalable condition and must be packed in it is original carton, unless an authorization is made to return merchandise for quality inspection. All returns must have the original warehouse pick label affixed to them.

- dry grocery and nonfood items — return within seven days of receipt of merchandise
- refrigerated items — return during delivery only
- refrigerated items delivered by key drop or honor drop — customer should notify US Foods upon checking in its order, by close of business the same day to request a product return authorization. The product should be picked up at the customer location on its next delivery day.
- frozen items — return within seven days of receipt of merchandise

Returns will not be authorized for made-to-order products such as fresh-cut meat, seafood, and poultry; special or custom print paper goods, or equipment, unless such products are:

- received outdated or received otherwise unusable
- received damaged, or received defective or nonconforming to supplier specifications
- specifically authorized for return by supplier through US Foods
- recalled

PRODUCT STOCKING

Product Stocking Requirements

1. Stocking Requirements
   A. US Foods agrees to warehouse at primary ordering locations at its own cost, except as otherwise provided herein, such quantities of products as is reasonably necessary to satisfy the anticipated requirements of Participating Members served by the POLs. In addition, US Foods shall have the following inventory responsibilities with respect to non-contract products:
      1. US Foods will maintain sufficient inventory of products to support participating members at the fill rate of 98 percent.

2. US Foods will stock locally any item requested by participating member for which use of the item by members and other customers creates anticipated inventory turns of at least three cases per week per POL. If a Participating Member requests that US Foods stock non-contract products that create less than three cases per week per POL, US Foods may elect to stock the products(s) and deviate from distribution fees for them. Deviation shall not exceed 1 percent unless otherwise agreed. Participating Member will be notified in advance with respect to any such deviation.
3. Upon request of a Participating Member to add items to stock, US Foods will add the items to stock from any supplier that (a) meets industry standards of good manufacturing practices, (b) has credit worthiness comparable to other suppliers with which US Foods does business, and (c) completes US Foods standard vendor documentation, where product's usage meets the minimum movement requirements as described above. Within 30 days after supplier's completion of the standard documentation or reasonable industry standard lead time, of receipt of usage data, US Foods will make reasonable efforts to have the items in stock and advise the requesting Participating Member that the items are available at the POL.
4. US Foods will not remove from stock at the POL any non-contract product that is being purchased by a Participating Member, unless US Foods no longer distributes the product. US Foods will review its stock on an appropriate basis to identify those non-contract products that have generated movement of less than three cases per week per POL. US Foods may then contact any Participating Member that was purchasing these products within the last 90 calendar days to ascertain continuing need. If no need is expressed, US Foods may give written or electronic notice to the Participating Members of its intent to remove the items from stock. Within 10 business days after such notice, if a Participating Member provides US Foods with its usage estimates that are in excess of three cases per week per POL, US Foods will maintain the items in stock. If US Foods does not receive usage data, it may discontinue the items and will notify the Participating Member
5. US Foods and its POLs will attempt to stock non-contract products that meet the product specifications of Participating Members serviced by that POL. If products that meet the product specification requirements of Participating Member are not stocked, US Foods will provide samples of like products that are currently in inventory. If the products offered by US Foods are not found to be acceptable by the Participating Member, then: (a) the products in question shall be identified to the POL, (b) a cutting of the product in question along with the preferred product will take place with a US Foods representative, and (c) if US Foods product is concluded as unsatisfactory in the reasonable judgment of the Participating Member , it will bring into stock the preferred product subject to the inventory turns requirements state above.

B. US Foods shall adhere to the following inventory responsibilities with respect to contract and non-contract products:

1. If a supplier advises US Foods that specific products will be available in reduced quantities or will be allocated, US Foods may not be able to honor all requests for them. It will allocate, based upon past purchasing history of Participating Members, a portion of the affected products to Participating Members s and will advise the Participating Members of the allocation quantities.
2. US Foods may refuse to stock products if warehouse sanitation or existing storage or transportation environment is incompatible with their requirements and nature. In such instances, upon a Participating Member request, US Foods will arrange for the supplier to ship such product(s) directly to the Participating Member (a drop-shipment), if available, and such transaction will be subject to the terms of the Vizient Agreement, including the pricing terms. US Foods may pass-through to the Participating Member any freight or

applicable service charges levied by supplier on US Foods for drop-shipments and, upon request, shall notify the affected Participating Member of such charges.

C. Substitution of Products. US Foods may make no product substitutions without prior approval from the Participating Member. If US Foods fails to have a product on hand at the POL when the product is ordered, and the Participating Member has provided written or electronic preapproval to substitute another product for it, US Foods will automatically make the approved substitution ("automatic product substitution" or "auto-sub"). Further, the Participating Member may, upon being notified of the out-of-stock condition, authorize an alternative product be substituted ("authorized substitution" or "authorized-sub"). Automatic product substitutions must be of equal or better quality to the product originally ordered. Auto-sub and authorized-sub products shall be priced at Delivered Price plus the distribution fees.

D. Product Recall. US Foods shall notify the Participating Members of all product recalls and the reason(s) for such recalls as soon as reasonably possible after the information is made available to it. US Foods is required to provide product removal and replacement assistance to Participating Members in the event of a product recall.

E. Proprietary Products. "Proprietary products" include any (1) Participating Member-labeled products and (2) products that US Foods brings into inventory at the request of a Participating Member to address that Participating Member's unusual or excessive demand (including pursuant to a special order). In the event the Vizient Agreement expires or is terminated, or service from any of US Foods distribution center is discontinued by either US Foods, or a Participating Member for any reason (other than breach of the Vizient Agreement by US Foods that is not cured within 30 days of its receipt of notice of such breach), each Participating Member shall purchase, or cause a third party acceptable to US Foods to purchase, all proprietary products brought into inventory for the Participating Member at the Sell Price. Each Participating Member (or the applicable approved third party) shall pick up all frozen and refrigerated proprietary products within seven days of the expiration, termination or service discontinuation date, and all other proprietary products within 15 days of the expiration, termination or service discontinuation date. The Participating Member shall pay all amounts due for such proprietary products within 30 days of the expiration, termination or service discontinuation date. US Foods reserves the right to offset any amounts owed any Participating Member against any amounts due to US Foods for such proprietary products. If any proprietary products are not removed from US Foods distribution centers within the prescribed time frames, US Foods may dispose of them in any manner it deems appropriate, and the applicable Participating Member shall reimburse it for any related costs, fees, and expenses. Under no circumstances shall the Participating Member be obligated to purchase (or cause a third party to purchase) any proprietary products in the event the Vizient Agreement expires or is terminated or service from any of US Food's distribution centers is discontinued by either US Foods, or a Participating Member for any reason.

Product Fill Rates

1. US Foods shall guarantee an unadjusted fill rate of 98 percent, as measured according to the formula below, in any one-month period beginning with the second full month US Foods is servicing a Participating Member.
2. Product fill rate is defined as the percentile representation of line items filled, on the first scheduled delivery following order placement for a Participating Member during a one-month period, divided by total line items ordered by that Participating Member for that same period. Line items filled do not include authorized or unauthorized substituted products.
3. US Food service's inability to deliver due to a force majeure event, crop shortage, manufacturer allocations, inventory shortage caused by the Participating Member's unusual demand (greater than 110 percent of

prior month average order for each item), or special orders (items not included in the Participating Member's regular order guide) will not be included in fill rate calculations if US Foods provides notice of such conditions when Participating Member's order is confirmed.

AUDIT

Additional Requirements

1. Pricing Audit Requirements. The following will apply to Participating Member-specific audit requests:

   Participating Member-specific audit process is subject to the following:

   a. Participating Member must request a price audit in writing at least 20 business days prior to the suggested date of the price audit. This request must identify the 30 items to be verified with one price point verification per item.

   b. The audit period shall be limited to the 13 weeks immediately preceding such audit.

   c. The date and time of the audit must be to the mutual agreement of both parties.

   d. The audit will be conducted at the POL servicing the Participating Member.

   If the 30-item audit reveals an error ratio greater than 10 percent, the Participating Member has the right to request an expanded audit of 100 items, following the process cited above.

   If the 100-item audit reveals an error ratio greater than 10 percent, the Participating Member has the right to request an audit of all purchases for the 13 weeks preceding such audit.

   Should the expanded audit reveal significant discrepancies, the Participating Member has the right to refer the matter to NJPA in accordance with the process outlined for general problem resolution.

2. Product Handling Requirements. US Foods shall comply with all U.S. Food and Drug Administration Hazard Analysis Critical Control Points (HACCP) guidelines and any state and local laws relating to the storage and delivery of food products in and from all POLs.

3. Reports to Participating Members. US Foods will provide the following quarterly reports to each Participating Member within 30 days of the end of the calendar quarter reflected in such report. A copy of each Participating Member s report shall be forwarded to the appropriate account executive representing the clients.

   a. Fill Rate Report. The fill rate report will include unadjusted fill rate before substitution and unadjusted fill rate after substitution.

   b. Discount Report. The discount report shall include all relevant performance data such as total monthly volume, average order size, average number of deliveries, DSO, and number of lines ordered using electronic order entry. The discount report shall itemize dollar amounts earned under the various discount opportunities available to the Participating Member under the Vizient Agreement.

RECALLS

Safety- Product Recalls

US Foods will post all Product Recalls on *www.usfoods.com* to keep its customers apprised of product recall status. In addition, if a Participating Member is affected by a recall, your US Foods distribution center will contact you within 24 hours.

CITY OF ROUND ROCK

INSURANCE REQUIREMENTS

1. **INSURANCE**: The Vendor shall procure and maintain at its sole cost and expense for the duration of the agreement or purchase order resulting from a response to the Solicitation/Specification, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work as a result of the solicitation by the successful respondent, its agents, representatives, volunteers, employees or subcontractors.

   1.1. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before work commences.

   1.2. The following standard insurance policies shall be required:

      1.2.1. General Liability Policy

      1.2.2. Automobile Liability Policy

      1.2.3. Worker's Compensation Policy

   1.3. The following general requirements are applicable to all policies:

      1.3.1. Only insurance companies licensed and admitted to do business in the State of Texas shall be accepted.

      1.3.2. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.

      1.3.3. Claims made policies shall not be accepted, except for Professional Liability Insurance.

      1.3.4. Upon request, certified copies of all insurance policies shall be furnished to the City.

      1.3.5. Policies shall include, but not be limited to, the following minimum limits:

         1.3.5.1. Minimum Bodily Injury Limits of $300,000.00 per occurrence.

         1.3.5.2. Property Damage Insurance with minimum limits of $50,000.00 for each occurrence.

         1.3.5.3. Automobile Liability Insurance for all owned, non-owned, and hired vehicles with minimum limits for Bodily Injury of $100,000.00 each person, and $300,000.00 for each occurrence, and Property Damage Minimum limits of $50,000.00 for each occurrence.

         1.3.5.4. Statutory Worker's Compensation Insurance and minimum $100,000.00 Employers Liability Insurance.

      1.3.6. Coverage shall be maintained for two years minimum after the termination of the Agreement.

   1.4. The City shall be entitled, upon request, and without expense to receive copies of insurance policies and all endorsements thereto and may make reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Vendor shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof. All insurance and bonds shall meet the requirements of the solicitation specification and the insurance endorsements stated below.

EXHIBIT "B"

1.5. Vendor agrees that with respect to the required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following provisions:

1.5.1. Provide for an additional insurance endorsement clause declaring the Vendor's insurance as primary.

1.5.2. Name the City and its officers, employees, and elected officials as additional insured's, (as the interest of each insured may appear) as to all applicable coverage.

1.5.3. Provide thirty days' notice to the City of cancellation, non-renewal, or material changes.

1.5.4. Remove all language on the certificate of insurance indicating:

1.5.4.1. That the insurance company or agent/broker shall endeavor to notify the City; and,

1.5.4.2. Failure to do so shall impose no obligation of liability of any kind upon the company, its agents, or representatives.

1.5.5. Provide for notice to the City at the addresses listed below by registered mail:

1.5.6. Vendor agrees to waive subrogation against the City, its officers, employees, and elected officials for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.

1.5.7. Provide that all provisions of the agreement concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

1.5.8. All copies of the Certificate of Insurance shall reference the project name, solicitation number or purchase order number for which the insurance is being supplied.

1.5.9. Vendor shall notify the City in the event of any change in coverage and shall give such notices not less than thirty days prior notice to the change, which notice shall be accomplished by a replacement Certificate of Insurance.

1.5.10. All notices shall be mailed to the City at the following addresses:

Assistant City Manager	**City Attorney**
City of Round Rock	**City of Round Rock**
221 East Main	**309 East Main**
Round Rock, TX 78664-5299	**Round Rock, TX 78664**

2. **WORKERS COMPENSATION INSURANCE**

2.1. Texas Labor Code, Section 406.098 requires workers' compensation insurance coverage for all persons providing services on building or construction projects for a governmental entity.

2.1.1. Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

2.1.2. Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR'S/person's work on the project has been completed and accepted by the OWNER.

2.2. Persons providing services on the project ("subcontractor") in Section 406.096 – includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-

operators, employees of any such entity, or employees of any entity, which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2.3. The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.

2.4. The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the agreement.

2.5. If the coverage period shown on the CONTRACTOR'S current certificate of coverage ends during the duration of the project, the CONTRACTOR shall, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended.

2.6. The CONTRACTOR shall obtain from each person providing services on a project, and provide to the OWNER:

2.6.1. a certificate of coverage, prior to that person beginning work on the project, so the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2.6.2. no later than seven (7) calendar days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

2.7. The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

2.8. The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within ten (10) calendar days after the CONTRACTOR knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

2.9. The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

2.10. The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project, to:

2.10.1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all its employees providing services on the project, for the duration of the project;

2.10.2. provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on a project, for the duration of the project;

2.10.3. provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

2.10.3.1. obtain from each other person with whom it contracts, and provide to the CONTRACTOR:

2.10.3.1.1. a certificate of coverage, prior to the other person beginning work on the project; and

2.10.3.1.2. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project

2.10.3.2. retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;

2.10.3.3. notify the OWNER in writing by certified mail or personal delivery, within ten (10) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

2.10.3.4. contractually require each person with whom it contracts, to perform as required by paragraphs (2.1 thru 2.7), with the certificates of coverage to be provided to the person for whom they are providing services.

2.10.3.5. By signing the solicitation associated with the specification, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

2.10.3.6. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the agreement void if the Contractor does not remedy the breach within ten (10) calendar days after receipt of notice of breach from the owner.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-133007

Date Filed:
11/04/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
US FOODS, INC.
ROSEMONT, IL 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 ROUND ROCK

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.
16-0002
Wholesale distributor of food and food service supplies

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
AVILA, LUIS	ROSEMONT, IL United States	X	
KHAN, FAREED	ROSEMONT, IL United States	X	
SATRIANO, PIETRO	ROSEMONT, IL United States	X	
US FOODS HOLDING CORP.	ROSEMONT, IL United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

OFFICIAL SEAL
ANN M SPITLER
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/05/17

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Luis Avila, this the 4th day of November, 2016, to certify which, witness my hand and seal of office.

Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath
	Ann M Spitler	Notary

City of Round Rock

Agenda Item Summary

Agenda Number: F.6

Title: Consider a resolution authorizing the Mayor to execute a Refuse Collection Contract Between the City and Central Texas Refuse, Inc. dba Round Rock Refuse.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Michael Thane, Director of Utilities and Environmental Services

Cost:

Indexes:

Attachments: Resolution, Exhibit A, Form 1295

Department: Utilities and Environmental Services

Text of Legislative File 2016-3847

In August of 2010, the City amended the City Ordinance regarding the implementation of a Comprehensive Solid Waste Management and Recycling Program. In October of 2010, the City entered into an updated contract with Round Rock Refuse to perform solid waste and recycling collection and disposal services for the City. The City has successfully worked with Round Rock Refuse since 1987 for these services. The solid waste and recycling services that are performed by Round Rock Refuse continue to receive high ratings from our citizens during the survey that the City conducts biannually. In an effort to continue to improve this program and to provide these services at a reasonable cost to our citizens, staff would like to make the following amendments to Round Rock Refuse's contract as outlined below:

• The initial term of the contract shall be for 5 years commencing on January 1, 2017. At the end of the 3rd calendar year of the initial 5 year term, and at the end of each calendar year thereafter, the term shall automatically renew such that the balance of the term remains three years.

• The Residential Services Rate is comprised of three components: the Fuel Component, Disposal Cost Component, and the Operations, Overhead, and Profit Component. For the initial year of the agreement, the Residential Services Rate shall be fixed at $14.51 per customer. At the end of the first year, Round Rock Refuse may petition to the City for reasonable adjustments to the Residential Services Rate based on increases in the Fuel Component, Disposal Cost Component, and the Operations, Overhead, and Profit Component caused by increases in inflation and/or also by other factors such as increases in cost by

revised laws, ordinances, regulations, etc.

• As part of Round Rock Refuse's existing Contract, they collect and dispose of solid waste from all City facilities. With this new contract, the collection and delivery of recyclable materials from all City facilities to the WILCO Recycling Material Facility have been added to their responsibility.

Staff Recommends Approval.

RESOLUTION NO. R-2016-3847

WHEREAS, the City of Round Rock ("City") and Central Texas Refuse, Inc. DBA "Round Rock Refuse" ("Round Rock Refuse") entered into that one certain Refuse Collection Contract on October 1, 1990 whereby Contractor has collected garbage, rubbish and refuse for residential customers within the City; and

WHEREAS, the aforesaid Refuse Collection Contract has been amended several times since the execution of the original Agreement; and

WHEREAS, the parties desire to enter into a new contract setting forth terms and conditions for the collection, delivery and disposal of bulk waste and recyclable materials; Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City a Refuse Collection Contract between City of Round Rock, Texas and Central Texas Refuse, Inc. DBA "Round Rock Refuse," a copy of said contract being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____

ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____

SARA L. WHITE, City Clerk

0112.1604; 00365152

EXHIBIT
"A"

REFUSE COLLECTION CONTRACT

between

CITY OF ROUND ROCK, TEXAS

and

CENTRAL TEXAS REFUSE, INC.
DBA "ROUND ROCK REFUSE"

TABLE OF CONTENTS

REFUSE COLLECTION CONTRACT

between

CITY OF ROUND ROCK, TEXAS
and

CENTRAL TEXAS REFUSE, INC.
DBA "ROUND ROCK REFUSE"

This Refuse Collection Contract ("Contract") is made on _____, 2016 between: **CITY OF ROUND ROCK**, a Texas municipal home rule corporation, hereinafter referred to as "City," and **CENTRAL TEXAS REFUSE, INC.**, a corporation, hereinafter referred to as "Contractor."

RECITALS

WHEREAS, the City and Contractor (DBA "Round Rock Refuse") entered into that one certain Refuse Collection Contract on October 1, 1990 whereby Contractor has collected garbage, rubbish and refuse for residential customers within the City; and

WHEREAS, the aforesaid Refuse Collection Contract has been amended several times since the execution of the original Agreement; and

WHEREAS, the parties desire to enter into a new contract setting forth terms and conditions for the collection, delivery and disposal of bulk waste and recyclable materials;

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, City and Contractor agree as follows:

AGREEMENT

SECTION 1: RECITALS INCORPORATION

The foregoing recitals are true and correct and hereby incorporated herein by reference.

SECTION 2: DEFINITIONS

As used herein, the following defined terms, phrases, words, and their derivations shall have the meanings as set forth in this section. When not inconsistent with the context, words used in the present tense shall include the future, words importing persons shall include firms and corporations, words used in the plural shall include the singular, words used in the singular shall

include the plural, words used in the masculine gender shall include the feminine gender, and word used in the feminine gender shall include the masculine gender.

Act of Default or Default **—** Act of Default or Default shall mean any failure to timely, fully and completely comply with one or more material requirements, obligations, performance criteria, duties, terms or conditions, as started in this Contract. City may, in its sole discretion, accept substantial compliance, which is an Act of Default, in lieu of full compliance by waiving such Act of Default solely by an instrument in writing.

Aluminum and Steel Recyclable Material — Aluminum and Steel Recyclable Material shall mean any beverage container, food can, bi-metal container, or lid with or without paper labels, rings, and lids composed primarily of whole iron, aluminum, steel, or other Recyclable Material of a similar nature.

Bag **—** Bag shall mean a non-dissolvable plastic sack with a capacity of up to approximately thirty five (35) gallons designed or intended to store Municipal Solid Waste with sufficient wall strength to maintain physical integrity when lifted by the top.

Bulk Waste **—** Bulk Waste shall mean Municipal Solid Waste composed of materials not easily containerized in a Cart, including but not limited to, brush, furniture, and large appliances. Bulk Waste shall include Municipal Solid Waste enclosed in bags.

Bulk Waste Services **—** Bulk Waste Services shall mean the collection and disposal of Bulk Waste by the Contractor and the collection and recycling of Bulk Waste pursuant to this Contract.

Business Day **—** Business Day shall mean any day, Monday through Friday, except Holidays.

Cart — Cart shall mean a receptacle with wheels with a capacity of up to approximately ninety six (96) gallons designed or intended to be mechanically dumped into a loader-packer type truck and approved for use by the Contract Administrator.

City **—** City shall mean the City of Round Rock, Texas; and shall include City's elected officials, officers, employees, agents, volunteers and representatives.

City Event **—** City Event shall mean an event sponsored or co-sponsored by the City and designated by the Contract Administrator to receive City Facility Services. The Contract Administrator has the sole authority to add or eliminate City Events to receive City Facility Services.

City Facility **—** City Facility shall mean any City owned or operated facility designated by the Contract Administrator as a City Facility to receive City Facility Services. The Contract Administrator has the sole authority to add or eliminate City Facilities to receive City Facility Services.

City Facility Services — City Facility Services shall mean Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for City Facilities and for City Events pursuant to this Contract.

Collect or Collection — Collect or Collection shall mean the act of removing Municipal Solid Waste and Bulk Waste for transport to a Solid Waste Facility and the act of removing Recyclable Material for transport to a Recyclable Material Facility.

Comply or Compliance — Comply or Compliance shall mean timely, fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty or condition as stated in this Contract. Compliance shall not mean substantial compliance. Substantial compliance shall be an Act of Default unless waived by Contract Administrator solely by a written instrument.

Contract — Contract shall mean this document, including any amendment thereto agreed upon by the City and Contractor.

Contract Administrator — Contract Administrator shall mean the City Manager of the City, or his or her designee or designees, which shall represent the City in the administration and supervision of this Contract.

Contractor — Contractor shall mean Central Texas Refuse, Inc., a corporation authorized to do business in the City and the State, and Contractor's assignees and Contractor's subcontractors.

Cost of Fuel — Cost of Fuel shall mean the cost of diesel based on the Department of Energy Diesel Fuel price index, less 5% for volume purchases

Council — Council shall mean the City Council, which is the governing body of the City.

Curbside — Curbside shall mean within five (5) feet of the street or alleyway that provides primary access to the Residential Service Unit as designated by the Contract Administrator.

Disposal Cost Component — Disposal Cost Component shall mean a component of the Residential Services Rate based on the disposal cost per ton to dispose of Municipal Solid Waste at the Solid Waste Facility and to deliver Recyclable Material to the Recyclable Material Facility.

Disposal Facility — Disposal Facility shall mean a Solid Waste Facility authorized by the Texas Commission on Environmental Quality to manage such waste and shall meet all local, state, and federal requirements.

Fuel Component — Fuel Component shall mean a component of the Residential Services Rate based on the Cost of Fuel, as set forth in Section 20.2 below.

Garbage — Garbage shall mean Solid Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Glass Recyclable Material —Glass Recyclable Material shall mean any glass food and beverage bottles, containers, or jars with or without paper labels, rings, and lids. Glass Recyclable Material shall not mean window glass, porcelain, or china.

Hazardous Waste — Hazardous Waste shall mean any Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 et seq., as amended.

Holidays — Holidays shall mean days that City offices are closed in order to observe New Year's Day, Thanksgiving Day, and Christmas, and any other holiday designated by the City Council.

Marketing — Marketing shall mean identification and developing of end markets for Recyclable Material and the selling of Recyclable Material to end markets.

Municipal Solid Waste — Municipal Solid Waste shall mean Solid Waste resulting from or incidental to activities of Residential Service Units, City Facilities and City Events and Construction and Demolition activities, including Garbage and Rubbish. Municipal Solid Waste shall not include Hazardous Waste and Special Waste.

Municipal Solid Waste Services — Municipal Solid Waste Services shall mean collection and disposal of Municipal Solid Waste by the Contractor pursuant to this Contract.

Operations, Overhead and Profit Component — Operations, Overhead and Profit Component shall mean a component of the Residential Services Rate intended to cover Contractor's profit, as well as all direct and indirect costs to Contractor of providing Residential Services other than the Fuel Component and the Disposal Cost Component, as set forth in Section 20.4 below.

Paper Recyclable Material — Paper Recyclable Material shall mean any:

(A) Kraft paper,

(B) Corrugated containers that have liners of Kraft, jute, or test liner including dry food boxes, beer and soda carriers, shoe boxes,

(C) Old newspaper including slick paper inserts,

(D) Chipboard, and

(E) Other mixed paper including but not limited to junk mail, junk mail inserts, residential mixed paper, bagged shredded paper, high-grade paper, white and colored ledger, copier paper, office paper, laser printer paper, computer paper including continuous-formed perforated white bond or green bar paper, book

paper, cotton fiber content paper, duplicator paper, form bond, manifold business forms, mimeo paper, note pad paper (no backing), loose leaf fillers, stationery, writing paper, paper envelopes without plastic windows, carbonless (NCR) paper, tabulating cards, facsimile paper, manila folders, magazines, paperback books, small catalogs, telephone books and Yellow Pages.

Person — Person shall mean an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Plastic Recyclable Material — Plastic Recyclable Material shall mean any #1 through #7 rigid plastic bottle, container, jug, or jar.

Recyclable Material — Recyclable Material shall mean Paper Recyclable Material, Plastic Recyclable Material, Glass Recyclable Material, Aluminum and Steel Recyclable Material that has been diverted from the nonhazardous Solid Waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable Material is not Solid Waste. However, Recyclable Material may become Solid Waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be Solid Waste with respect only to the party actually abandoning or disposing of the material. Notwithstanding, neither the Contractor nor the recyclables processor shall discard any portion of the collected single stream recyclables unless they make up a de minimus amount included within the nonrecyclable residual remaining after being sorted through a recyclables sorting and packaging system.

Recyclable Material Facility — Any facility the City designates for the delivery and processing of the City's Recyclable Material.

Recycling — Recycling shall mean a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products.

Recycling Services — Recycling Services shall mean the separate collection of recyclable materials and the delivery to Recyclable Material Facility.

Residential Customer — Residential Customer shall mean any person living in a Residential Service Unit that produces Solid Waste and/or Recyclable Materials

Residential Service Unit — Residential Service Unit shall mean a dwelling in a single family zoning district or a two family zoning district within the City, occupied by a person or group of persons. A Residential Service Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto.

Residential Services — Residential Services shall mean Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for Residential Service Units.

Residential Services Rate — Residential Services Rate shall mean the sum of money per Residential Customer paid each month by the City to the Contractor for the provision of Residential Services. The Residential Services Rate is composed of the Fuel Component, the Disposal Cost Component, and the Operations, Overhead and Profit Component.

Rubbish — Rubbish shall mean nonputrescible Solid Waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible Rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible Rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

Set-Out — Set-Out shall mean the Municipal Solid Waste, Bulk Waste, and/or Recyclable Material placed at Curbside or other appropriate location for collection.

Solid Waste — Solid Waste shall mean Garbage, Rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

(A) Solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) Soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction.

Solid Waste Facility — Solid Waste Facility shall mean all contiguous land, structures, other appurtenances, and improvements on the land used for disposing of Solid Waste.

Special Waste — Special Waste shall mean any Solid Waste or combination of Solid Wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special Wastes shall include:

(A) Hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);

(B) Class 1 industrial nonhazardous waste;

(C) Untreated medical waste;

(D) Municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) Septic tank pumpings;

(F) Grease and grit trap wastes;

(G) Wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);
(H) Slaughterhouse wastes;
(I) Dead animals;
(J) Drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;
(K) Pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;
(L) Discarded materials containing asbestos;
(M) Incinerator ash;
(N) Soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);
(O) Used oil;
(P) Waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;
(Q) Waste generated outside the boundaries of Texas that contains:
  (i) any industrial waste;
  (ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or
  (iii) any item listed as a special waste in this paragraph;
(R) Lead acid storage batteries; and
(S) Used-oil filters from internal combustion engines.

State — State shall mean the State of Texas.

Substantial Compliance — Substantial Compliance shall pertain solely to acts of Contractor being less than full and complete compliance and being ninety percent (90%) or more of full compliance. Substantial compliance shall mean an Act of Default.

Unacceptable Set-Out — An Unacceptable Set-Out is a Set-Out that the Contractor reasonably determines to exceed the limits as established in this Contract, presents a substantial endangerment, such as disease or death, to the public or employee health or safety; or contains Hazardous Waste that cannot be easily separated.

SECTION 3: REPRESENTATIONS

3.1 Representations by City

The City represents to the Contractor that the City is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Contract.

3.2 Representations by Contractor

The Contractor represents to the City that:

(i) The Contractor is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry on the business and operations contemplated by this Contract.

(ii) The Contractor has obtained the necessary disposal capacity for Municipal Solid Waste and Bulk Waste with a Solid Waste Facility for the initial term of this Contract as set forth in Section 5.2.1.

(iii) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection and disposal of Bulk Waste and collection of Recyclable Material.

(iv) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection, processing and marketing of Bulk Waste.

(v) The Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are necessary for collection, processing and marketing of Bulk Waste.

(vi) The Contractor has obtained all required insurance specified in this Contract.

(vii) The Contractor has obtained the required performance bond specified in this Contract.

(viii) To the best of the Contractor's knowledge, there is no action, suit or proceeding, at law or equity, before or by any court or government authority, pending or threatened against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligation hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other contract or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

(ix) The City may, at its option, require the Contractor to present a separate contract with one or more Recyclable Material Facilities for approval by the City, or the City may contract directly with one or more Recyclable Material Facilities.

SECTION 4: GRANT OF FRANCHISE

City hereby grants Contractor for the term of this Contract, including any automatic renewals, as defined in Section 5 unless sooner terminated, the right, privilege, and franchise to have, use and operate Residential Services and City Facility Services; and to have, use and operate its vehicles on, over, and along, and across the present and future streets and alleys. The City grants the Contractor the exclusive right, privilege, and franchise to have, use and operate:

(i) Municipal Solid Waste Services, Bulk Waste Services, and Recycling Services for Residential Service Units,

(ii) Municipal Solid Waste Services and Bulk Waste Services for City Facilities, and

(iii) Municipal Solid Waste Services and Recycling Services for City Events.

SECTION 5: EFFECTIVE DATE AND TERM OF CONTRACT

5.1 Effective Date

Except as otherwise provided for herein, the obligations of the parties shall take effect on January 1, 2017.

5.2 Term of Contract

5.2.1 Initial Term

Unless sooner terminated in accordance with Section 33.10 of this Contract, the initial term of this Contract shall be for five (5) calendar year period commencing on January 1, 2017 at 12:01 AM and shall continue in effect until December 31, 2021 at 12:00 midnight.

5.2.2 Automatic Renewal

At the end of the third calendar year of the initial five (5) year term, and at the end of each calendar year thereafter, unless either party shall have given written notice of termination to the other party prior to the end of the then calendar year as set forth in 5.2.3, the term shall automatically renew such that the balance of the term remains three (3) years.

5.2.3 Termination Notice

At any time after the end of the initial five (5) year term, either party shall have the option to terminate this Contract for any or no reason by giving the other party two (2) years written notice of its exercise of its option to terminate. Receipt by either party of the aforesaid written notice shall serve to terminate the automatic renewal provision.

SECTION 6: MUNICIPAL SOLID WASTE SERVICES, BULK WASTE SERVICES AND RECYCLING SERVICES

6.1 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for Residential Service Units

6.1.1 Municipal Solid Waste Services for Residential Service Units

Once per week on a scheduled day, Contractor shall collect Municipal Solid Waste from each Residential Service Unit in the City.

6.1.2 Bulk Waste Services for Residential Service Units

Once per week on the same scheduled day as Contractor collects Municipal Solid Waste from the Residential Service Unit, Contractor shall collect up to seven (7) Bulk Waste items from each Residential Service Unit in the City. A Residential Customer may request the Contractor to collect additional Bulk Waste item(s) from the Residential Service Unit. Upon the receipt of a request for additional Bulk Waste items, Contractor shall collect, on a scheduled day, additional Bulk Waste items. If the request requires a

special trip by Contractor, Contract is authorized to charge a reasonable fee to the Residential Customer for such special trip.

6.1.3 Recycling Services for Residential Service Units

Once every two weeks on the same scheduled day as Contractor collects Municipal Solid Waste, Contractor shall collect from the Residential Service Units all Recyclable Material contained in a Cart from each Residential Service Unit in the City. Such source separated Recyclable Materials shall not be comingled with Municipal Solid Waste by Contractor.

6.2 Municipal Solid Waste Services, Bulk Waste Services and Recycling Services for City Facilities and Municipal Solid Waste Services for City Events

Contractor shall provide City Facility Services to City Facilities and City Events. Contractor and City shall mutually decide on the number and size of Carts and containers. In addition, Contractor and City shall mutually decide on the frequency and scheduled days. If a dispute arises concerning City Facility Services for a City Facility and/or City Event, Contract Administrator shall at its sole discretion determine resolution of the disputed issue.

SECTION 7: COLLECTION, DISPOSAL, AND PROCESSING LOCATION

7.1 Collection Location

7.1.1 Residential Services

Except as provided below, the Contractor shall collect Municipal Solid Waste, Bulk Waste, and Recyclable Material at the curbside. If the Contract Administrator determines that all occupants of a Residential Service Unit are handicapped or due to age or verified physical limitations cannot safely move a Cart to the curbside, the Contractor shall collect Municipal Solid Waste and Recyclable Material at a location at the front, side or rear of a Residential Service Unit acceptable to both the Residential Customer and Contractor. The Contract Administrator reserves the right to designate the location for Municipal Solid Waste Services and Recycling Services if (i) the Residential Customer and the Contractor cannot agree on an acceptable location or (ii) the location agreed upon by the Residential Customer and the Contractor presents or may present health and safety hazards.

7.1.2 City Facility Services

The Contract Administrator and the Contractor may mutually decide on a location for collection of Municipal Solid Waste and Bulk Waste from City Facilities and the location for collection of Municipal Solid Waste and Recyclable Material from City Events. The Contract Administrator reserves the right to designate the location for collection of Municipal Solid Waste and Bulk Waste generated by City Facilities and the location for collection for City Events, if the Contract Administrator and the Contractor cannot agree on an acceptable location.

7.2 Municipal Solid Waste Disposal Location

Contractor shall dispose of all Municipal Solid Waste and Bulk Waste collected at a Solid Waste Facility.

7.3 Recyclable Materials Processing Location and Tipping Fee

Contractor shall deliver all Recyclable Materials collected to a Recyclable Material Facility and shall pay the tipping fee to the Recyclable Material Facility in the amount set forth in a separate contract between the City and the Recyclable Material Facility. Contractor acknowledges that the City intends to enter into a separate contract with a Recyclable Material Facility for the processing and marketing of the City's Recyclable Material and any tipping fee paid by Contractor to the Recyclable Material Facility shall be negotiated between the City and Recyclable Material Facility and set forth in a separate contract between the City and the Recyclable Material Facility.

7.4 Bulk Waste Processing Location

Contractor shall dispose of all unrecycled Bulk Waste collected at a Disposal Facility.

SECTION 8: COMMINGLING OF RESIDENTIAL SERVICES MATERIALS AND DISPOSAL OF RECYCLABLE MATERIALS PROHIBITED

8.1 Commingling of Residential Services Materials Prohibited

The Contractor shall not commingle Municipal Solid Waste, Bulk Waste, and/or Recyclable Materials from Residential Services, City events and City Facilities with materials from outside the City except when approved in writing by the Contract Administrator.

8.2 Disposal of Recyclable Materials Prohibited

The Contractor shall not deliver any Recyclable Material to any other facility than a Recyclable Material Facility designated by the City.

SECTION 9: INSPECTION OF SET-OUTS AND UNACCEPTABLE SET-OUTS

9.1 Contractor's Right to Inspect Set-Outs

The Contractor may inspect each Set-Out prior to collection for consistency with the requirements of this Contract.

9.2 Unacceptable Set-outs

9.2.1 Reasons for Unacceptable Set-outs

Prior to collection of the Set-Out, Contractor may determine that a Set-Out is an Unacceptable Set-Out as defined herein.

9.2.2 Procedure for Unacceptable Set-outs

If the Contractor determines that a Set-Out or a portion of a Set-Out is an Unacceptable Set-Out, Contractor shall:

(i) Take a photograph of the entire Set-Out;

(ii) Collect the portion of the Set-Out that is acceptable; and

(iii) Immediately provide a Unacceptable Set-Out Notice to the Residential Customer stating the reason the Set-Out or portion of the Set-Out was determined to be unacceptable;

For Bulk Waste Set-Outs that are unacceptable due to exceeding the Set-Out limits, Contractor shall collect the seven (7) largest Bulk Waste items.

For all Unacceptable Set-Outs, Contractor shall provide a list of the Unacceptable Set-Outs including the address, reason Set-Out was deemed unacceptable, and other information requested by Contract Administrator to the Contract Administrator by 10:00 AM of the next business day.

SECTION 10: COLLECTION AND PROCESSING EQUIPMENT

10.1 Collection Equipment

10.1.1 Collection Vehicles

10.1.1.1 Appearance of Collection Vehicles

Contractor shall paint all collection vehicles uniformly as approved by the Contract Administrator and with the name of Contractor, customer service office telephone number and the unique identification number of the vehicle in letters not less than six (6) inches high on each side and the rear of the vehicle. All collection vehicles shall be uniquely numbered and a record kept of the vehicle to which each number is assigned. No third-party advertising shall be permitted on collection vehicles. Contractor shall maintain all collection vehicles in a clean manner.

10.1.1.2 Age of Collection Vehicles

Contractor shall provide collection vehicles that are no more than ten (10) years of age.

10.1.1.3 Purchase, Operation, Maintenance, Storage and Replacement of Collection Vehicles

Contractor, at its sole cost, shall purchase, operate, maintain, store and replace all collection vehicles as required for the provision of Residential Services and City Facility Services. Contractor shall maintain collection vehicles according to industry standards including, but not limited to compaction, prevention of leakage, and other industry standard performance requirements.

10.1.2 Carts

10.1.2.1 Purchase, Delivery, and Initial Distribution of Carts

Contractor, at its sole cost, shall purchase all Carts as required for the provision of Residential Services and City Facility Services in connection with this Contract. Contractor, at its sole cost, shall be responsible for the cost to the cart manufacturer for the delivery of all Carts to secured area within the City for

staging of Carts. In addition, the Contractor, at its sole cost, shall be responsible for the cost to the cart manufacturer for initial distribution of Carts to Residential Service Units and City Facilities prior to January 1, 2011. Contractor, at it sole cost, shall oversee the delivery and initial distribution of Carts. Contractor shall deliver two Carts to each Residential Service Unit. One Cart shall be clearly designated for Solid Waste collection and the other Cart shall be clearly designated for Recyclable Materials collection.

10.1.2.2 Staging for Initial Distribution, Distribution Excluding Initial Distribution, Maintenance and Storage of Carts and Bins

Contractor, at its sole cost, shall provide a secured area within the City for staging of Carts prior to the initial distribution. After the initial distribution of Carts, Contractor, at its sole cost, shall deliver Cart(s) to Residential Service Units and City Facilities within two (2) business days of the request of the Contract Administrator. Contractor shall attach a Program Introduction Notice to each Cart delivered.

Contractor's employees shall take care to prevent damage to Carts by unnecessary rough treatment. Contractor shall be solely responsible for the maintenance, including warranty issues, of Carts.

Contractor shall store all replacement Carts and bins at Contractor's local customer service office to ensure that extra or replacement Carts and bins can be provided upon the request of the City.

10.1.2.3 Replacement of Carts

Upon notification to Contractor by the Contract Administrator or Residential Customer that a Cart has been lost, destroyed, stolen or that it has been damaged beyond repair, Contractor shall deliver a replacement cart to such customer within two (2) business days. The Contractor shall bear the cost of replacing Carts that must be replaced due to normal wear and tear. The Residential Customer shall bear the cost of replacing Carts that are lost, destroyed, stolen or damaged for reasons other than normal wear and tear.

10.1.3 Other Collection Equipment

10.1.3.1 Appearance of Other Collection Equipment

Contractor shall provide brown Carts for Municipal Solid Waste Services and green Carts for Recycling Services. All Carts shall also show the name of Contractor and customer service office telephone number as approved by the Contract Administrator. No third-party advertising shall be permitted on other collection equipment. No advertising shall be permitted on vehicles for third parties. Contractor shall be responsible to ensure that collection vehicles and other collection equipment are maintained in a clean manner.

10.1.3.2 Purchase, Operation, and Maintenance of Other Collection Equipment

Unless otherwise stated in this Contract, Contractor, at its sole cost, shall purchase, operate, and maintain collection equipment.

The Contract Administrator, at his/her sole discretion, shall determine whether the Contractor is or is not properly maintaining the collection equipment. If the Contract Administrator determines the Contractor is not properly maintaining the collection equipment, Contractor shall replace such equipment in accordance with this Contract and City may assess administrative charges in accordance with this Contract.

10.1.3.3 Replacement of Collection Equipment

Unless otherwise stated in this Contract, Contractor, at its sole cost, shall replace any and all collection equipment if such equipment is lost, stolen or damaged beyond normal wear and tear. If Contractor or City determines that collection equipment requires replacement, Contractor shall replace such equipment within fourteen (14) calendar days with comparable equipment. Contractor shall be responsible for making the appearance of the replacement equipment comply with the requirements of this Contract.

10.1.4 Ownership of Collection Equipment

10.1.4.1 Ownership Collection Equipment other than Carts

Ownership of collection equipment other than Carts shall rest with Contractor.

10.1.4.2 Ownership of Carts

Ownership of Carts shall rest with Contractor during the term of the Contract. Ownership of Carts in the possession of Residential Service Units, City Facilities, City, Contractor, or any other person at the end of the Contract shall rest with the City.

10.2 Disposal Facility and Recyclable Material Facility Equipment

10.2.1 Scales

The Contractor shall be solely responsible for ensuring the Disposal Facility is equipped with adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming vehicles transporting Solid Waste Materials. Contractor shall separately weigh, record, and tabulate each load from City.

Contractor shall document that each scale has been annually certified with the State and no later than December 1 of each Contract Year shall provide proof of certification to the City.

10.2.2 Capacity and Other Facility Equipment

The Contractor shall be solely responsible for ensuring that the Disposal Facility has the capacity and equipment to dispose of and/or thoroughly process the quantity and type of

materials collected by the Contractor in connection with this Contract in accordance with industry standards for managing such materials.

SECTION 11: PERSONNEL

Contractor shall assign a qualified person or persons to be in charge of its operations within City, and shall provide the name, office telephone number, mobile phone number, email address, and fax number of Contractor's representatives and key personnel to the Contract Administrator. Such records shall be updated as personnel or contact information changes. In addition, Contractor shall adhere to the following requirements:

(i) Contractor shall hire and maintain qualified personnel to provide service under this Contract. Contractor shall ensure that personnel operating commercial vehicles have a valid commercial driver's license while operating commercial vehicles in the City.

(ii) Contractor shall furnish each employee with a uniform and safety vest, shirt or jacket which clearly displays the name of Contractor. Such uniforms and safety equipment shall make the employee readily visible to other motorists. Contractor's employees shall wear complete uniforms and safety vest, shirt or jacket at all times.

(iii) Contractor shall provide regularly scheduled, on-going operating and safety training for all employees. In addition, Contractor's employees shall be trained to perform their duties to maximize the City's recycling rate, minimize contamination, and promote recycling at all times. All temporary and newly hired permanent collection personnel shall receive comprehensive safety and operational training prior to working on the collection vehicles. Training manuals and schedules shall be maintained at the local office of Contractor and available for review at any time by Contract Administrator.

(iv) All employees involved in the performance of this Contract including office and all collection personnel, shall be provided adequate training before and during their employment with the Contractor. This training shall familiarize employees with the required duties and standards of performance, specific requirement on routes to which they will be assigned, teach the route layouts previously established and approved, and provide necessary knowledge to eliminate delays and missed collections. All supervisory and collection employees shall be provided comprehensive safety training, equipment, and supplies prior to and during the performance of their duties. All collection, administrative, supervisory and customer service personnel shall receive customer service training prior to and during the time they are employed by the Contractor.

(v) Contractor's employees shall treat all Residents customers, co-workers, City employees and any person with whom they come in contact in the performance of their duties in a polite and courteous manner. Rudeness, belligerence, and the use of profanity are strictly prohibited. The City reserves the right to direct Contractor to remove any employee who violates this policy from providing services to the City.

(vi) In performance of collection, disposal, processing, and marketing services, Contractor's employees shall comply with all City, state and federal laws.

The City reserves the right to require the Contractor remove employees who fail to meet these criteria from services related to this Contract.

SECTION 12: HOURS OF OPERATION

12.1 Collection Hours of Operation

Except for specified holidays, Contractor's hours of operation within the City are set forth below.

12.1.1 Residential Services

Contractor's regular collection hours shall be from 7:00 a.m. until 6:00 p.m., Monday through Friday, unless the Contract Administrator gives permission for extended hours.

Contractor is prohibited from operating its vehicles on City streets prior to 7:00 a.m. or after 8:00 p.m.

12.1.2 City Facility Services

Contractor's regular collection hours for City Facility Services within 300 feet of a residential area shall be from 7:00 a.m. until 6:00 p.m., Monday through Sunday. Contractor is prohibited from operating its vehicles on City streets for this designated area prior to 7:00 a.m. or after 8:00 p.m.

SECTION 13: HOLIDAYS

For purposes of this Contract, holidays shall include only the following:

(i) New Year's Day;

(ii) Thanksgiving Day; and

(iii) Christmas Day.

The Contract Administrator, at his/her sole discretion, may add or delete holidays. If the Contract Administrator elects to add or delete holidays, the City will provide the Contractor notice in accordance with the provisions of this Contract. If a holiday occurs on a scheduled collection day for Residential Services, Contractor shall perform the scheduled collection for the holiday and the remainder of the week ending on Friday on the next calendar day after the scheduled collection day. If a holiday occurs on a scheduled collection day for City Facility Services, the Contractor shall perform the scheduled collection for such City Facility on the next calendar day after the holiday.

SECTION 14: CUSTOMER SERVICE OFFICE AND COMPLAINTS

Contractor shall maintain a customer service office, staffed with personnel Monday through Friday, 8:00 AM to 5:00 PM. If the City receives a customer service complaint, the City shall contact the Contractor Representative via non-toll phone call or email and provide the following information:

(i) Customer name, address, and phone number, and

(ii) Type of complaint

All complaints, whether received by the City or the Contractor, shall be resolved as follows:

(i) If the complaint is a missed collection, Contractor shall pick up the missed collection on that same day if the complaint is delivered to the Contractor prior to 1:00 PM.

(ii) If the complaint is a missed collection, Contractor shall pick up the missed collection before 5:00 PM on the next calendar day if the complaint is delivered to the Contractor on or after 1:00 PM.

(iii) If the complaint is other than a missed collection, Contractor shall attempt to resolve the complaint within twenty four (24) hours of notice of such complaint to Contractor.

For each customer complaint, Contractor shall record the following information regarding the complaint:

(i) Date and time complaint was delivered to the Contractor;

(ii) Identification of the person whom delivered the complaint to the Contractor;

(iii) Contractor's determination as to whether the complaint is legitimate or non-legitimate;

(iv) Date, time and action taken to resolve complaint; and

(v) Name of responsible contact at Contractor's location regarding the complaint.

On or before the tenth day of each month, the Contractor shall deliver to the Contractor Administrator a summary report of all customer complaints for the previous month.

Contractor and City acknowledge that customer service is of high importance to the City. Contractor and its employees will work diligently to provide high customer services to the City and all customers.

SECTION 15: TRANSITION SUPPORT

Contractor understands, acknowledges, and agrees that a smooth transition from Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service from a provider(s) to another is essential for the health and safety of the City and its residents. Contractor understands, acknowledges, and agrees that with the failure of Contractor to timely and promptly transition could create serious health and safety issues for the City and its residents. Contractor understands, acknowledges, and agrees that the City does not possess the necessary manpower or equipment to provide Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service.

Contractor shall cooperate fully and timely with the City and subsequent provider(s) in any transition of Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service. Contractor shall cooperate fully with the City in:

(i) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon expiration of the initial term or optional renewal term of this Contract; and,

(ii) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon termination of the Contract.

SECTION 16: DAMAGE TO PROPERTY

The Contractor shall take all necessary precautions to protect public and private property during the performance of this Contract. The Contractor shall repair or replace any private or public property which is damaged by the Contractor. Such property damages shall be addressed for repair or replacement, at no charge to the property owner, within forty-eight (48) hours with property of the same or equivalent value at the time of the damage.

If the Contractor fails to address the repair or replacement of damaged property within forty-eight (48) hours, the City may, but shall not be obligated to, repair or replace such damaged property, and the cost of doing so shall be deducted from payment to be made to the Contractor.

SECTION 17: SPILLAGE AND LEAKAGE, LITTER, AND ODOR

17.1 Spillage and Leakage

Contractor shall clean up any materials including leakage of fluids spilled from Contractor's vehicles. During transport, all materials shall be contained, covered and enclosed so that leaking, spilling, and blowing of materials does not occur. Contractor shall be responsible for the cleanup of any spillage or leakage from Contractor's vehicles. Contractor shall perform all clean-ups within two (2) hours of the spillage or leakage.

17.2 Litter

The Contractor shall be required to pick up any and all litter (including any glass spillage) caused by the provision of services in connection with this Contract.

17.3 Odor

The Contractor shall maintain collection equipment to minimize unpleasant odors.

SECTION 18: RECORDKEEPING, REPORTING, AUDITED FINANCIAL STATEMENTS, AND REPORTING FORMAT

18.1 Recordkeeping

The Contractor shall create, maintain, and make available records that are reasonably necessary to:

(i) Document Recyclable Material and Residential Solid Waste deliveries by time delivered to facility, the Municipal Solid Waste disposal fee per ton and other information as requested by Contract Administrator.

(ii) Document Hazardous Waste including the source, tonnage, date received, Disposal Facility, and other information as requested by Contract Administrator. (A monthly and annual summary shall also be submitted to the City.)

(iii) Such other documents and reports as the City may reasonably require to verify compliance with the Contract or to meet the City's reporting requirements with the State of Texas. (A monthly and annual summary shall also be submitted to the City.)

All of Contractor's records shall be available to City and its representatives at reasonable times and places throughout the term of this Contract and for a period of five (5) years after last or final payment.

18.2 Reporting

18.2.1 Initial Reports

18.2.1.1 Transition Plan

No later than one year prior to the expiration or termination date of this Contract, the Contractor shall submit to the Contract Administrator for approval a transition plan, consistent with the transition support requirements as set forth in this Contract. In the transition plan, Contractor shall detail:

(i) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon expiration of the initial term or optional renewal term; and,

(ii) The transition from the Contractor to subsequent person(s) or the City providing Municipal Solid Waste Service, Bulk Waste Service, and Recycling Service upon termination of the Contract.

18.2.1.2 Hazardous Waste and Special Waste Contingency Plan

The Contractor shall submit to the Contract Administrator for approval a Hazardous Waste and Special Waste contingency plan prior to January 1, 2011. This plan shall detail what actions shall be taken by the Contractor upon discovery of Hazardous Waste and/or Special Waste to a facility. Contractor shall include in the plan a copy of a signed contract(s) with a permitted Hazardous Waste and Special Waste transporter(s) to handle any Hazardous Waste and Special Waste discovered at the facility. The plan shall comply with all State and Federal regulations regarding the handling of Hazardous Waste and Special Waste.

18.2.2 Monthly Reports

Contractor shall submit all monthly reports, including bills, to the Contract Administrator within seven (7) calendar days following the end of each calendar month. Monthly reports are those described in this Section 18.

18.2.3 Annual Reports

Contractor shall submit all annual reports to the Contract Administrator on or before February 1 of each contract year. Annual reports are those listed in this Section. In addition, Contractor shall provide the Contract Administrator with a copy of any annual financial audit performed for Contractor.

18.2.4 Report Format

Within thirty (30) calendar days of the execution of this Contract, the Contractor shall submit to the Contract Administrator for its approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Contract. Contractor shall submit all reports in electronic and hard copy format approved by the Contract Administrator.

SECTION 19: CITY INSPECTION RIGHTS

19.1 City's Right to Inspect Records, Books, Data and Documents

Upon twenty-four (24) hours notification to Contractor, the City or any of its duly authorized representatives shall have access to all books, records, data and documents of the Contractor for inspection, and audit, at City's expense.

19.2 City's Rights to Inspect Facilities and Equipment

The City or any of its duly authorized representatives shall have access to inspect Contractor's facilities and facilities which receive the City's Municipal Solid Waste, including the Disposal Facility, and equipment and perform such inspections, as City deems reasonably necessary, to determine whether the services required to be provided by Contractor under this Contract conform to the terms hereof. City shall conduct the inspection of facilities and equipment during regular hours of operation. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of inspections by City's representatives.

SECTION 20: RESIDENTIAL SERVICES RATE

20.1 Residential Services Rate

The Residential Services Rate is the sum of money per Residential Customer paid each month by the City to the Contractor for the provision of Residential Services. The Residential Services Rate is composed of three separate components, to wit: the Fuel Component, the Disposal Cost Component, and the Operations, Overhead and Profit Component. The Residential Services Rate shall be fixed at **$14.51** until January 1, 2018. After January 1, 2018, the Contractor may request a change in the Residential Services Rate in accordance with the terms set forth therein and the formulas set forth below.

20.2 Fuel Component of the Residential Services Rate

The Cost of Fuel is based on the Department of Energy ("DOE") Diesel Fuel price index, less a 5% discount for volume purchases. The Fuel Component of the Residential Services Rate is calculated by multiplying the total monthly average fuel consumption for the previous twelve (12) month period times the Cost of Fuel per gallon, divided by the

total number of Residential Service Units. The following is an example calculation of the Fuel Component of the Residential Services Rate:

(i) The previous twelve (12) month average fuel consumption equals 9,092 gallons;

(ii) The Cost of Fuel [DEO Diesel Price Index ($3.66) less a 5% ($0.18) discount for volume purchases] per gallon equals $3.48; and

(iii) The total number of Residential Service Units is 28,993.

Formula: (9,092 gallons) X ($3.48 per gallon) / (28,993 units) equals $1.09.

Therefore the Fuel Component of the Residential Services Rate in the example calculation above is $1.09. The numbers in the example above are used for illustrative purposes only.

20.3 <u>Disposal Cost Component of the Residential Services Rate</u>

The Disposal Cost Component will be based upon the actual disposal cost per ton to dispose of Municipal Solid Waste at the Solid Waste Facility and dispose/deliver Recyclable Material at the Recyclable Material Facility. The Disposal Cost Component of the Residential Services Rate is calculated by multiplying the monthly average of the number of tons of Municipal Solid Waste delivered to the Solid Waste Facility in the previous twelve (12) months, times the actual disposal cost per ton, plus the monthly average of the number of tons of Recyclable Material delivered to the Recyclable Material Facility in the previous twelve (12) months, multiplied by the actual disposal/deliver cost per ton, divided by the total number of Residential Service Units. The following is an example calculation of the Disposal Component of the Residential Service Rate:

(i) The monthly average of the number of tons of Municipal Solid Waste delivered to the Solid Waste Facility in the previous twelve (12) months equal 3,015;

(ii) The actual disposal cost per ton of Municipal Solid Waste equals $27.96/ton;

(iii) The monthly average of the number of tons of Recyclable Material delivered to the Recyclable Material Facility over the previous twelve (12) months equals 530;

(iv) The actual disposal/delivery cost per ton of Recyclable Materials equals $25.36/ton;

(v) The total number of Residential Service Units is 28,993.

Formula: (3,015 tons) X ($27.96/ton) + (530 tons) X ($25.36/ton) / (28,993 units) equals $3.37.

Therefore the Disposal Cost Component of the Residential Services Rate in the example calculation above is $3.37. The numbers in the example above are used for illustrative purposes only.

20.4 Operations, Overhead and Profit Component

The Operations, Overhead and Profit Component is intended to cover all other direct and indirect costs to Contractor of providing Residential Services, as well as a reasonable profit. For the purposes of establishing the Residential Services Rate, the Contractor and City hereby agree that the Operations, Overhead and Profit Component shall be $10.05. The Operations, Overhead and Profit Component may be modified from time to time by mutual agreement of the parties as set forth in a Residential Services Rate after January 1, 2018.

20.5 Residential Services Rate

The Residential Services Rate is the sum of the Fuel Component, the Disposal Component, and the Operations, Overhead and Profit Component. The following is an example calculation of the Residential Service Rate using the rates from the example calculations in Sections 20.2, 20.3, and the actual amount of the Operations, Overhead and Profit Component set forth in Section 20.4:

(i)	Fuel Component	$ 1.09
(ii)	Disposal Cost Component	$ 3.37
(iii)	Operations, Overhead and Profit Component	$10.05
EXAMPLE TOTAL RESIDENTIAL SERVICES RATE		**$14.51**

The numbers in the example above are used for illustrative purposes only.

20.6 Accurate Records and Audits

The Contractor and City each agree to maintain accurate records with respect to the three components of the Residential Service Rate. Specifically, Contractor agrees to maintain accurate records of its monthly fuel consumption, and the number of tons of Municipal Solid Waste and Recyclable Material delivered to the appropriate facility each month. Likewise, the City agrees to maintain accurate records of the total number of Residential Service Units. Each party grants to the other party reasonable rights to inspect and audit the aforesaid records.

SECTION 21: ADJUSTMENT OF THE RESIDENTIAL SERVICES RATE

21.1 Residential Service Rate Adjustment

After January 1, 2018, the Contractor may petition the City for reasonable adjustments to the Residential Services Rate based on increases in the Fuel Component, the Disposal Cost Component, and/or the Operations, Overhead and Profit Component caused by increases in inflation and/or also by other factors other than the three listed components such as increases in cost caused by revised laws, ordinances, regulations, and for other similar reasons. The Contractor's petition will specifically identify the reasons for the requested adjustment, and its impact upon the Contractor's cost of operations, in unit terms, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the requested adjustment. The City shall not unreasonably refuse to grant Contractor's petition for reasonable adjustments to the Residential Services Rate.

21.2 Other Adjustment

In the event of a significant or unusual increase in costs beyond the control of Contractor, Contractor may petition the City for an adjustment to the Residential Services Rate based upon significant increases in costs to Contractor. Contractor's petition must specify in detail the reasons for the requested adjustment and a detailed analysis on the impact to Contractor's cost of operations, with an explanation of the methodology used to calculate such impact. The City may request additional information it considers necessary to evaluate the requested adjustment. The City shall not unreasonably refuse to grant Contractor's petition for reasonable adjustments to the Residential Services Rate.

SECTION 22: CUSTOMER LIST, BILLING PAYMENT

22.1 Customer List

From time to time, City shall provide Contractor with a Customer List for Residential Services and City Facility Services. Contractor will report in writing to the Contract Administrator any Cart(s) or Bulk Waste placed at the curbside of a Residential Waste Service Unit or City Facility that is not on the then current Customer List, and Contract Administrator will thereafter update the Customer List as applicable. Regardless of the Customer List, Contractor shall provide services to all Residential Services Units and City Facilities.

22.2 Billing

22.2.1 Residential Services

The City shall bill Residential Service Units as identified on the Customer List for Residential Services in accordance with the rate structure established from time to time by. For additional Bulk Waste Services, the Contractor shall bill Residential Service Units for additional Bulk Waste Services in accordance with the mutually agreed upon rate established by the Contractor and the Residential Service Unit.

22.2.2 City Facility Services

The Contractor shall at its sole expense provide City Facility Services. The Contractor shall not bill the City, co-sponsors, or any other person for City Facility Services.

22.3 Payment

22.3.1 Payment to Contractor

On or prior to the 15th of each calendar month, the City shall pay to Contractor the Residential Services Rate for each Residential Unit that has paid the City's fee for collection of refuse and recycling services during the previous month.

SECTION 23: COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor understands, acknowledges, and agrees the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Pursuant to the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be deemed a material breach of this Contract and may subject the Contractor or subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty.

The City will not consider the Contractor or any of its subcontractors in material breach of this Contract if the Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Section shall be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Texas by a contractor of subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In addition, Contractor shall comply with the following laws:

(i) Occupational Safety and Administration

Contractor will warrant that any work performed on City property or in a location partially or entirely under (Contractor's) control will be performed in accordance with OSHA requirements and all applicable labor laws, regulations, and standards.

(ii) Equal Employment Opportunity

Contractor will comply with applicable laws, statutes, codes, rules and regulations related to or prohibiting discrimination in employment in the performance of its work under this Contract.

(iii) Fair Labor Standards Act

Contractor is required and hereby agrees by execution of this Contract to pay all employees not less than the Federal minimum wage and to abide by other requirements as established by the Congress of the United States in the Fair Labor Standards Act, as amended from time to time.

SECTION 24: PUBLIC EDUCATION NOTICES

Contractor shall provide the following services associated with public education notices at no cost to the City or the customer. Contractor shall submit all public education notices to the Contract Administrator for approval. Contractor will at no time place public education notices inside customers' mailboxes. Contractor shall not distribute any public education notices within the City without written approval from Contract Administrator.

(i) Distribution of Program Introduction Notice

Contractor shall develop, print, and distribute, at Contractor's own expense, a Program Introduction Notice for each Residential Service Unit and Commercial Service Unit for which Contractor delivers a Bin, Cart, and/or Container.

(ii) Development, Printing and Distribution of Unacceptable Set-Out Notice

Contractor shall develop, print, and distribute, at Contractor's own expense, an Unacceptable Set-Out Notice. The Unacceptable Set-Out Notice shall be approved by the Contract Administrator and shall include one (1) original with two (2) copies. The Unacceptable Set-Out shall include (a) the date (b) reason for non-collection, and (c) Contractor's customer service telephone number, and (d) any other information the City requests. Contractor shall attach the original Unacceptable Set-Out Notice via a non-adhesive means to the Bin, Cart, or Container. Contractor shall take a digital photo of the Set-Out that receives a Unacceptable Set-Out Notice. Contractor shall maintain copies of Unacceptable Set-Out Notices and digital photos in a format Contractor can immediately retrieve of a requested notice or photo by address. Contractor shall provide a monthly report of Unacceptable Set-Out Notices as set forth in this Contract.

SECTION 25: OWNERSHIP OF SOLID WASTE, BULK WASTE, RECYCLABLE MATERIALS AND CONSTRUCTION AND DEMOLITION WASTE

Title to Solid Waste, Bulk Waste, and Construction and Demolition Waste shall pass to the Contractor once the Contractor takes possession of the materials. Title to Recyclable Material shall remain with the City until the Recyclable Materials are delivered to the Recyclable Material Facility at which time title passes to the Recyclable Materials Facility operator. The risk of loss to the Recyclable Materials shall pass to Contractor at the time they are picked up by the Contractor. After the risk of loss passes to Contractor, if any Recyclable Materials are lost, damaged, or scavenged, Contractor shall be liable to the City for that sum of funds that would have been paid to the City in accordance with the provisions of this Contract.

SECTION 26: INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall and does herby fully and completely indemnify and hold harmless the City and its Officers, Directors, Agents and Employees from and against any and all claims, costs, demands, suits, judgments, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, and interest, arising directly or indirectly out of or resulting from the willful or negligent acts or omissions of the Contractor in the performance or failure to perform the work required under this Contract for any and all injuries,

including death, to persons and any and all damage to personal or real property. This obligation shall not be construed to negate or reduce any other right or obligation of indemnity that would otherwise exist. This indemnification and hold harmless requirement shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor under any workers compensation acts, disability benefit acts or other employee benefit acts.

SECTION 27: INSURANCE REQUIREMENTS

27.1 Specific Insurance Requirements

The Contractor shall procure and maintain, during the life of this Contract insurance coverage listed below. If Federal, State or local law requires a higher insurance limit, Contractor shall procure and maintain the policy limit as specified by the applicable law.

(i) Worker's Compensation Insurance - on behalf of itself, its partners, and all employees employed directly or indirectly by the Contractor who are to provide a service under this Contract of limits no less than as required law.

(ii) Comprehensive/Commercial General Liability: (no pollution exclusion endorsement is permitted)

1. Bodily Injury Liability (except automobile):	$1,000,000.00 per occurrence
2. Property Damage Liability (except automobile)	$1,000,000.00 per occurrence
3. Total Aggregate:	$2,000,000.00

(iii) Automobile Liability:

1. Bodily Injury	$1,000,000.00 each person $2,000,000.00 per occurrence
2. Property Damage	$2,000,000.00 per occurrence

The policies of insurance shall be primary and written on forms acceptable to the City and placed with insurance carriers approved and licensed by the State of Texas and meet a minimum financial A.M. Best & Company rating of no less than “Excellent”: VII.

Contractor shall file certificates of insurance meeting the requirements as set forth herein with the City prior to execution of this Contract. In addition, Contractor shall be solely responsible to maintain that all certificates of insurance are up to date as filed at the City. Failure of the Contractor to fully comply with the requirements set forth herein regarding insurance may be considered a material breach of this Contract and may be cause for termination of this Contract.

No changes are to be made to these specifications without prior written approval by the City.

Approval of the insurance by the City shall not relieve or decrease the liability of the Contractor for any damages arising from Contractor’s performance of services provided herein.

27.2 General Requirements

All policies required herein, unless approval is given by the City, are to be written on an occurrence basis, shall name the City as additional insured as their interest may appear

under this Contract, and the insurer shall agree to waive all right of subrogation against the City.

Insurance requirements itemized in this Section required by Contractor shall be provided by or in behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modification, deviation, or omissions in these insurance requirements as they apply to all subcontractors.

Each insurance policy required by this Contract shall:

(i) Apply separately to each insured against whom claim is made and suit is brought, except with respect to the limits of the insurer's liability.

(ii) Be endorsed to state that coverage shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to Contract Administrator.

(iii) The City shall retain the right at any time to review coverage, form and amount of insurance.

(iv) The procuring of such required policy or policies of insurance shall not be construed to limit the Contractor's liability to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, Contractor shall be obligated for the full and total amount of any damages, injury or loss caused by negligence or neglect connected with this Contract.

(v) The Contractor shall be solely responsible for payment of all premiums for insurance contributing to the performance of this Contract and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City is an insured under the policy.

(vi) Claims made policies will be accepted for professional and hazardous materials liability coverage and such other risks as are authorized by the City. All such policies contributing to the satisfaction of the insurance requirements herein sha1l have an extended reporting period option or automatic coverage of not less than two years. If provided an option, the Contractor agrees to purchase the extended reporting period coverage on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.

(vii) Certificates of Insurance evidencing claims made or occurrence form coverage and conditions to this Contract, as well as the City's Contract number and description of work, are to be received and approved by the Contract Administrator and the City Risk Manager prior to Commencement Date and no more than thirty (30) calendar days prior to expiration of the insurance when applicable. All insurance certificates shall be received and approved by Contract Administrator before the Contractor will be allowed to commence or continue work.

(viii) Notice of Accident (occurrence) and notice of claim shall be given to the insurance company, the City Risk Management Division, and the Contract

Administrator as soon as practicable after notice to the insured of any incident (occurrence) or claim.

SECTION 28: PERFORMANCE BOND

Contractor agrees that within ten (10) days after the execution of this Contract, Contractor shall make, execute, and deliver to the City a good and sufficient Performance Bond in a form approved by the Contract Administrator, to secure the full, complete and faithful performance of the terms and conditions herein. Such Performance Bond shall be in the amount of one hundred and fifty thousand dollars ($150,000), and shall be renewed each year thereafter throughout the term of this Contract. The Performance Bond shall be signed by the President or General Officer of the Contractor, together with the signature of the corporate secretary and the corporate seal. The surety shall be a surety company duly authorized to do business in the State of Texas; having an "A" or better rating by A. M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States of America; and acceptable to Contract Administrator and the City.

SECTION 29: ASSIGNMENT AND/OR SUBCONTRACTING

This Contract and any permits required for performance of the Contract may not be assigned, subcontracted, conveyed, or otherwise disposed of without the written permission of the City, which will not be unreasonably withheld. No such assignment or subcontracting shall relieve Contractor of its liability under this Contract. In the event Contractor elects to use any subcontractors, this does not relieve Contractor from any prime responsibility of full and complete satisfactory and acceptable performance under any awarded Contract.

SECTION 30: TAXES

Contractor shall be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or supplies generally taxable to the Contractor are eligible for a tax exemption due to the nature of the item and services performed as part of this Contract, Contractor shall assist City in applying for and obtaining such tax credits and exemptions which shall be paid or credited to City.

SECTION 31: FORCE MAJEURE

Except for any payment obligation by either party, if the City or Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Contract by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for the City or Contractor to correct the adverse effect of such event of force majeure.

An event of "Force Majeure" shall mean the following events or circumstances to the extent that they delay the City or Contractor from performing any of its obligations (other than payment obligations) under this Contract:

(i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of Contractor, its agents, and assigns),

landslides, earthquakes, epidemics, quarantine, pestilence, and extremely abnormal and excessively inclement weather; and

(ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this Section, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The parties agree that, as to this Section, time is of the essence.

SECTION 32: DEFAULT

32.1 Events of Default

The occurrence of any of the following shall constitute an "Event of Default" by. Contractor hereunder:

(a) The failure of Contractor to pay when due any sum of money provided herein, provided such failure continues for more than five business days after Contractor receives written notice from City that such installment is due.

(b) The breach by Contractor of any other covenant, condition, or agreement required to be performed or observed hereunder, if such breach has not been cured within thirty (30) days of delivery of notice of such breach to Contractor by City, unless such breach, by its nature, cannot be cured within such thirty (30) day period, in which case so long as Contractor is diligently proceeding to cure such breach and is making reasonable progress in effectuating a cure, it shall not be deemed to be an Event of Default.

(c) The occurrence of an Act of Bankruptcy, provided that with respect to the filing of an involuntary petition in bankruptcy or other commencement of a bankruptcy or similar proceeding against Contractor, such petition or proceeding shall remain undismissed for ninety (90) days.

32.2 Remedies of the City on Default

(a) If any Event of Default shall have occurred and be continuing, City may, in its own name and for its own account, without impairing the ability of City to pursue any other remedy provided for in this Contract now or hereafter existing at law or in equity or by statute, institute such action against Contractor as may appear necessary or desirable to collect such amounts then due under this Contract, or to enforce performance and observance of such covenant, condition or obligation of Contractor hereunder, or to recover damages for Contractor's non-payment, non-performance or non-observance of the same.

(b) Upon the occurrence of any Event of Default and during the continuance thereof, City may (i) by giving Contractor written notice upon the occurrence of any Event of Default described herein declare this Contract to be terminated**,** (ii) exclude Contractor from continuing to collect Municipal Solid Waste, Bulk Waste and Recyclable Materials; and (iii) take whatever action at law or in equity as may

appear necessary or desirable to collect any amounts then due, to enforce performance and observance of any covenant, condition or obligation of Contractor hereunder, or to recover damages for Contractor's nonpayment, non-performance or non-observance of the same.

(c) Contractor shall pay all of City's reasonable fees and expenses, including reasonable attorneys' fees, in enforcing any covenant to be observed by Contractor or pursuing any remedy upon an Event of Default.

SECTION 33: DISPUTE RESOLUTION

33.1 Agreement Regarding Remedies

The failure by either party to perform its obligations under this Contract would be difficult, if not impossible, of being appropriately remedied by award of damages because of the nature of the obligations to each other hereunder. Therefore, the parties agree that in addition to any other remedy that they have in law or equity that they shall be entitled to the remedies of specific performance, mandamus, and injunction in the event of any breach of any obligation by any party under this Contract. The parties hereby waive any requirement that they be required to provide any bond or other surety in order to obtain any of the agreed upon remedies.

33.2 Agreement to Negotiate First to Resolve Issues

The parties agree to attempt first to resolve disputes concerning this Contract amicably by promptly entering into negotiations in good faith. The parties agree that they will not refer any dispute to another dispute resolution procedure including mediation or litigation until they have first made reasonable and good faith efforts to settle their differences by joint negotiations conducted in a timely manner.

33.3 Agreement to Mediate

If any dispute cannot be resolved through good faith negotiation, then the parties shall endeavor to resolve the dispute by mediation as provided herein.

33.4 Presentation of Written Claim Regarding Disputes Not Resolved by Negotiation

In the event that a dispute is not resolved as a result of such negotiations, either party may at any time give formal written notice to the other party of a "claim." A "claim" as used herein means a demand or assertion by one of the parties (the "claimant") seeking, as a matter of right, adjustment or interpretation of contract terms, the payment of money, an extension of time for performance or other relief with respect to the terms of this Contract or any other dispute or matter in question between the parties arising out of or related to this Contract. Such notice shall be in writing. After such notice is given, the dispute resolution procedure provided for below shall immediately enter into effect.

33.5 Performance During Mediation

The claimant shall continue with performance under this Contract pending mediation of the dispute.

33.6 Appointment of Mediator

Promptly following the making of a written claim by either party, the parties will consult with one another to agree on the appointment of a mediator acceptable to parties. The mediator shall have experience in matters of the kind giving rise to the claim. If within five (5) business days the parties are unable to agree on the appointment of a mediator, then either party may request the appointment of a mediator by the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law. The parties shall endeavor to secure such appointment from the Center for Public Policy Dispute Resolution within ten (10) business days after the request for same is made. The parties agree to utilize the mediator appointed by the Center unless they ultimately reach agreement on an alternative selection and give notice to the Center that another selection has been made by agreement.

33.7 Rules for Mediation

The parties agree to the following stipulations concerning the conduct of the mediation:

(a) The mediator shall be impartial and shall have no conflict of interest.

(b) The mediator shall not have any past, present or anticipated financial interest in this Contract except for the payment for services as mediator nor shall the mediator have been previously employed or acted as a consultant, attorney, employee, engineer, architect, contractor or subcontractor of either party nor have any present or anticipated future engagement of the kind described. Before the engagement of the mediator is finalized, the mediator shall provide to the parties a disclosure statement containing a resume of experience, and a description of past, present or anticipated future relationships to the parties, their engineers, contractors, subcontractors, attorneys, architects, or consultants.

(c) The mediation shall be held at a time and location mutually agreeable to the parties and the mediator provided, however, that the mediation shall commence no later than fifteen (15) business days following the confirmation of appointment.

(d) At least ten (10) business days prior to the mediation, the claimant shall submit to the other party and the mediator a statement of the claimant's position, the issues that need to be resolved, and a summary of the arguments supporting the claimant's position. At least two (2) business days prior to the mediation, the other party shall submit its written response to the claimant's statement and provide a summary of its arguments in response.

(e) If the parties agree that independent expert or technical advice would be helpful in facilitating a negotiated resolution of the dispute, the mediator may make arrangements to obtain such advice, and may, with the agreement of the parties, make arrangements for an independent expert to render a non-binding advisory opinion with respect to any technical matters in dispute after hearing the contentions of the parties with respect thereto. The expenses of obtaining such independent advice or advisory opinion shall be borne equally by the parties.

(f) No party shall engage in any private interview, discussion or argument with the mediator concerning the subject matter of the mediation.

(g) The fees of the mediator and any other costs of administering the mediation shall be borne equally by the parties unless otherwise agreed among them in writing.

(h) The mediator may promote settlement in any manner the mediator believes appropriate at one or several mediation sessions as agreed to by the parties. The mediation shall continue only so long as desired by the parties and with the consent of all of them.

(i) Mediation sessions shall be private unless otherwise required by law. Persons other than the representatives of the parties may attend mediation sessions only with the permission of both parties and the consent of the mediator.

(j) All communications made in the course of the mediation process including any advice or advisory opinions rendered shall be confidential in accordance with V.T.C.A. Civil Practice and Remedies Code, Section 154.073.

33.8 Litigation

If a dispute arising pursuant to this Contract is not resolved through mediation as described in this Section, either party may pursue their legal and/or equitable remedies in court.

33.9 Operations during Dispute

In the event that any dispute arises between City and Contractor relating to this Contract, Contractor shall continue to render service and receive compensation in full compliance with all terms and conditions of this Contract as interpreted, in good faith, by the City, regardless of such dispute.

33.10 Right of Termination

Notwithstanding the other provisions in this Section 35, City reserves the right to terminate this Contract at any time whenever the service provided by Contractor fails to meet reasonable standards of the trade, after City provides written notice to Contractor pursuant to Section 33 of this Contract. Upon termination, City may call the performance bond and apply the cash and surety bond for the cost of service in excess of that charged to City by the firm engaged for the balance of the Contract period.

SECTION 34: DESIGNATED REPRESENTATIVE

Any notices or communication required or permitted to be made to either the City or the Contractor under this Contract shall be made to the Designated Representative in writing:

If to the Contractor: Michael E. Lavengco
General Manager
Central Texas Refuse, Inc.
P.O. Box 18685
Austin, TX 78760-8685

If to the City: City Manager
221 E, Main St.
Round Rock, Texas 78664

Notice shall be deemed to be given: (a) if personally delivered, when delivered; (b) if mailed, five (5) business days after receipted delivery to the U.S. Mail; (c) if delivered to Federal Express, or any other nationally recognized overnight carrier, one (1) business day after delivery to such overnight carrier. Each party, by similar written notice given five (5) business days in advance to the other Parties in the aforesaid manner, may change the address to which notice may be sent.

SECTION 35: MISCELLANEOUS

35.1 Succession of Agreement

This Contract and the rights and obligation contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

35.2 Survival

Any rights either party may have in the event it terminates this Contract pursuant to the terms hereof shall survive such termination.

35.3 Joint Preparation

The preparation of this Contract has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

35.4 No Penalties

No provision of this Contract is to be interpreted as a penalty upon any party to this Contract. The parties hereby agree that the rights of the City in the event Contractor takes or fails to take certain actions pursuant to this Contract, are reasonable, and that the parties desire such certainty with regard to such matters.

35.5 Relationship

Nothing contained in this Contract shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Contractor and City.

35.6 Further Assurance

Contractor and City agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Contract and give effect hereto. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Contract, the parties declare their intention to cooperate with each other in effecting the terms of this Contract.

35.7 Time of the Essence

For purposes herein, the parties agree that time shall be of the essence of this Contract and the representations and warranties made are all material and of the essence of this Contract.

35.8 Captions and Section Headings

Captions and Sections headings contained in this Contract are for convenience and reference only and in no way define, describe, extend, or limit the scope or intent of this Contract, nor the intent of any provision hereof.

35.9 No Waiver

No waiver of any provision in this Contract shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

35.10 Entire Agreement and Modification

This Contract constitutes the entire understanding and agreement between the parties and may not be changed, altered or modified except by an instrument in writing signed by all parties against whom enforcement of such change would be sought.

35.11 Severability

In the event that any provision of this Contract shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Contract or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Contract shall, as so amended, modified, or supplemented, or otherwise affected by such action remain in full force and effect.

35.12 Knowledge

Contractor agrees that it has investigated and examined all streets, alleys, overhead trees, wires and such other conditions and requirements of the City that may affect its full and complete performance of this Contract and enters into this Contract giving completed such investigations and examinations to its full satisfaction and solely relying on such investigations and examinations.

35.13 Appendices

All Appendices attached hereto contain additional terms of this Contract and are incorporated into this Contract by reference. Typewritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

35.14 Governing Law

This Contract shall be construed and interpreted according to the laws of the State of Texas and venue with respect to any litigation shall be Williamson County, Texas.

35.15 Attorney Fees

The prevailing party in any litigation related to this Contract shall be entitled to recover from the non-prevailing party the reasonable attorneys' fees and costs incurred by such prevailing party in connection with such litigation.

35.16 Authorization

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges and agrees that it has read this Contract, understands it, and agrees to be bound by it.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have made and executed this Contract on the respective dates under each signature:

CONTRACTOR:

Central Texas Refuse, Inc.

By: _____
Michael E. Lavengco, General Manager

Date: _____

CITY:

City of Round Rock, Texas

By: _____
Alan McGraw, Mayor

Date: _____

Attest:

By: _____
Sara L. White, City Clerk

Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-120611

Date Filed:
10/05/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Central Texas Refuse, Inc
Austin, 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.

The City of Round Rock, Texas

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.

Refuse Collection Contract
Waste and Recycling Collection

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Tolin, David	Houston, TX United States		X
Lavengco, Michael E.	Austin, TX United States		X

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

HEATHER A. RAKOWITZ
Notary Public, State of Texas
Comm. Expires 03-11-2020
Notary ID 12229661

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Michael Lavengco, this the 5th day of Oct, 20 16, to certify which, witness my hand and seal of office.

Heather A. Rakowitz — Heather A. Rakowitz

Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

City of Round Rock

Agenda Item Summary

Agenda Number: F.7

Title: Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Raftelis Financial Consultants, Inc. for a 2017 Water and Wastewater Utility Rate Study.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Michael Thane, Utilities and Environmental Services Director

Cost: $150,000.00

Indexes: Utility Fund

Attachments: Resolution, Exhibit A, Form 1295

Department: Utilities and Environmental Services

Text of Legislative File 2016-3953

In 2014, the City initially contracted with Reftalis Financial Consultants, Inc. to review the water and wastewater rates that the City charges to both our retail and wholesale customers. At that time, the City committed to a once every three year schedule to update the water and wastewater rates to ensure that our rates are set to recover the cost of providing these services.

In order to stay on this schedule, it is now time to review these water and wastewater rates. This professional services work authorization contract is to review, update, and recommend changes to the various rates and fees that fund the water and wastewater utilities. In addition, we are also including a task to review, update, and recommend changes to the current drainage utility rates.

Tasks under this contract may include updating the water and wastewater rate models, examining water and wastewater rate alternatives, updating the drainage financial plan and rate model, examining the regional stormwater management program (regional detention) fee and structure, etc.

Cost: $150,000.00
Source of Funds: Utility Fund

Staff recommends approval.

RESOLUTION NO. R-2016-3953

WHEREAS, the City of Round Rock desires to retain professional consulting services for a 2017 City Water and Wastewater Utility Rate Study; and

WHEREAS, Raftelis Financial Consultants, Inc. has submitted an Agreement for Professional Consulting Services to provide said services; and

WHEREAS, the City Council desires to enter into said agreement with Raftelis Financial Consultants, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Agreement for Professional Consulting Services for a Water and Wastewater Utility Rate Study with Raftelis Financial Consultants, Inc., a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____

ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____

SARA L. WHITE, City Clerk

EXHIBIT

"A"

CITY OF ROUND ROCK AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES FOR A WATER AND WASTEWATER UTILITY RATE STUDY WITH RAFTELIS FINANCIAL CONSULTANTS, INC.

THE STATE OF TEXAS	**§**	
	§	
THE CITY OF ROUND ROCK	**§**	**KNOW ALL BY THESE PRESENTS**
	§	
COUNTY OF WILLIAMSON	**§**	
COUNTY OF TRAVIS	**§**	

THIS AGREEMENT for professional consulting services related to a 2017 Water and Wastewater Utility Rate Study (the "Agreement") is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299, (the "City") and RAFTELIS FINANCIAL CONSULTANTS, INC., located at 5619 DTC Parkway, Suite 175, Greenwood, CO 80111 (the "Consultant").

RECITALS:

WHEREAS, City has determined that there is a need for a 2017 City Water and Wastewater Utility Rate Study; and

WHEREAS, City desires to contract for such professional services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 EFFECTIVE DATE, DURATION, AND TERM

This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

The term of this Agreement shall be until full and satisfactory completion of the work specified herein is achieved, but in no event shall be later than December 31, 2017.

City reserves the right to review the Agreement at any time, and may elect to terminate the Agreement with or without cause or may elect to continue.

2.01 PROPOSAL FOR SERVICES

For the purposes of this Agreement, the City agrees to furnish the Consultant the information set forth in Exhibit "A" titled "City Services," which document is attached hereto and incorporated herein for all purposes. For purposes of this Agreement Consultant has issued its proposal for services for the tasks delineated therein, such proposal for services being attached to this Agreement as Exhibit "B" titled "Financial Services," which document is incorporated herein for all purposes.

3.01 SCOPE OF SERVICES

Consultant shall satisfactorily provide all services described herein and as set forth in Exhibit "B" according to the schedule set forth in the attached Exhibit "C" titled "Work Schedule," which document is incorporated herein for all purposes. Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform services in accordance with this Agreement, in accordance with the appended proposal for services, and in a professional and workmanlike manner.

4.01 LIMITATION TO SCOPE OF SERVICES

Consultant and City agree that the scope of services to be performed is enumerated in Exhibit "B" and herein, and Consultant shall not undertake work that is beyond the Scope of Work set forth in Exhibit "B," however, either party may make written requests for changes to the Scope of Work." To be effective, a change to the Scope of Work must be negotiated and agreed to and must be embodied in a valid Supplemental Agreement as described in 9.01.

5.01 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant in accordance with Exhibit "D" entitled "Fee Schedule," which document is attached hereto and incorporated herein for all purposes, in payment for services and the Scope of Services deliverables as delineated in Exhibit "B."

Not-to-Exceed Total Payment for Services: Consultant's total compensation for consulting services hereunder shall not exceed **One Hundred Fifty Thousand and no/100 ($150,000.00)**. This amount represents the absolute limit of City's liability to Consultant hereunder unless same shall be changed by Supplemental Agreement, and City shall pay, strictly within the not-to-exceed sum recited herein, Consultant's professional fees for work done on behalf of City.

Payment for Reimbursable Expenses: There shall be no payments for reimbursable expenses included in this Agreement.

Deductions: No deductions shall be made for Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to Consultant.

Additions: No additions shall be made to Consultant's compensation based upon project claims, whether paid by the City or denied.

6.01 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

Payment of Invoices: The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 7.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law. The City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

7.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the goods or services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

(a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or

(b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or

(c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or

(d) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

8.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the services as determined by the City's budget for the fiscal year in question. The City may effect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

9.01 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and the City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

10.01 TERMINATION; DEFAULT

Termination: It is agreed and understood by Consultant that the City may terminate this Agreement for the convenience of the City, upon thirty (30) days' written notice to Consultant, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City

subsequently contract with a new consultant for continuation of service on the project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the City and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

Default: Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

11.01 NON-SOLICITATION

All parties agree that they shall not directly or indirectly solicit for employment, employ, or otherwise retain staff of the other during the term of this Agreement.

12.01 CITY'S RESPONSIBILITIES

City shall perform the services described in Exhibit "A." Consultant's performance requires receipt of all requested information reasonably necessary to provision of services. Consultant agrees, in a timely manner, to provide City with a comprehensive and detailed information request list, if any.

13.01 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

(1) Consultant has the right to perform services for others during the term hereof.

(2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.

(3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.

(4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.

(5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.

(6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.

(7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

14.01 CONFIDENTIALITY; MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Any and all materials created and developed by Consultant in connection with services performed under this Agreement, including all trademark and copyright rights, shall be the sole property of City at the expiration of this Agreement.

15.01 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industry standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work no in compliance with this representation.

16.01 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

In no event shall Consultant be liable to the City, by reason of any act or omission relating to the services provided under this Agreement (including the negligence of Consultant), whether a claim be in tort, contract or otherwise, (a) for any consequential, indirect, lost profit, punitive, special or similar damages relating to or arising from the services, or (b) in any event, in the aggregate, for any amount in excess of the total professional fees paid by the City to Consultant under this Agreement, except to the extent determined to have resulted from Consultant's gross negligence, willful misconduct or fraudulent acts relating to the service provided hereunder.

17.01 INDEMNIFICATION

Consultant agrees to hold harmless, exempt, and indemnify City, its officers, agents, directors, servants, representatives and employees, from and against any and all suits, actions, legal proceedings, demands, costs, expenses, losses, damages, fines, penalties, liabilities and claims of any character, type, or description, including but not limited to any and all expenses of litigation, court costs, attorneys' fees and all other costs and fees incident to any work done as a result hereof.

To the extent allowable by law, City agrees to hold harmless, exempt, and indemnify Consultant, its officers, agents, directors, servants, representatives and employees, from and against any and all suits, actions, legal proceedings, demands, costs, expenses, losses, damages, fines, penalties, liabilities and claims of any character, type, or description, including but not limited to any and all expenses of litigation, court costs, attorneys' fees and all other costs and fees incident to any work done as a result hereof.

18.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

19.01 LOCAL, STATE AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

(1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;

(2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or

(3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

20.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local,

state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights, if required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

21.01 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

22.01 DESIGNATION OF REPRESENTATIVES

The City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Michael Thane, P.E.
Director, Utilities and Environmental Services
2008 Enterprise Drive
Round Rock, TX 78664
(512) 218-3236

23.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

(1) When delivered personally to recipient's address as stated herein; or

(2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Consultant:

Raftelis Financial Consultants, Inc.,
5619 DTC Parkway, Suite 175
Greenwood Village, CO 80111

Notice to City:

City Manager, City of Round Rock
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephan L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

24.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

25.01 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

26.01 DISPUTE RESOLUTION

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

27.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement 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 Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

28.01 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

29.01 GRATUITIES AND BRIBES

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

30.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

31.01 INSURANCE

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

32.01 MISCELLANEOUS PROVISIONS

Time is of the Essence. Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each phase of this Agreement within the agreed project schedule may constitute a material breach of this Agreement. Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

Force Majeure. Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default

or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties**.**

Section Numbers. The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver. No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Raftelis Financial Consultants, Inc.

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Exhibit A

Services to be provided by the City

The City will provide the following information and other assistance to RFC that the City deems appropriate and necessary:

1. Providing necessary and relevant data requested by the Consultant;
2. Participating in Project Kick-off meeting;
3. Participating in calls/meetings to discuss preferred approaches (financial plan, rate design);
4. Participating in calls/meetings to discuss preliminary results of each project element;
5. Responding to questions;
6. Make timely decisions on policy matters that will affect the conduct of the study;
7. Reviewing draft deliverables (reports, presentation packages); and
8. Coordinate the scheduling of the Public and/or Council meetings during which the Consultant will present findings of the study.

EXHIBIT B

Services to be provided by the Consultant

Project Purpose

The purpose of this contract is to provide ongoing support for specific tasks as deemed necessary by City of Round Rock staff. These tasks shall be generally associated with the professional services to review, update, and recommend changes to the various rates and fees that fund the water, wastewater and drainage utilities.

Tasks may include but are not limited to the following:

1. Water and Wastewater Model Update
   - Update the existing water and wastewater financial planning and rate model
   - Collect and review the most recent financial and customer information and incorporate into the model.
   - Analyze customer demand behavior of retail and wholesale customers and determine rate revenue adjustments to meet annual revenue requirements.

2. Examine Water and Wastewater Rate Alternatives
   - Review rate alternatives in the model and discuss alternatives with staff
   - Incorporate retail water rate alternatives into the model for comparison
   - Prepare rate schedules for the three-year forecast for retail and wholesale customers accompanied by customer impact analyses for consideration by the City.

3. Drainage Fee and Financial Planning Study
   - Collect, analyze, and forecast operating and capital expenditures, debt service, and miscellaneous items to be included in comprehensive Drainage financial plan.
   - Determine level of fee revenue required to fund utility operations, meet financial targets and balances, and ensure long-term financial viability.
   - Develop a new comprehensive rate model.

4. Regional Stormwater Management Program (RSMP) – aka Regional Detention
   - Evaluate the City's existing RSMP program including rate structure.
   - Recommend changes, updates, or abandonment of the program as appropriate.
   - Examine the City's options under state law for an impact fee and compare and contrast those options with the existing RSMP voluntary fee.

5. Public Presentations and Meeting Support
   - Attendance and support for various public and council meetings
   - Presentations of results and recommendations to at public and council meetings

EXHIBIT C

Work Schedule

All work shall be completed by 31 December 2017.

(Work Schedule to be determined with each individual Work Authorization.)

EXHIBIT D

Fee Schedule

Hourly rates to be billed on a time and materials basis as described in each Work Authorization.

RFC's 2016* Standard Hourly Billing Rates

Position	Hourly Billing Rate **
Chair Emeritus	$400
Chief Executive Officer/President	$375
Chief Operating Officer	$325
Executive Vice President	$305
Vice President/Principal Consultant	$275
Director of Storm Water Management	$275
Director of Governmental Services	$275
Senior Manager	$250
Director of Management Consulting	$275
Director of Florida Operations	$205
Manager	$225
Senior Consultant	$195
Consultant	$170
Associate	$140
Analyst	$105
Administration	$75

* Rates may be amended once between Jan. 1, 2017 and Dec. 31, 2017, not to exceed a 3% increase.

** For services related to the preparation for and participation in deposition and trial/hearing, the standard billing rates listed above will be increased by 50%.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-135850

Date Filed:
11/11/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Raftelis Financial Consultants, Inc.
Charlotte, NC 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 Round Rock

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.
Water/Wastewater Rate Study
Professional consulting for a Water and Wastewater Utility Rate Study for the City of Round Rock

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Stannard, William G.	Kansas City, MO United States	X	
Brandt, Peiffer A.	Charlotte, NC United States	X	
Burns, Byron B.	Charlotte, NC United States	X	
Davis, Jon P.	Charlotte, NC United States	X	
Giardina, Richard D.	Greenwood Village, CO United	X	
Rawls, Benjamin M.	Charlotte, NC United States	X	
Readling, Ronald K.	Cary, NC United States	X	
Thomas, Darin H.	Greensboro, NC United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Alexis F. Warmath, Corporate Secretary
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said ALEXIS F. WARMATH, this the 11th day of November, 20 16, to certify which, witness my hand and seal of office.

Bonnie R. Williams — Bonnie R. Williams — BONNIE R. WILLIAMS NOTARY PUBLIC MECKLENBURG COUNTY, N.C.
Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

City of Round Rock

Agenda Item Summary

Agenda Number: F.8

Title: Consider a resolution authorizing the Mayor to execute a Contract with Tank Builders, Inc. for the Lake Creek Ground Storage Tank Rehabilitation 2016 Project.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Michael Thane, Director of Utilities and Environmental Services

Cost: $389,800.00

Indexes: Self-Financed Water Construction

Attachments: Resolution, Bid Tab and award recommendation, Form 1295

Department: Utilities and Environmental Services

Text of Legislative File 2016-3968

The City currently has three active ground-water wells that are located along Lake Creek just east of Mays Street. At this location is the Lake Creek Ground Storage Tank (GST) that was erected and placed into service in the early 70's. The GST has been rehabilitated several times during its 44 years of service. The tank shell is in very good condition as a result of the past rehabilitation efforts; however, the roof rafters have had to be replaced several times because of corrosion. It is necessary at this time to replace the tank roof. The City's Utility team has chosen an umbrella roof design that will eliminate the interior roof rafters that allow corrosion to be a continual maintenance issue.

In April 2016, the City hired HOT Inspection Services to formulate technical specifications for the bidding and construction phases of this project. The project was advertised and bid according to Attachment "A" of Section 01000 of the Project Manual contract documents.

Three bids were received and opened on October 20th. The only bid conforming to the technical specifications was a bid from Tank Builders, Inc. with a bid of $389,800.

Cost: $389,800.00
Source of Funds: Self-financed water construction

Staff recommends approval.

RESOLUTION NO. R-2016-3968

WHEREAS, the City of Round Rock has duly advertised for bids for the Lake Creek Ground Storage Tank Rehabilitation 2016 Project; and

WHEREAS, Tank Builders, Inc. has submitted the lowest responsible bid; and

WHEREAS, the City Council wishes to accept the bid of Tank Builders, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City a contract with Tank Builders, Inc. for the Lake Creek Ground Storage Tank Rehabilitation 2016 Project.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____
ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____
SARA L. WHITE, City Clerk

THE CITY OF ROUND ROCK

2008 Enterprise Dr.
Round Rock, Texas. 78664
(512) 218-6605

BID TABULATION

BIDS EXTENDED AND CHECKED
BY : David Freireich, P.E.
DATE : 10/28/2016

CONTRACT Lake Creek GST Rehab 2016

LOCATION : Round Rock, Texas

ITEM NO.	ITEM	UNIT	APPROX. QTY.	NG Painting Statement of Safety? Yes Adendum(s)' Yes Bid Bond? Yes Qualifications- No [see #1 below] UNIT PRICE	NG Painting COST	Tank Builders, Inc. Statement of S: Safety? Yes Adendum(s)? ? Yes Bid Bond? Yes Qualifications? Yes UNIT PRICE	Tank Builders, Inc. COST	Blastco Statement of Safety? Adendum(s)? Yes Bid Bond? Yes Qualifications- No [see #2 below] UNIT PRICE	Blastco COST
1	Mobilization & De-Mob	L.S.	1		-	$19,490.00	$19,490.00		-
2	Tank Roof Replacement	L.S.	1		-	$215,310.00	$215,310.00		-
3	Exterior Coating	L.S.	1		-	$60,000.00	$60,000.00		-
4	Interior Coating	L.S.	1		-	$75,000.00	$75,000.00		-
5	DH & Dust Collection	L.S.	1		-	$20,000.00	$20,000.00		-
	TOTAL:				no bid - [see #1 below]		**$389,800.00**		no bid - [see #2 below]

Responsive bidders for this project must have provided the following items per "ATTACHMENT A" Section 01000 of the TECHNICAL SPECIFICATIONS Section 1.04 A&B with their bids. Failure to do so would deem their bid non-responsive. These include the following ;

> Section 1.04 A. "The Contractor must be able to demonstrate experience through the design and construction of at least ten (10) Ground Storage Water Tanks with self supporting umbrella roofs as part of the bid submittal on the Bidder's Qualification Statement Form **[DEFICIENCY #1]**. The Contractor shall not subcontract the demolition, design or erection of the steel tank roof." **[DEFICIENCY #2]**

> Section 1.04 B.The Contractor shall submit with his bid the following information. **No bid will be considered unless this information is provided with the proposal.**

- A list of ten Ground Storage Water Tanks with self supporting umbrella or dome roofs of similar size within the last five years, including the owner, tank capacity and the Engineer. **[DEFICIENCY #3]**
- A preliminary drawing of the tank showing major dimensions and plate thickness, attachments, roof configuration, access ladder/platform and appurtenances upon which the bid is based. **[DEFICIENCY #4]**
- A demolition plan of the existing cone roof and support system and installation of the new umbrella/dome roof. **[DEFICIENCY #5]**
- A written statement by the coatings manufacturer stating that the Contractor or the paint sub-contractor is familiar with the materials specified and has workers capable of performing the work specified herein. **[DEFICIENCY #6]**

NOTE #1 - Contractor had the following deficiencies in his bid - Nos. 1, 3, 4, 5, 6.

NOTE #2 - Contractor had the following deficiencies in his bid - Nos. 1, 2, 3.

October 28, 2016

Michael Thane, P.E. Director
2008 Enterprise Drive
Round Rock, Texas 78664

RE: Lake Creek Ground Storage Tank Rehabilitation 2016 Project
Engineer's Recommendation for Bid Award

Dear Mr. Thane:

Three (3) bids were received and opened at 2 o'clock PM on October 20, 2016 for the above referenced project. All bidders acknowledged receipt of the addendum that was issued, included a bid security, and provided the statement of safety experience. Of the three bidders, however, only one provided all of the remaining items required by the bid documents. That bidder was Tank Builders, Inc. from Euless Texas.

Attached is a detailed bid tabulation showing the deficiencies of the two non-responsive bidders. Since Tank Builders, Inc. properly submitted all of the required information along with the other information as required in the bidding documents, we recommend award of the project to them in the amount of $389,800.00. Their bid was both responsive and reliable.

Sincerely,

David A. Freireich, P.E.
Manager, Utilities Engineering

attachment

cc: Jeff Bell,
John Konzen, HOT Services, Inc.
Tank Builders, Inc.
Blastco, A TF Warren Company
NG Painting, L.P.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-133907

Date Filed:
11/08/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
Tank Builders, Inc.
Euless, 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.
The City of Round Rock

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.
000000
Lake Creek Ground Storage Tank Rehabilitation 2016 Project

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

CHERYL LYNN GARCIA
Notary Public, State of Texas
Comm. Expires 07-22-2018
Notary ID 129895158

AFFIX NOTARY STAMP / SEAL ABOVE

Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Kent Kramer, this the 8th day of November 20 16, to certify which, witness my hand and seal of office.

Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath
Cheryl Lynn Garcia	Cheryl Lynn Garcia	Bookkeeper

City of Round Rock

Agenda Item Summary

Agenda Number: F.9

Title: Consider a resolution authorizing the Mayor to execute a Professional Consulting Services Agreement with Granicus, Inc. for legislative management software services and video streaming services.

Type: Resolution

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Sara White, City Clerk

Cost: $160,000.00

Indexes: General Fund

Attachments: Resolution, Exhibit A, Form 1295

Department: City Clerk's Office

Text of Legislative File 2016-3954

This agreement is for the live video streaming and video storage services as well as agenda management software. This software used to generate and publish City Council agendas and minutes, board and commission agendas and minutes in addition to the live the video streaming of City Council meetings and other board and commission meetings.

It provides a user friendly interface for both staff and the public and enables the public to access videos, agendas, and minutes 24 hours a day, 365 days a year.

The City has been using Granicus for video streaming since the mid 2000s and in 2013 added in the legislative management piece. Staff is able to streamline the agenda submittal process with this software, as well as more effectively ensure that all state laws regarding open meetings are being met.

Cost: $160,000 ($32,000 per year for 5 years)
Source of Funds: General Fund
Staff recommends approval.

RESOLUTION NO. R-2016-3954

WHEREAS, the City of Round Rock desires to retain professional consulting services for legislative management software and related services, and for video streaming and related services; and

WHEREAS, Granicus, Inc. has submitted an Agreement for Professional Consulting Services to provide said services; and

WHEREAS, the City Council desires to enter into said agreement with Granicus, Inc., Now Therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ROUND ROCK, TEXAS,

That the Mayor is hereby authorized and directed to execute on behalf of the City an Agreement for Professional Consulting Services With Granicus, Inc., a copy of same being attached hereto as Exhibit "A" and incorporated herein for all purposes.

The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

RESOLVED this 22nd day of November, 2016.

_____

ALAN MCGRAW, Mayor
City of Round Rock, Texas

ATTEST:

_____

SARA L. WHITE, City Clerk

EXHIBIT

"A"

CITY OF ROUND ROCK AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES WITH GRANICUS, INC.

THE STATE OF TEXAS	§	
	§	
CITY OF ROUND ROCK	§	**KNOW ALL BY THESE PRESENTS:**
	§	
COUNTY OF WILLIAMSON	§	
COUNTY OF TRAVIS		

THIS AGREEMENT for professional consulting services for legislative management software and related services, and for video streaming and related services (the "Agreement"), is made by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality with offices located at 221 East Main Street, Round Rock, TX 78664-5299 (the "City") and GRANICUS, INC., a California corporation with at P.O. Box 49335, San Jose, CA 95161 (the "Consultant").

RECITALS:

WHEREAS, Consultant is in the business of developing, licensing, and offering for sale various streaming media solutions specializing in Internet broadcasting, and related support services; and

WHEREAS, City has determined that there is a continued need for the delineated goods and services; and

WHEREAS, City now desires to contract for such professional services with Consultant; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations hereunder;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 EFFECTIVE DATE, DURATION, AND TERM

This Agreement shall be effective on the date it has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

The term of this Agreement shall be for sixty (60) months from the effective date of this Agreement.

City reserves the right to review the Agreement at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

2.01 CONTRACT AMOUNT

In consideration for the professional consulting services to be performed by Consultant, and for the related goods, City agrees to pay Consultant an amount not-to-exceed **Thirty-Two Thousand and No/100 Dollars ($32,000.00) per year** for the term of this Agreement. Such payment shall be for goods and services and deliverables as delineated herein and in attached exhibits. The delineated amount is inclusive of reimbursables and expenses such as travel, onsite visit costs, shipping, and the like.

3.01 SCOPE OF SERVICES

For purposes of this Agreement, Consultant has issued its "Proposal for City of Round Rock, TX / Government Transparency and Agenda Workflow Solutions" for the goods and services required, and such Proposal is designated Exhibit "A" and is attached hereto and incorporated herein by reference for all purposes. This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions. Consultant shall satisfactorily provide all goods, services and deliverables described under the referenced Proposal within the contract term specified herein. Consultant's undertakings shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant shall perform its services in accordance with this Agreement and in accordance with the referenced Proposal. Consultant shall perform its services in a professional and workmanlike manner.

Consultant shall not undertake work that is beyond the Proposal set forth in Exhibit "A" and herein. However, either party may make written requests for changes to the scope of provided goods and services. To be effective, such change must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

4.01 PAYMENT FOR SERVICES; NO REIMBURSABLE EXPENSES

Payment for Services: In consideration for the consulting services to be performed by Consultant, and related goods, City agrees to pay Consultant an amount not-to-exceed **Thirty-Tow Thousand and No/100 Dollars ($32,000.00) per year** for the term of this Agreement.

No Reimbursable Expenses: No reimbursable expenses are authorized under this Agreement.

Deductions: No deductions shall be made for Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to Consultant.

Additions: No additions shall be made to Consultant's compensation based upon claims, whether paid by City or denied.

5.01 SUPPLEMENTAL AGREEMENT

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and City shall not be responsible for actions by Consultant nor for any costs incurred by Consultant relating to additional work not directly authorized by Supplemental Agreement.

6.01 INVOICE REQUIREMENTS; TERMS OF PAYMENT

Invoices: To receive payment, Consultant shall prepare and submit detailed progress invoices to City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Proposal, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by City relative to service deliverables, Consultant shall comply promptly. In this regard, should City determine it necessary, Consultant shall make all records and books relating to this Agreement available to City for inspection and auditing purposes.

Payment of Invoices: City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and City or because of amounts which City has a right to withhold under this Agreement or state law. City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

7.01 LIMITATION TO SCOPE OF SERVICES

Consultant and City agree that the services to be performed and the related goods to be furnished are enumerated in Exhibit "A" and herein, and may not be changed without the express written agreement of the parties. Notwithstanding anything herein to the contrary, the parties agree that City retains absolute discretion and authority for all funding decisions, such to be based solely on criteria accepted by City which may be influenced by but not be dependent on Consultant's work.

8.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

9.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Consultant will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Consultant may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

A. There is a bona fide dispute between City and Consultant, a contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late; or

B. There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or

C. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or

D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

10.01 TERMINATION; DEFAULT

Termination: It is agreed and understood that either party may terminate this Agreement for convenience, upon thirty (30) days' written notice to the other party, with the understanding that immediately upon receipt of said notice all work being performed under this

Agreement shall cease. Consultant shall invoice City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement.

Termination of this Agreement shall extinguish all rights, duties, and obligations of City and the terminated party to fulfill contractual obligations. Termination shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

It is agreed and understood by Consultant that City may terminate this Agreement for cause, upon ten (10) days' written notice to the other party.

Default: Either party may terminate this Agreement, in whole or in part, for default if the party provides the other party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the parties).

If default results in termination of this Agreement, then City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to City, the cost to City of employing another firm to complete the useable work, and other factors will affect the value to City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating party and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

11.01 INDEPENDENT CONTRACTOR STATUS

Consultant is an independent contractor, and is not City's employee. Consultant's employees or subcontractors are not City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and City agree to the following rights consistent with an independent contractor relationship:

(1) Consultant has the right to perform services for others during the term hereof.

(2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.

(3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.

(4) Consultant or its employees or subcontractors shall perform services required hereunder, and City shall not hire, supervise, or pay assistants to help Consultant.

(5) Neither Consultant nor its employees or subcontractors shall receive training from City in skills necessary to perform services required by this Agreement.

(6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.

(7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of City.

12.01 NON-SOLICITATION

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

13.01 CITY'S RESPONSIBILITIES

Full information: City shall provide full information regarding project requirements. City shall have the responsibility of providing Consultant with such documentation and information as is reasonably required to enable Consultant to provide the services called for. City shall require its employees and any third parties who are otherwise assisting, advising or representing City to cooperate on a timely basis with Consultant in the provision of its services. Consultant may rely upon written information provided by City and its employees and agents as accurate and complete. Consultant may rely upon any written directives provided by City or its designated representative concerning provision of services as accurate and complete.

Required materials: Consultant's performance requires receipt of all requested information reasonably necessary to provision of services. Consultant agrees, within ten (10) days of the effective date of this Agreement, to provide City with a comprehensive and detailed information request list, if any.

14.01 CONFIDENTIALITY; AND MATERIALS OWNERSHIP

Any and all programs, data, or other materials furnished by City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use

thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

The parties recognize and understand that City is subject to the Texas Public Information Act and its duties run in accordance therewith.

15.01 WARRANTIES

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industry standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

16.01 LIMITATION OF LIABILITY

Should any of Consultant's services not conform to the requirements of City or of this Agreement, then and in that event City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by City, its directors, employees or agents.

In no event shall Consultant be liable to City, by reason of any act or omission relating to the services provided under this Agreement (including the negligence of Consultant), whether a claim be in tort, contract or otherwise, (a) for any consequential, indirect, lost profit, punitive, special or similar damages relating to or arising from the services, or (b) in any event, in the aggregate, for any amount in excess of the total professional fees paid by City to Consultant under this Agreement, except to the extent determined to have resulted from Consultant's gross negligence, willful misconduct or fraudulent acts relating to the service provided hereunder.

17.01 INDEMNIFICATION

Consultant and City (to the extent allowable by law to City) each agree to indemnify, defend and hold harmless the other from and against amounts payable under any judgment, verdict, court order or settlement for death or bodily injury or the damage to or loss or destruction of any real or tangible property to the extent arising out of the party's negligence in the performance of this Agreement.

18.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

19.01 LOCAL, STATE AND FEDERAL TAXES

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. City will not do the following:

(1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;

(2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or

(3) Withhold state or federal income tax from any of Consultant's payments.

If requested, City shall provide Consultant with a certificate from the Texas State Comptroller indicating that City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

20.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements set forth at: http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf.

21.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to City at the expiration of the term of this Agreement.

22.01 FINANCIAL INTEREST PROHIBITED

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required hereunder.

23.01 DESIGNATION OF REPRESENTATIVES

The City hereby designates the following representative(s) authorized to act in its behalf with regard to this Agreement:

Sara L. White
City Clerk
City of Round Rock
221 East Main Street
Round Rock, Texas 78664

24.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

(1) When delivered personally to recipient's address as stated herein; or

(2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Consultant:

Granicus, Inc.
P.O. Box 49335
San Jose, CA 95161

Notice to City:

City Manager, City of Round Rock
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephan L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of City and Consultant.

25.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

26.01 EXCLUSIVE AGREEMENT

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding

on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

27.01 DISPUTE RESOLUTION

City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

28.01 FORCE MAJEURE

Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

Consultant shall not be deemed to be in default of its obligations to City if its failure to perform or its substantial delay in performance is due to City's failure to timely provide requested information, data, documentation, or other material necessary for Consultant to perform its obligations hereunder.

29.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement 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 Agreement from being void should a provision which is of the essence of this Agreement be determined void.

30.01 STANDARD OF CARE

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to City and according to generally accepted business practices.

31.01 GRATUITIES AND BRIBES

City may, by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

32.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

33.01 GENERAL AND MISCELLANEOUS

Section Numbers: The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

Waiver: No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

Closed Captioning Services: City and Granicus may agree that closed captioning or transcription services will be provided by a third party under this Agreement. In such case, City expressly understands that the third party is an independent contractor and not an agent or employee of Granicus. Granicus is not liable for acts performed by such independent third party.

Multiple Originals: This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument. City agrees to provide Consultant with one fully executed original.

Exhibits: This Agreement consists of this primary document as well as the following exhibits incorporated by reference:

Exhibit "A": Proposal
Exhibit "B": Granicus' Additional Terms and Conditions
Exhibit "C": Support Information
Exhibit "D": Hardware Exhibit

Exhibit "E": Trademark Information
Exhibit "F": Termination or Expiration Options Regarding Content

IN WITNESS WHEREOF, City and Consultant have executed this Agreement on the dates indicated.

CITY OF ROUND ROCK, TEXAS

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

GRANICUS, INC.

By: _____
Printed Name: Jason Fletcher
Title: CEO
Date Signed: 9.27.16

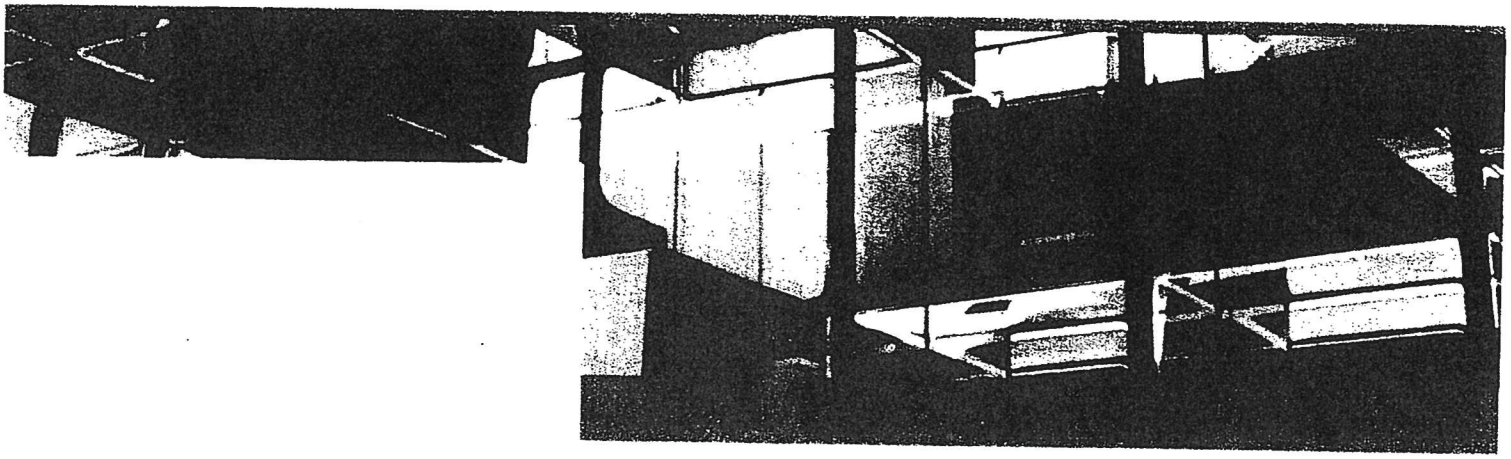
EXHIBIT A

PROPOSAL

granicus.
connecting government

Proposal for City of Round Rock, TX

Government Transparency and Agenda Workflow Solutions



Proposal presented to:

ROUND ROCK, TEXAS
PURPOSE. PASSION. PROSPERITY.

Granicus Proposal to the City of Round Rock, TX

Thank you for considering Granicus, we're excited continue supporting public meeting workflow needs. It has been a pleasure to work with the City of Round Rock over the past few years. We look forward to continuing our rewarding, long-term relationship with you.

On the following few pages, you will find a breakdown of the needs that we have uncovered, our proposed solution, some of our key differentiators, detailed pricing, and a checklist that outlines our next steps.

Primary Business Issue

During our conversations and assessment of Round Rock's primary business challenges, we discovered the following issues:

- Continue taking on a leadership role in open and accessible government through technology.
- Address manual process and make government more responsive and efficient.
- High costs associated with paper-based manual approval routing processes.

Current Situation

- A typical process for an agenda submittal might start with the Department → Legal → Finance → City Clerk → Legal. The legal team writes up the resolutions and ordinances at this point of time for the agenda submittal.
- All items are due on Wednesday; week before council meeting on Thursday of following week.
- Agenda items are assembled on Thursday and discussed in a staff meeting on Friday.
- Packet briefing happens on Tuesday (2 days before council meeting) for the council.

Key Challenges

- High costs due to high paper consumption and staff time as documents are walked manually from between staff members.
- All tasks are performed manually by the City Secretary's Office for assembling agenda packets. Documents are scanned into PDFs.
- Duplicate tasks as agendas are posted in multiple locations through City's website.
    - Link to council and media
    - Internal portal for staff
    - Uploaded through Granicus media manager

- Problems associated with staff members missing deadlines for agenda item submissions.

We have discussed some specific ways to address the challenges the City of Round Rock is facing. In working closely, below is a list of solution elements to specifically address the challenges described above.

Ideal Solution Components

- A solution that will produce an agenda similar to Round Rock's current agenda format, eliminate duplicate tasks and make the process electronic
- Ability to produce an agenda packet in tiff format for archival purposes in city library.
- Ability to pull agenda items and postpone to future meetings.
- Ability to send a word document of the ordinances to Municode.
- Provide complete history tracking for all legislation/actions taken by the City.
- Follow city file naming conventions: Type – Year – Month – Meeting Date – Agenda Item Number.
- Ability to manage boards and commissions through the system.
- Ability for City Council and Executive staff to view agenda packet information on iPads.
- Stream video content over mobile devices such as iPhones, iPads and Androids.

Impact of Success

Some potential ways for City of Round Rock to measure and determine success with proposed Granicus solutions would be,

- Staff time saved to secure agenda submittal approvals and assemble agendas for City Council meetings.
- Cost savings from reduced paper consumption for public meetings.
- Increased transparency and improved service provided to citizens of Round Rock.

Plan

We will be developing a plan for going live with the new solution over the next few weeks once the funding source for this project has been identified.

Also, below you will find a detailed proposal for the solution that the City of Round Rock has chosen. The proposal and pricing includes all training, software, hardware, 24/7/365 support, professional services, installation and implementation.

Our next steps are to present the proposal to the City Manager's office and finalize go live dates for the City. I look forward to working with you over the next few weeks to start work on the Agenda Management project.

Over 900 jurisdictions have selected Granicus as a partner to help them build trust with citizens, reduce staff time spent on processing meetings, and engage citizens in productive new ways. We hope that you have found tremendous value in being a part of the Granicus client family.

Most Sincerely,

Ram Annasami
Account Manager
Granicus, Inc.

Plan for Success

Item	Date	Contact
Proposal Review	05/31/2012	Sara/Brooks
Project Timeline Review	TBD	TBD
Funding/Procurement Process Review	TBD	TBD
Project Approved	TBD	TBD
Work Order Received	TBD	TBD
Contract Executed	TBD	TBD
Project Kick Off Call	TBD	TBD
Software Installed and Configured	TBD	TBD
Solution Deployment Validated	TBD	TBD
Training Completed	TBD	TBD
Internal Go-Live	TBD	TBD
System Accepted	TBD	TBD
Go Live to the Public – Project Successful!	TBD	TBD

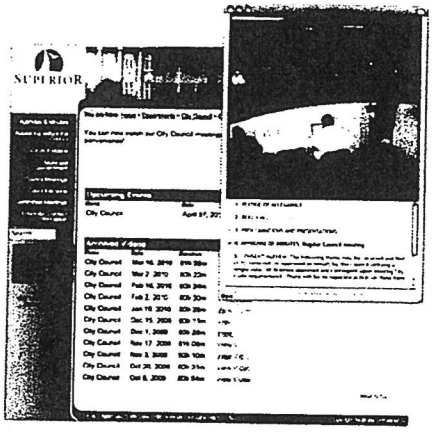
Proposed Solution

Granicus® Open Platform

The Granicus® Open Platform allows you to stream an unlimited number of meetings and events online and over mobile devices – play video in H.264* and Silverlight. Publish all of your content online with indefinite retention schedules. Granicus Encoding Appliance gives you unlimited bandwidth and storage as well as local live and on-demand streaming for up to 50 concurrent viewers. You can also access a library of community content and start publishing videos immediately. Finally, leverage an open architecture and connect in-house or third-party solutions to Granicus. Click here for more information on the Granicus Open Platform.

- Stream unlimited meeting bodies and events
- Indefinite retention schedules
- Intelligent media routing
- Community content library
- Open architecture and SDK

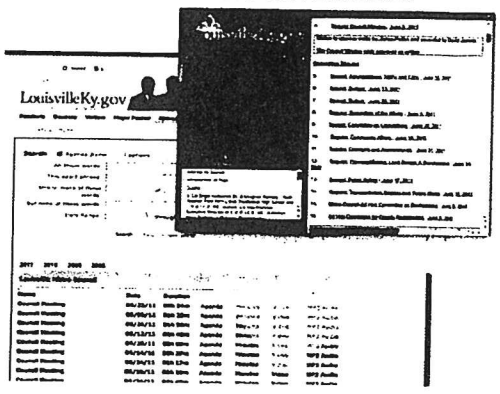
* In pilot, will be available to all customers upon release



Government Transparency Suite

The Government Transparency Suite gives your citizens greater access to public meetings and records online. Take the next step towards greater transparency and link related documents to your video, offer your full agenda packet, and provide advanced searching of archives. Reach a broader audience Reach a broader audience with podcasting - download media in MP3 and MP4 formats (MP3, MP4) and view video offline. Granicus' reporting tools give you a detailed analysis of visitor statistics to help you better understand viewership trends. Click here for more information on the Government Transparency Suite.

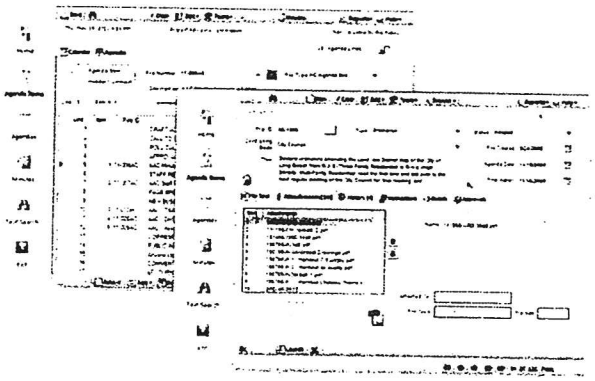
- Publish agenda packets with video
- Link relevant materials
- Build reports and analytics
- Index videos live
- Offer downloadable formats (MP3 & MP4)



Legislative Management Suite

The Legislative Management Suite offers a complete and automated agenda workflow solution. Create agenda items and assign them to the appropriate agenda, making agenda creation seamless. Item approvals are done automatically – approvers are notified when it's their turn to review. Once the agenda is generated, a minutes report is automatically created with the same data. All attendance, actions, movers/seconders, votes and notes can be captured for the public record. This Suite also allows you to track legislation from inception through approvals and actions taken. Click here for more information on the Legislative Management Suite.

- Agenda item drafting
- Electronic approval process
- Agenda packet generation and publication
- Meeting minutes
- Track and search legislative data



Professional Services	Legislative Management	
Hosted Web-Based Application	•	Activation of a hosted media and content management application.
Workflow Assessment	•	Careful workflow review and software configuration.
Workflow Implementation	•	Hands-on guidance and support to ensure smooth and successful user adoption.
Onsite Training and Meeting Support	2 Day/ Sys Admin	On-premise support and mentorship to guide users during a live meeting.
Self-Paced Online	•	On-demand online training courses accessible anytime, anywhere.
Instructor-led Online Training Series	5 Day Combo w/ Onsite	Live online training led by a training professional in a classroom environment.
Onsite Training and Meeting Support	5 Day Combo w/ Online	Intensive hands-on training at the clients' location to address unique user needs.
Standard Website Integration		Standard media player and media portal embedded into customer's branded website.
Legislative Portal Website Integration	•	Standard portal for legislative information that matches the look and feel of customer's branded website.
Standard Reports	•	Standardized report templates for agendas and minutes.

Granicus Differentiators

- World's most experienced provider of government transparency, citizen participation, meeting efficiency, legislative management, and training management solutions with:
  - Over 900 clients in all 50 states, at every level of government
  - Over 31 million government webcasts viewed
  - More than 265,350 government meetings online
- First fully integrated legislative workflow management system for local government
- Open API architecture and SDK allow for seamless integrations with systems already in place
- Certified integrations provide flexibility and choice of agenda workflow solutions
- Only government webcasting service to provide encoding, minutes annotation, transcription, and closed captioning services
- Truly unlimited storage and distribution for all meeting bodies and non-meeting content
- Indefinite retention schedules for all archived meeting and non-meeting content
- Only provider of both government webcasting and citizen participation services
- Only provider of both government webcasting and training management services
- Access a library of peer-created government media content from over 900 Granicus users
- 24/7/365 customer service and support
- 97% customer satisfaction rating, 99% client retention rating
- Ranked 185 on Deloitte 500 fastest growing companies
- Ranked 419 on Inc 500 fastest growing companies
- Client Success stories are available here: http://www.granicus.com/Clients/Case-Studies.aspx

EXHIBIT B

GRANICUS' ADDITIONAL TERMS AND CONDITIONS

Granicus desires to provide and Client desires to (i) purchase the Granicus Solution, and continue with Client's current solution as set forth in the Proposal, which is attached as Exhibit B and incorporated herein by reference, (ii) use the Granicus Software subject to the terms and conditions set forth in the Agreement and exhibits, and (iii) contract with Granicus to administer the Granicus Solution through the Managed Services set forth in Exhibit B.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements, covenants, representations and warranties herein contained, the parties hereto agree as follows:

1. GRANICUS SOFTWARE AND MANAGED SERVICES

1.1 Software and Services. Subject to the terms and conditions of the Agreement and exhibits, Granicus will provide Client with the Granicus Software and Managed Services that comprise the Granicus Solution as outlined in Exhibit B. "Managed Services" shall mean the services provided by Granicus to Client as detailed in Exhibit B. "Managed Services Fee" shall mean the monthly cost of the Managed Services, as detailed in Exhibit B.

2. GRANT OF LICENSE

2.1 Ownership. Granicus, and/or its third party supplier, owns the copyright and/or certain proprietary information protectable by law in the Granicus Software.

2.2 Use. Granicus agrees to provide Client with a revocable, non-transferable and non-exclusive license to access the Granicus Software listed in the Solution Description and a revocable, non-sublicensable, non-transferable and non-exclusive right to use the Granicus Software. All Granicus Software is proprietary to Granicus and protected by intellectual property laws and international intellectual property treaties. Pursuant to the Agreement and exhibits, Client may use the Granicus Software to perform its own work and work of its customers/constituents. Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Software license as described in Section 2.2 hereof.

2.3 Limited Warranty; Exclusive Remedies. Subject to Sections 6.1 and 6.2 of this exhibit, Granicus warrants that the Granicus Software, as provided by Granicus, will substantially perform in accordance with its applicable written specifications for as long as the Client pays for and receives Managed Services. Client's sole and exclusive remedy for any breach by Granicus of this warranty is to notify Granicus, with sufficient detail of the nonconformance, and provide Granicus with a reasonable opportunity to correct or replace the defective Granicus Software. Client agrees to comply with Granicus' reasonable instructions with respect to the alleged defective Granicus Software.

2.4 Limitations. Except for the license in Section 2.2, Granicus retains all ownership and proprietary rights in and to the Granicus Software, and Client is not permitted, and will not assist or permit a third party, to: (a) utilize the Granicus Software in the capacity of a service bureau or on a time share basis; (b) reverse engineer, decompile or otherwise attempt to derive source code from the Granicus

Software; (c) provide, disclose, or otherwise make available the Granicus Software, or copies thereof, to any third party; or (d) share, loan, or otherwise allow another Meeting Body, in or outside its jurisdiction, to use the Granicus Software, or copies thereof, except as expressly outlined in the Proposal.

3. PAYMENT OF FEES

3.1 Client agrees to pay all costs as outlined in Exhibit A and Exhibit B, as delineated in the Agreement.

3.2 Monthly billing for Managed Services shall begin forty-five (45) days after the receipt of a fully executed Agreement or the receipt of a purchase order for the up-front costs, whichever occurs first, as agreed upon in Exhibit A and Exhibit B.

3.3 Client agrees to pay all invoices from Granicus in accordance with the Texas Prompt Payment Act delineated in the Agreement. Granicus shall send all invoices to:

Name: Sara White
Title: City Clerk
Address: 221 East Main Street, Round Rock, TX 78664

3.4 Only upon renewal date of the Agreement, Granicus may include (in which case, Client agrees to pay) a maximum increase of the current CPI percentage rate (as found at The Bureau of Labor and Statistics website http://www.bls.gov/CPI/) or three percent (3%) per year on Client's Managed Services Fee, whichever is larger.

3.5 Training Cancellation Policies. Granicus' policies on Client cancellation of scheduled trainings is as follows:

(a) Onsite Training. For any cancellations within forty-eight (48) hours of the scheduled onsite training, Granicus, at its sole discretion, may invoice the Client for one hundred percent (100%) of the purchased training costs and all actual travel expenses, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously-quoted pricing.

(b) Online Training. For any cancellations within twenty-four (24) hours of the scheduled online training, Granicus, at its sole discretion, may invoice the Client for fifty percent (50%) of the purchased training costs, including any incurred third party cancellation fees. Subsequent training will need to be purchased and scheduled at the previously-quoted pricing.

3.6 Additions. Granicus, at its sole discretion, may add features or functionality to existing product suite bundles for various reasons, including to enhance Granicus' offerings, or improve user satisfaction. During the initial term of the Agreement, the Client understands that the use of these additional products is included in the originally agreed-upon monthly Managed Services Fee.

At contract renewal, the Client acknowledges that this added functionality may have additional monthly managed service charges associated with it and that monthly managed services rates on renewals may have a higher rate than preceding years.

4. CONTENT PROVIDED TO GRANICUS

4.1 Responsibility for Content. The Client shall have sole control and responsibility over the

determination of which data and information shall be included in the Content that is to be transmitted, including, if applicable, the determination of which cameras and microphones shall be operational at any particular time and at any particular location. However, Granicus has the right (but not the obligation) to remove any Content that Granicus believes violates any applicable law or the Agreement.

4.2 Restrictions. Client shall not provide Granicus with any Content that: (i) infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights; (ii) violates any law, statute, ordinance or regulation, including without limitation the laws and regulations governing export control and e-mail/spam; (iii) is defamatory or trade libelous; (iv) is pornographic or obscene, or knowingly promotes, solicits or comprises inappropriate, harassing, abusive, profane, defamatory, libelous, threatening, indecent, vulgar, or otherwise objectionable content or constitutes unlawful content or activity; (v) contains any viruses, or any other similar software, data, or programs that may damage, detrimentally interfere with, intercept, or expropriate any system, data, information, or property of another.

5. TRADEMARK OWNERSHIP

Granicus and Client's Trademarks are listed in the Trademark Information exhibit attached as Exhibit F.

5.1 Each Party shall retain all right, title and interest in and to their own Trademarks, including any goodwill associated therewith, subject to the limited license granted to the Client pursuant to Section 2 hereof. Upon any termination of the Agreement, each Party's right to use the other Party's Trademarks pursuant to this Section 5 terminates.

5.2 Each party grants to the other a non-exclusive, non-transferable (other than as provided in Section 5 hereof), limited license to use the other party's Trademarks as is reasonably necessary to perform its obligations under the Agreement, provided that any promotional materials containing the other party's Trademarks shall be subject to the prior written approval of such other party, which approval shall not be unreasonably withheld.

6. LIMITATION OF LIABILITY

6.1 Warranty Disclaimer. Except as expressly provided herein, Granicus' services, software and deliverables are provided "as is" and Granicus expressly disclaims any and all express or implied warranties, including but not limited to implied warranties of merchantability, non-infringement of third party rights, and fitness for a particular purpose. Granicus does not warrant that access to or use of its software or services will be uninterrupted or error free. In the event of any interruption, Granicus' sole obligation shall be to use commercially reasonable efforts to restore access.

6.2 Limitation of Liabilities. To the maximum extent permitted by applicable law, Granicus and its suppliers and licensors shall not be liable for any indirect, special, incidental, consequential, or punitive damages, whether foreseeable or not, including but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of: profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data); or cost of procurement of substitute goods, services or technology, even if advised of the possibility of such damages and even in the event of the failure of any exclusive remedy. In no event will Granicus' and its suppliers' and licensors' liability exceed the amounts paid by client under the Agreement regardless of the form of the claim (including without limitation, any contract, product liability, or tort claim (including negligence, statutory or otherwise).

7. CONFIDENTIAL INFORMATION & OWNERSHIP.

7.1 Confidentiality Obligations. Confidential Information shall mean all proprietary or confidential information disclosed or made available by the other party pursuant to the Agreement that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and includes but is not limited to the terms and conditions of the Agreement, and all business, technical and other information (including without limitation, all product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing party to the receiving party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of Client.

7.2 Each party agrees to keep confidential and not disclose to any third party, and to use only for purposes of performing or as otherwise permitted under the Agreement, any Confidential Information. The receiving party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each party agrees not to disclose the Confidential Information to any of its Representatives except those who are required to have the Confidential Information in connection with this Agreement and then only if such Representative is either subject to a written confidentiality agreement or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.

7.3 Exceptions. The obligations of this Section 7 shall not apply if receiving party can prove by appropriate documentation that such Confidential Information (i) was known to the receiving party as shown by the receiving party's files at the time of disclosure thereof, (ii) was already in the public domain at the time of the disclosure thereof, (iii) entered the public domain through no action of the receiving party subsequent to the time of the disclosure thereof, or (iv) is required by law or government order to be disclosed by the receiving party, provided that the receiving party shall (i) notify the disclosing party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, (ii) use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.

8. TERM

8.1 The initial term and renewal terms of the Agreement shall be as delineated in the Agreement that this exhibit supplements.

8.2 Rights Upon Termination. Upon any expiration or termination of the Agreement, under the terms thereof, and unless otherwise expressly provided in an exhibit to the Agreement:

(a) Client's right to access or use the Granicus Solution, including Granicus Software, terminates and Granicus has no further obligation to provide any services;

(b) Client has the right to keep any purchased hardware, provided that Client removes and/or uninstalls any Granicus Software on such hardware. However, if Client has received hardware as part of a Granicus Open Platform Suite solution ("Open Platform Hardware"), Client understands that upon termination of the Agreement, Client shall immediately return the Open Platform Hardware to Granicus. The Open Platform Hardware must be returned within fifteen (15) days of termination, and must be in substantially the same condition as when

originally shipped, subject only to normal wear and tear; and

(c) Client shall immediately return the Granicus Software and all copies thereof to Granicus, and within thirty (30) days of termination Client shall deliver a written certification to Granicus certifying that it no longer has custody of any copies of the Granicus Software.

8.3 Obligations Upon Termination. Upon any termination of the Agreement,

(a) the parties shall remain responsible for any payments that have become due and owing up to the effective date of termination;

(b) the provisions of 2.1, 2.4, 3, 4, 5, 6.1, 6.2, 7, 8.3, and 10 of this exhibit, and applicable provisions of the other exhibits intended to survive, if any, shall survive termination of the Agreement and continue in full force and effect;

(c) pursuant to the Termination or Expiration Options Regarding Content, Granicus shall allow the Client limited access to the Client's Content, including but not limited to all video recordings, timestamps, indices, and cross-referenced documentation. The Client shall also have the option to order hard copies of the Content in the form of compact discs or other equivalent format; and

(d) Granicus has the right to delete Content within sixty (60) days of the expiration or termination of the Agreement.

9. PATENT, COPYRIGHT AND TRADE SECRET INFRINGEMENT.

9.1 Granicus' Options. If the Granicus Software becomes, or in Granicus' opinion is likely to become, the subject of an infringement claim, Granicus may, at its option and sole discretion, (i) obtain for Client the right to continue to use the Granicus Software as provided in this Agreement; (ii) replace the Granicus Software with another software product that provides similar functionality; or (iii) if Granicus determines that neither of the foregoing options are reasonably available, Granicus may cease providing the applicable services or require that Client cease use of and destroy the Granicus Software. In that event, and provided that Client returns or destroys (and certify to such destruction of) all copies of the Granicus Software in Client's possession or control, if any, Granicus will refund to Client all license fees paid by Client under the current Agreement.

10. MISCELLANEOUS.

10.1 Independent Contractors. The parties are independent contractors, and no other relationship is intended by the Agreement.

10.2 Force Majeure. Other than payment obligations, neither party is responsible for any delay or failure in performance if caused by any event outside the reasonable control of the party, including without limitation acts of God, government regulations, shortage of supplies, act of war, act of terrorism, earthquake, or electrical, internet or telecommunications outage.

EXHIBIT C

SUPPORT INFORMATION

1. Contact Information. The support staff at Granicus may be contacted by the Client at its mailing address, general and support-only telephone numbers, and via e-mail or the Internet.

(a) Mailing Address. Mail may be sent to the support staff at Granicus headquarters, located at P.O. Box 49335, San Jose, California, 95161.

(b) Telephone Numbers. Office staff may be reached from 8:00 AM to 7:00 PM Pacific time at (415) 357-3618 or toll-free at (877) 889-5495. The technical support staff may be reached at (415) 357-3618 opt 1 from 5:00 AM to 6:00 PM Pacific time. After hours or in case of a technical support emergency, the support staff may be reached at (415) 655-2414, twenty-four (24) hours a day, seven (7) days a week.

(c) Internet and E-mail Contact Information. The website for Granicus is http://www.granicus.com. E-mail may be sent to the support staff at support@granicus.com.

2. Recognized Client Representatives. Granicus strives to provide unparalleled support to its Clients by ensuring that Client staff is properly educated and is prepared to maximize its Granicus Solution. Any Client Representative who wishes to participate and receive Granicus customer advocacy services shall participate in and complete the training program that is suited for the Granicus Solution. Once a Client Representative completes the training, that Representative will be recognized in Granicus' internal system as qualified to receive support and ongoing education services. All Client Representatives are eligible to receive technical support services, regardless of participation in the training program.

3. Support Policy. When Granicus receives notification of an issue from Client, a Granicus account manager or technical support engineer will respond directly to the Client via phone or e-mail with (a) an assessment of the issue, (b) an estimated time for resolution, and (c) will be actively working to resolve the issue as appropriate for the type of issue. Notification shall be the documented time that Granicus receives the Client's call or e-mail notifying Granicus of an issue or the documented time that Granicus notifies Client there is an issue. Granicus reserves the right to modify its support and maintenance policies, as applicable to its customers and licensees generally, from time to time, upon reasonable notice.

4. Scheduled Maintenance. Scheduled maintenance of the Granicus Solution will not be counted as downtime. Granicus will clearly post that the site is down for maintenance and the expected duration of the maintenance. Granicus will provide the Client with at least two (2) days prior notice for any scheduled maintenance. All system maintenance will only be performed during these times, except in the case of an emergency. In the case that emergency maintenance is required, the Client will be provided as much advance notice, if any, as possible under the circumstances.

5. Software Enhancements or Modifications. The Client may, from time to time, request that Granicus incorporate certain features, enhancements or modifications into the licensed Granicus Software. Subject to the terms and conditions to this exhibit and the Service Agreement, Granicus and Client will use commercially reasonable efforts to perform all tasks in the Statement of Work ("SOW"). Upon the Client's request for such enhancements/modifications, the Client shall prepare a SOW for the specific project that shall define in detail the Services to be performed. Each such SOW signed by both

parties is deemed incorporated in this exhibit by reference. Granicus shall submit a cost proposal including all costs pertaining to furnishing the Client with the enhancements/modifications.

5.1 Documentation. After the SOW has been executed by each party, a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed project staffing, anticipated project schedule, and other information relevant to the project. Such enhancements or modifications shall become part of the licensed Granicus Software.

5.2 Acceptance. Client understands that all work contemplated by this exhibit is on a "time-and-materials" basis unless otherwise stated in the SOW. Within ten (10) business days of Granicus' completion of the milestones specified in the SOW and delivery of the applicable enhancement/modification to Client, Client will provide Granicus with written notice of its acceptance or rejection of the enhancement/modification, based on the acceptance criteria set forth in the SOW. Client agrees that it will not reject any enhancement/modification so long as it substantially complies with the acceptance criteria.

5.3 Title to Modifications. All such modifications or enhancements shall be the sole property of the Granicus.

6. Limitation of Liability; Exclusive Remedy. IN THE EVENT OF ANY INTERRUPTION, GRANICUS' SOLE OBLIGATION, AND CLIENT'S EXCLUSIVE REMEDY, SHALL BE FOR GRANICUS TO USE COMMERCIALLY REASONABLE EFFORTS TO RESTORE ACCESS AS SOON AS REASONABLY POSSIBLE.

EXHIBIT D

HARDWARE EXHIBIT

THIS HARDWARE EXHIBIT is entered into by Granicus and Client, as an attachment to the Service Agreement between Granicus and Client, for the hardware components of the Granicus Solution (the "**Hardware**") provided by Granicus to Client. This exhibit is an additional part of the Service Agreement and is incorporated therein by reference. Capitalized terms used but not defined in this exhibit have the meanings given in the Service Agreement.

1. **Price**. The price for the Hardware shall be the price specified in the Proposal.

2. **Delivery**. Any scheduled ship date quoted is approximate and not the essence of this exhibit. Granicus will select the shipment method unless otherwise mutually agreed in writing. Granicus retains title to the Hardware. Granicus retains title to and ownership of all Granicus Software installed by Granicus on the Hardware, notwithstanding the use of the term "sale" or "purchase."

3. **Acceptance**. Use of the Hardware by Client, its agents, employees or licensees, or the failure by Client to reject the Hardware within fifteen (15) days following delivery of the Hardware, constitutes Client's acceptance. Client may only reject the Hardware if the Hardware does not conform to the applicable written specifications.

4. **Service Response Time**. For Hardware issues requiring replacement, Granicus shall respond (via written or verbal acknowledgment) to the request made by the Client within twenty-four (24) hours. If confirmed by Granicus that Hardware requires replacement, Granicus will deliver replacement hardware directly to the Client after such confirmation via overnight shipping. The Hardware and software will be configured to the original specs of the client. Once the Hardware is received Client's responsibilities will include:

   a. Mount server on client rack (if applicable)

   b. Connecting original network cables.

   c. Connecting original audio and video cables (if applicable).

5. **DISCLAIMER OF WARRANTIES**. NOTWITHSTANDING THE MAINTENANCE PROVIDED UNDER SECTION 7 BELOW, GRANICUS DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OF MERCHANTABILITY AND AGAINST INFRINGEMENT, WITH RESPECT TO THE HARDWARE. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF GRANICUS.

6. **LIMITATION OF LIABILITY**. GRANICUS SHALL NOT BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS EXHIBIT INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF GRANICUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL GRANICUS' LIABILITY TO CLIENT ARISING OUT OF OR RELATING TO THIS EXHIBIT EXCEED THE AMOUNT OF THE PRICE PAID TO GRANICUS BY CLIENT FOR THE HARDWARE.

7. **Managed Hardware**. In the event of malfunction for Managed Hardware provided by Granicus, Granicus Hardware that is maintained as part of a managed Open Platform service will be repaired or replaced as part of the managed services as long as Client is current with Client's monthly subscription payment. The key features of the Managed Hardware are as follows:

- Robust support for hardware, O/S, and applications
- 7x24x365 phone, chat and email support from certified experts
- In the event of Hardware failure, Granicus will deliver overnight replacement hardware directly to the Client.

Escalation management. Granicus provides the above mentioned services under Client's acknowledgment that all Granicus tools, and systems will be installed by the manufacturer chosen by Granicus within the Managed Hardware provided to the client. These software tools have been qualified by Granicus to allow the highest level of service for the Client. While it is Granicus' intention to provide all Clients with the same level of customer care and warranty, should the Client decline these recommended tools, certain levels of service and warranty may not be guaranteed.

8. **Purchased Hardware Warranty**. For Hardware purchased from Granicus by Client, Granicus will provide to Client any warranty provided by the manufacturer with respect to the Hardware. Granicus shall repair or replace any Hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials as long as such Hardware is then under the manufacturer's warranty.

9. **Use of Non-Approved Hardware**. The Granicus platform is designed and rigorously tested based on Granicus-approved Hardware. In order to provide the highest level of support, Granicus requires the use of Granicus-approved Hardware in your solution. While it is Granicus' intention to provide all clients with the same level of customer care and continuous software upgrades, Granicus does not make any guarantees whatsoever in the event Client uses non-approved hardware.

10. **Client Changes to Managed Hardware Prohibited.** In the event changes are made by Client to the managed hardware without the approval of Granicus, Granicus may charge Client a one-time fee of two hundred fifty ($250.00) dollars to restore the system back to standard settings. Such changes may include, but are not limited to: operating system level changes; third party software installations; changes to Granicus software, and/or configurations; and/or changes to third party system and/or network monitoring tools.

EXHIBIT E

TRADEMARK INFORMATION

Granicus Registered Trademarks ®

Granicus logo as a mark
Granicus®
MediaVault®
Mobile Encoder®
Outcast Encoder®
StreamReplicator®

Granicus Trademark Names ™

Integrated Public Record™
Intelligent Routing™
LinkedMinutes™
LiveManager™
MediaCenter™
MediaManager™
MeetingMember™
MeetingServer™
Simulcast Encoder™
VoteCast™
VoteCast™ Classic
VoteCast™ Touch

Client Trademarks

EXHIBIT F

TERMINATION OR EXPIRATION OPTIONS REGARDING CONTENT

In case of termination by Client or expiration of the Service Agreement, Granicus and the Client shall work together to provide the Client with a copy of its Content. The Client shall have the option to choose one (1) of the following methods to obtain a copy of its Content:

- Option 1: Video/Audio files made available through optional media: data CD, external hard drive, or Granicus provided FTP site. A CSV, XML, and/or database file will be included providing clip information, and/or legislative content.

- Option 2: Provide the Content via download from MediaManager or from a special site created by Granicus. This option shall be provided free of charge.

- Option 3: Granicus shall provide the means to pull the content using the Granicus Application Programming Interface. This option shall be provided free of charge.

The Client and Granicus shall work together and make their best efforts to transfer the Content within the sixty (60) day termination period. Granicus has the right to delete Content from its services after sixty (60) days.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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:
2016-113712

Date Filed:
09/19/2016

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Granicus, Inc.
Denver, CO 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 Round Rock

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.

Agenda Management System 2016
Agenda Management System 2016-Granicus

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. [X]

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

KATAIAH B. WILLIAMS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20084033593
MY COMMISSION EXPIRES NOVEMBER 07, 2016

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said CEO, Jason Fletcher, this the 19th day of September, 20 16, to certify which, witness my hand and seal of office.

Kataiah B. Williams | Kataiah B. Williams | AR Lead

Signature of officer administering oath | Printed name of officer administering oath | Title of officer administering oath

City of Round Rock

Agenda Item Summary

Agenda Number: H.1

Title: Consider Executive Session as authorized by §551.087, Government Code, to deliberate the offer of a financial or other incentive to KR Acquisitions, LLC to locate a facility in the City.

Type: Executive Session

Governing Body: City Council

Agenda Date: 11/22/2016

Dept Director: Steve Sheets, City Attorney

Cost:

Indexes:

Attachments:

Department: Legal Department

Text of Legislative File 2016-3867