



# Solicitation **COVER SHEET**

## IDENTIFICATION

Number	IFB 8100 PLS1001REBID
Title	Energy Management Control System
Summary	The Department of Aviation seeks a vendor to support and maintain the Alerton Compass Energy Management & Control System installed at Austin– Bergstrom International Airport.
Type	Invitation for Bid (IFB)
Version (Addenda)	0

## AUTHORIZED CONTACT PERSONS

Primary	Daniel Dellemonache, Procurement Specialist IV; (512) 974-2981; Daniel.Dellemonache@austintexas.gov
Secondary	Leslie Holt, Procurement Specialist III; (512) 978-1973; Leslie.Holt@austintexas.gov
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov
Notes	See Solicitation Instructions, 3.1 Authorized Contact Persons.

## IMPORTANT DATES

### OFFERS DUE

Date and Time	February 16, 2023 at 2:00 pm local time.
Notes	See Solicitation Instructions, 5 Offer Submission.

### BID OPENING

Date and Time	February 16, 2023 at 3:00 pm local time.
Notes	See Solicitation Instructions, 5 Offer Submission.

### QUESTIONS DUE

Date and Time	February 9, 2023 at 5:00 pm local time.
Submission Method	Email Only

Notes	See Solicitation Instructions, 3.2 Questions.
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**PRE-OFFER CONFERENCE**

Conference (Yes/No)	No
Mandatory (Yes/No)	N/A
Date and Time	N/A
Location	N/A
Notes	N/A

**PUBLISHED**

Date	January 16, 2023
Available Online	<a href="https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm">https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm</a>
Available Hardcopy	Purchasing Office; 124 w. 8 <sup>th</sup> Street, Suite 300; Austin, TX 78701

**SOLICITATION DOCUMENTS**

Document name	Pages	Date
<b><u>Solicitation Packet – IFB 8100 PLS1011REBID Includes the following:</u></b>		
<u>Solicitation Cover Sheet</u>	3	1/16/2023
<u>Solicitation Instructions</u>	8	1/16/2023
<u>Terms and Conditions</u>	25	1/16/2023
<u>Scope of Work</u>	11	1/16/2023
<u>Exhibit A: City of Austin Data Security Standards</u>	6	1/16/2023
<u>Exhibit B: City of Austin Third Party Access Request Form</u>	5	1/16/2023
<u>Offer and Certifications – IFB 8100 PLS1011REBID – <b>Complete and return</b></u>	12	1/16/2023
<u>Pricing Submittal – IFB 8100 PLS1011REBID – <b>Complete and return</b></u>	X	1/16/2023

**NIGP CODES****COMMODITY CODES**

Code	Description
910017	ENERGY COMPUTERIZED CONTROL SYSTEM

92047	Support Services, Computer
0312585	PARTS AND ACCESSORIES, AIR CONDITIONING AND HEATIN
9243559	TRAINING, PROFESSIONAL DEVELOPMENT



# Solicitation INSTRUCTIONS

Solicitation No.  
**IFB 8100**  
**PLS1011REBID**

## 1 INVITATION FOR BIDS

- 1.1 Invitation.** The City of Austin invites all Responsible Offerors to submit Bids to provide the goods and/or services described in this Solicitation.
- 1.2 Documents.** This Invitation for Bids ("IFB" or "Solicitation") is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Process.** The process described in this IFB is the Competitive Sealed Bidding process. This process is procedurally compliant with the competitive bidding processes prescribed by Texas Local Government Code Ch. 252, Ch. 271, as well as Government Code Ch. 2269.
- 1.4 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.5 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.6 Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

## 2 PUBLICATION AND NOTICES

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

## 3 COMMUNICATIONS AND MEETINGS

- 3.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office's main line at (512) 974-2500 and request assistance from any member of the Purchasing Office's management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.

- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.
- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. ([https://assets.austintexas.gov/purchase/downloads/New\\_ALO\\_Ordinance\\_No\\_20180614-056.pdf](https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf)) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-Offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 4 OFFER PREPARATION**
- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer and an Offer and Certifications submittal.
- 4.2 Offer Acceptance Period.** All Offers are valid for a period of one hundred and fifty (150) calendar days subsequent to the IFB closing date.
- 4.3 Alternate Offers.** Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.

- 4.4 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. With the exception of the Prices and Pricing Submittal, which shall not be kept confidential, Offerors seeking to keep any other portions of their Offer confidential shall mark each such portion as “Proprietary”. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General’s Office of the State of Texas, of any Bid contents marked as “Proprietary”. A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- 4.5 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.
- 4.6 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.** If the solicitation includes an MBE/WBE Program Compliance Plan or Offeror intends to subcontract, the Offeror shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Utilization Plan as approved by the City (the “Plan”).
- 4.7 Living Wages.** The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$20.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- 4.8 Pricing Requirements – Non-Specified Items.**
- 4.8.1** The City may purchase additional related items that are available from the Contractor in various quantities. Pricing for these non-specified items will be calculated based on a percentage markup over Contractors cost as identified in the Price Sheet under the Non-Specified Parts Section.
- 4.8.2** Offeror shall bid a percentage markup to their cost.
- 4.8.2.1** The percentage markup shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent renewal periods if the City and the Contractor choose to renew the Contract.
- 4.8.2.2** The Offeror may offer a different percentage discount or markup amount per manufacturer for any NonSpecified Part; however, parts within each manufacturer’s product line shall be priced by taking the stated list price and applying that percentage discount or markup.
- 4.9 Published Price Lists.**
- 4.9.1** Offerors may quote using published price lists in the following ways:
- 4.9.1.1** Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
- 4.9.1.2** Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.
- 4.9.2** Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror’s name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer’s price list, the price list must also include the manufacturer’s name, the manufacturer’s latest effective date, and the manufacturer’s price schedule. All price lists submitted become part of the Offer.
- 4.9.3** The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer’s official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the

effective date of change to be at least 30 calendar days (30 unless a different period is inserted) after written notification. The City reserves the right to refuse any list revision.

- 4.9.4** The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- 4.9.5** Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

## 5 OFFER SUBMISSION

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

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

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

- 5.1.1 Due Date and Time for Electronic Offers.** Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.
- 5.1.2 Withdrawing Electronic Offers.** Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation's Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.
- 5.1.3 Late Electronic Offers.** The Solicitation's eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation's Due Date and Time.
- 5.1.4 Opening Electronic Offers.** The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation's eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.
- 5.2 Hardcopy Offers.** Hardcopy Offers (physical documents including paper and flash drives) must be returned in a sealed envelope and shall be delivered to the City of Austin's Purchasing Office at one of the following addresses, depending on the delivery method:

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: IFB 8100 PLS1011REBID P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: IFB 8100 PLS1011REBID 124 W 8 <sup>th</sup> Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

- 5.2.1 Due Date and Time for Hardcopy Offers.** Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.
- 5.2.2 Withdrawing Hardcopy Offers. See below for changes due to the COVID-19 pandemic.**
- 5.2.3 Late Hardcopy Offers.** All Hardcopy Offers received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Offer's late receipt at the designated location.
- 5.2.4 Opening Hardcopy Offers.** The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one is in attendance at the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.
- 5.3 Special procedures due to 2020 COVID-19 Pandemic.**
- 5.3.1 Confirmation of Submittals –** Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Offers when they are received or able to verify receipt of Hardcopy Offers or provide signature confirmation of Offers delivered by common carriers.
- 5.3.2 Withdrawing Hardcopy Offers –** Hardcopy Offers may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Offerors must send emails to withdraw Offers to the following email address: [PurchasingAdmin@austintexas.gov](mailto:PurchasingAdmin@austintexas.gov)
- 5.3.3 Solicitation Openings -** Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=66](https://www.austintexas.gov/financeonline/afo_content.cfm?s=66).
- When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Offers aloud and will referring the public to the Solicitation's eResponse section to view the remaining Electronic Offers.
- 6 OFFER EVALUATION**
- 6.1 Basis of Competition.** The City may compare bids based on the prices for individual line items, the prices for categories of line items or the aggregate price bid. The City will choose the basis of competition that best meets the City's needs for the resulting contracts.
- 6.2 Price Evaluation.** Once the City determines the basis of competition, the City will sort the bids from low to high price.
- 6.3 Responsiveness Evaluation.** Once the low bid is identified, the City will evaluate the bid for responsiveness with all Solicitation requirements. A bid is responsive if it complies with all Solicitation Instructions, scope and specifications. If a bid is found to be nonresponsive, the City will set it aside and proceed with evaluating the next lowest bid for responsiveness.
- 6.4 Responsibility Evaluation.** Once the low responsive bid is identified, the City will evaluate the Offeror submitting the low responsive bid for their responsibility. An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance and positive compliance history with all City ordinances. If an



Offeror is found to be non-responsible, the City will set their bid aside and proceed with evaluating the responsibility of the Offeror submitting the next low and responsive bid.

- 6.5 Minor Informalities.** In conducting evaluations, the City may waive as an informality, any minor deviations in the Solicitation's contents or in the Offers received, in procedure or in specifications, provided such deviations do not affect the Solicitation's competition.

## **7 CONTRACT AWARD AND EXECUTION**

- 7.1 Award Determination.** The City will award the contract to the responsible Offeror submitting the low responsive bid. If the City receives a Bid from an offeror who has Local Business Presence and whose bid is within three percent of the lowest bid price received from an offeror who does not have Local Business Presence, the City may enter into a contract with the local vendor. Local Business Presence is determined per the form in the Offer and Certifications Section of the Solicitation.
- 7.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the responsible Offerors submitting the next lowest responsive bids.
- 7.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

## **8 ADMINISTRATIVE MATTERS**

- 8.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the publication of the City's recommendation of award. The recommendation of award will be posted in Austin Finance Online.
- 8.2 Debriefings.** Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer in response to the Solicitation will be discussed.
- 8.3 Reservations.** The City expressly reserves the right to the following: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation closing date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject or cancel any or all Offers; (ix) reissue a Solicitation; (x) procure any item by other means; (xi) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; and/or (xii) reject an Offer if prices in the Offer are unbalanced (significantly less than cost for some items and significantly more than cost for others).
- 8.4 Protests.** The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.
- 8.4.1** Protest regarding the Solicitation (Pre-Bid Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days before the opening of Bids. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.

- 8.4.2** Protests regarding the evaluation of Bids. Any protest regarding the evaluation of Bids by the City shall be filed with the City no later than five (5) days after the opening of Bids, or notification that the protestor's status as a Offeror has changed, such as notification that a Bid has been rejected. Any protest filed after such date which raises issues regarding the evaluation will not be considered.
- 8.4.3** Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.
- 8.4.4** You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
- 8.4.5** Your protest shall be concise and presented logically and factually to help with the City's review.
- 8.4.6** When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
- 8.4.7** The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.
- 8.4.8** A decision will usually be made within fifteen (15) calendar days after the hearing.
- 8.4.9** The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- 8.4.10** When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.
- 8.5 Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

## **9 DEFINITIONS**

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

“Addendum” means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. “Addenda” is the plural form of the word.

“Bid” means a complete, properly signed Offer submitted in response to this Solicitation, which if accepted, would bind the Offeror to perform the resultant Contract.

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

“Competitive Sealed Bidding” means the competitive process described within an Invitation for Bids, wherein the City invites Offerors to submit bids to supply the City with the Goods and/or Service describes in the Solicitation document, where the City will award the resulting contract to the responsible Offeror submitting the low responsive bid.

“Invitation for Bids (IFB)” means a complete packet of documents describing the City’s competitive sealed bidding process, including but not limited to Solicitation instructions, Standard and Special contract terms and conditions, and the submittals necessary for Offerors to respond to the Solicitation.

“Offer” means a complete signed response to a Solicitation including, but not limited to, an Invitation for Bids.

“Offeror” means a person, firm, or entity that submits an Offer in response to this Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent’s authority. The agent cannot certify as to his own agency status.

“Price and Pricing Submittal” means a document, submitted by an Offeror in response to this Solicitation, containing unit and extended Bid prices for one or more of the Goods and/or Services identified by in the Prices and Pricing Submittal document.

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

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

“Responsible Offeror” means the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.

“Responsive” means meeting all the requirements of a Solicitation.

“Solicitation” means this Invitation for Bids or IFB.

**CITY OF AUSTIN  
STANDARD TERMS AND CONDITIONS**

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

**1 GENERAL**

**1.1 TERM OF CONTRACT:**

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

**1.2 INDEFINITE QUANTITY:**

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

**1.3 INVOICES:**

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

**1.4 PAYMENT:**

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

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

**1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:

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

**1.6 SPECIAL TOOLS & TEST EQUIPMENT:**

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

**1.7 AUDITS AND RECORDS:**

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

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

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

**1.9 RIGHT TO ASSURANCE:**

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

**1.10 STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified

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by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**1.11 DEFAULT:**

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

**1.12 TERMINATION FOR CAUSE:**

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

**1.13 ATTORNEY'S FEES:**

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

**1.14 TERMINATION WITHOUT CAUSE:**

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

**1.15 FRAUD:**

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

**1.16 DELAYS:**

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

**1.17 FORCE MAJEURE:**

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

**1.18 INDEMNITY:**

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

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



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- B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
  - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
  - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.19 NOTICES:**

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

**1.20 CONFIDENTIALITY:**

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective

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measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.21 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
  - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
  - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

**1.22 PUBLICATIONS:**

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

**1.23 ADVERTISING:**

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

**1.24 NO CONTINGENT FEES:**

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

**1.25 GRATUITIES:**

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

**1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:**

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

**1.27 INDEPENDENT CONTRACTOR:**

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

**1.28 ASSIGNMENT DELEGATION:**

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

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**1.29 WAIVER:**

The claim or right arising out of a breach of the Contract cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**1.30 MODIFICATIONS:**

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

**1.31 INTERPRETATION:**

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

**1.32 DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**1.33 JURISDICTION AND VENUE:**

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

**1.34 INVALIDITY:**

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

**1.35 HOLIDAYS:**

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/department/official-city-holidays>

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

**1.36 SURVIVABILITY OF OBLIGATIONS:**

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

**1.37 COOPERATIVE CONTRACT:**

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

**1.38 EQUAL OPPORTUNITY:**

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

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

**1.39 SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Subcontractor Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager no later than the 10<sup>th</sup> calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written Contract between the Contractor and Subcontractor. The terms of the Subcontract may not conflict with the terms of the Contract and shall contain provisions that
  - i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
  - ii. Prohibit the Subcontractor from further Subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further Subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - iii. Require Subcontractors to submit all Invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its Invoice or application for payment to the City in accordance with the terms of the Contract;
  - iv. Require that all Subcontractors obtain and maintain, throughout the term of their Contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any Contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

**1.40 NON-SPECIFIED ITEMS:**

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The City may purchase additional related items that are available from the Contractor. Pricing for these non-specified items will be calculated based on a percentage markup over Contractors cost, percentage discount of list price or as otherwise identified in the Price Sheet under the Non-Specified Items Section. The percentage markup or discount shall be fixed throughout the term of the Contract and are not subject to increase. They shall also remain firm through subsequent Contract extension options. The City may request additional information from the Contractor to substantiate the percentage markup or discount prior to placing an order.

**1.41 INSURANCE:**

**A GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:  
City of Austin Purchasing Office  
P.O. Box 1088  
Austin, Texas 78767  
OR  
[PUInsuranceCompliance@austinTexas.gov](mailto:PUInsuranceCompliance@austinTexas.gov)
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and

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exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

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

- (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
  - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.

ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

- (1) The policy shall contain the following provisions:
  - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
  - b. Independent Contractors coverage (Contractor/Subcontracted work);
  - c. Products/Completed Operations Liability for the duration of the warranty period;
  - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
  - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.



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- (1) The policy shall include these endorsements in favor of the City of Austin:
  - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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

**2 GOODS**

**2.1 DELIVERY AND PACKAGING TERMS:**

- A. **DELIVERY AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. destination, prepaid and allowed unless otherwise specified. Unless otherwise stated in this Contract, the Contractor's price shall be deemed to include all delivery and transportation charges of required mode of transportation. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be set forth in the block of the Purchase Order or Delivery Order entitled "SHIP TO" and/or Offer Sheet. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays. The City expressly reserves all rights under law, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
- B. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach. However, the Contractor shall have the right to substitute a conforming tender; provided if the time for performance has not yet expired. The Contractor shall notify the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.
- C. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** All Deliverables must be shipped complete unless arrangements for partial shipments are made in advance. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.
- D. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.
- E. **CONTRACTOR PACKAGING DELIVERABLES:** The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and Purchase Order or Delivery Order number and the price agreement number if applicable, (c) container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear the cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with

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requirements of common carriers and any applicable Specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**2.2 WARRANTY:**

**A. PRICE:**

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

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

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

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

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**2.3 WARRANTY BY CONTRACTOR AGAINST INFRINGEMENTS:**

- A. The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the Specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims.
- B. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties Stated in this Contract.
- C. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's Specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this Paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

**2.4 RESTOCKING FEES:**

- A. The Contractor may bill the City restocking fees (if specifically authorized by this Contract) for parts that are Ordered by the City under the Contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.
- B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

**2.5 PUBLISHED PRICE LISTS:**

The Published Price List may be superseded or replaced during the Contract term only if price revisions are the result of a modification to the manufacturer's official Published Price List. Written notification from the Contractor of price changes, along with one copy of the revised manufacturer's official Published Price List must be submitted to the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision. The discounts or markups on equipment rental, material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract and are not subject to increase. Failure to submit written notification of Published Price List revisions will result in the rejection of new prices being Invoiced. The City will only pay Invoices according to the last approved price list.

**3 SERVICES**

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

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

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amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

**3.2 WORKFORCE:**

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

**3.3 GUARANTEE – SERVICES:**

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

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

**3.4 TRAVEL EXPENSES:**

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

No amounts in excess of the Travel Policy or rates shall be paid. All Invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges

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may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

**3.5 PLACE AND CONDITION OF WORK:**

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

**3.6 COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:**

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

**3.7 LIVING WAGES:**

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

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

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$20.00 per hour, unless Published Wage Rates are included in this Solicitation. In addition, the City may stipulate higher wage rates in certain Solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$20.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant Contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act.
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first Invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the Contract. The City reserves the right to request individual Employee Certifications at any time during the Contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the Contract. The Employee Certification form is available on-line at [https://www.austinTexas.gov/financeonline/vendor\\_connection/index.cfm](https://www.austinTexas.gov/financeonline/vendor_connection/index.cfm).

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- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of Contract award with the respective Invoice to verify that employees are paid the Living Wage throughout the term of the Contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the Contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in Paragraph C above to verify compliance with this provision.

**PREVAILING WAGE:**

Contractor shall comply with the requirements of Section 00830 Prevailing Wage Rates and Payroll Reporting including the wage rates listed in Section 00830BC Wage Rates for Building Construction or Section 00830HH Wage Rates for Heavy and Highway Construction.

**3.8 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID) REQUIRED BACKGROUND CHECK:**

- A. Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the Contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel") and shall not utilize any Contractor's personnel, to fulfill the obligations of the Contract, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty.
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four- to six-week delay for receipt of a Federal report.
  - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
  - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
  - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- D. Contractor shall provide the City the documentation specified in the SOW affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a City-issued Contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
- F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's reports. Where denial of access by a

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particular person may cause the Contractor to be unable to perform any portion of the work under the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 calendar days of the receipt of notification of denial.

- G. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
- H. **Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.
- I. **Right to Remove Individuals:** The City shall have the right at any time to require that the Contractor remove for any or no reason at all from interaction with City any Contractor representative whom the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination if reasonably possible. If the City signifies that a potential security violation or other immediate risk situation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the Contract or future work orders without the City's consent.
- J. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- K. Contractor shall retain the reports and make them available for audit by the City during regular business hours.

**4 DEFINITIONS**

- 1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
- 2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
- 3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
- 4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
- 5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
- 6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes,

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procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data , and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.

7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.
11. **"Confidential Information"** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **"City Confidential Information"** is a subsets of Confidential Information.
12. **"Contract"** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **"Contract Price"** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **"Contractor"** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **"Contractor Information"** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.
16. **"Contractor Software"** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.



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17. **“Data Breach”** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City’s or City’s customers’ unencrypted Personally Identifiable Information or City Confidential Information.
18. **“Documentation”** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.
23. **“Infrastructure-as-a-Service” (IaaS)** – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).
24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.

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- 28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
- 29. **“Party” or “Parties”** – the City and Contractor, individually or together, as applicable.
- 30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
- 31. **“Platform-as-a-Service” (PaaS)** – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- 32. **“Purchase Order”** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
- 33. **“SaaS Software Application” and “SaaS Software”** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
- 34. **“SaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the SaaS Software Application.
- 35. **“Security Incident”** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
- 36. **“Service Level Agreement” (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description

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of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

- 37. **"Service Levels"** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
- 38. **"Services"** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
- 39. **"Software"** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.
- 40. **"Software-as-a-Service" (SaaS)** – the Services provided to the City to use the Contractor's offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- 41. **"Specifications"** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
- 42. **"Statement/Scope of Work"** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City's Service needs and expectations.
- 43. **"Subscription Services"** – City's access to and use of and Contractor's provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
- 44. **"Third Party"** – any natural person or legal entity other than Contractor and City.
- 45. **"Transition Date"** – the date upon which it is established to City's satisfaction that the SaaS Software Application is stable enough to support City's production processing.
- 46. **"User Information"** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor's supervision or control.

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47. **“User”** – City’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
48. **“Work Product”** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor’s Software.

**CITY OF AUSTIN  
DEPARTMENT OF AVIATION  
SCOPE OF WORK FOR  
ENERGY MANAGEMENT & CONTROL SYSTEM  
SOLICITATION NO. IFB 8100 PLS1011REBID**

**1. PURPOSE**

The City of Austin, Department of Aviation seeks a vendor to support and maintain the Alerton Compass Energy Management & Control System (EMCS) installed at Austin–Bergstrom International Airport (AUS).

The scope of services includes telephone technical support and onsite maintenance, system preventative and corrective maintenance, software maintenance and licensing, database maintenance, systems monitoring and troubleshooting. Additional services include system analysis, optimization and improvements, programming changes, report writing, on-site training, change management, and installation support for moves, adds and changes associated with new construction and/or other airport improvement projects.

The purpose of this contract is to provide AUS with comprehensive technical support and solutions that satisfy the specific requirements of this Scope of Work.

**2. TERM OF CONTRACT**

This Contract term is for 60-months or the City terminates the Contract.

**3. INVOICE AND PAYMENT ADDRESS**

The City's preference is to have invoices emailed to [Invoices@flyaustintexas.com](mailto:Invoices@flyaustintexas.com).

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

**4. DESIGNATION OF KEY PERSONNEL**

The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
City Contract Manager	Mike Robinson	512-530-7504	<a href="mailto:Mike.Robinson@flyaustin.com">Mike.Robinson@flyaustin.com</a>
City Contract Administrator, Procurement Specialist	Daniel Dellemonache	512-974-2981	<a href="mailto:Daniel.Dellemonache@austintexas.com">Daniel.Dellemonache@austintexas.com</a>

**5. BACKGROUND**

The Department of Aviation is responsible for the management and operation of Austin-Bergstrom International Airport. AUS site consists of 4,242 acre campus and includes the 32-gate, 1.8 million square foot Barbara Jordan Passenger Terminal, and several Airport support facilities.

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Current construction projects and continued passenger growth creates a dynamic environment at AUS. This requires a vendor who can support AUS' goal of optimizing and improving the day-to-day operations of AUS EMCS while being responsive to and assisting Airport contractors with changes to the system to accommodate construction and other improvement projects at AUS. It is anticipated that many Airport related projects will be performed throughout the AUS campus that may require services provided through this contract (see Section 9: SCOPE OF SERVICES)

The City reserves the right to award contracts for new installations to other qualified contractors. The Contractor is expected to support all additions and upgrades to the AUS energy management and control system regardless of installer.

**6. CURRENT ENVIRONMENT**

The existing system is comprised of the following:

- A. System Server Environments and Operating Systems:
  - 1. Server Operating System Microsoft Windows Server 2016 Standard
  - 2. Database Server MSSQL Server 2016
  - 3. Virtual servers in VMWare
- B. Alerton Compass 1.5.6 EMCS Software Version
- C. BacNet/BacTalk with Honeywell EBI Interface

**7. GLOSSARY OF ABBREVIATIONS**

AUS: Austin Bergstrom International Airport  
DOA: Department of Aviation  
EMCS: Energy Management and Control System  
LAN: Local Area Network  
MAC: Moves, Adds, and Changes  
MAT: Maintenance Administration Terminal  
MM: Multimode (fiber)  
NFPA: National Fire Protection Act  
SIDA: Site Identification Display Area  
SCR: System Change Request  
SPOC: Single Point of Contact  
SM: Singlemode (fiber)  
TSA: Transportation Security Administration  
WAN: Wide Area Network

**8. CONTRACTOR MINIMUM QUALIFICATIONS**

The Contractor shall meet or exceed the following requirements:

- A. Contractor shall have a minimum of five (5) years' continuous experience prior to this solicitation performing inspection, preventative maintenance, repairs and new

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installations/upgrades of Alerton Compass Energy Management Control System software and hardware.

1. Contractor shall be regularly engaged in the business of providing maintenance and repair services, and parts for an EMCS for a minimum of five (5) years
  2. Contractor's prior experience shall include support in facilities of similar size and scope to AUS.
  3. Contractor's prior experience shall include support and services similar to the scope of requirements as stated in this request for proposal
- B. Contractor shall have a full-time, operational facility with a permanent business address, functional email address and telephone, and a company headquarters located in the United State of America.
- C. The Contractor shall provide and maintain a telephone dispatch system that is operational 24 hours per day, seven (7) days per week, and 365 days per year (including holidays). Telephone answering machines do not meet the requirements of this paragraph.
- D. Contractor shall be available to provide service within 48 hours of notice by the City.

**9. SCOPE OF SERVICES**

This SOW is intended for the City of Austin's Department of Aviation (hereinafter "AUS") telephone technical support and onsite service for the Energy Management and Control System located at Austin-Bergstrom International Airport. The Contractor shall provide all services specified for the term of the Contract, including any extensions. During such time, all support relating to hardware, software, and systems components shall be covered under the Contract.

A. General Support Services:

1. Support shall include assisting with troubleshooting, modifying, and refining all software, hardware, and industrial automation control devices related to correcting, improving, or maintaining HVAC functionality at AUS. Covered equipment includes all HVAC control systems, computer software and hardware systems, integrations and customizations.
2. Support services shall be provided through a combination of telephone technical support, remote access, and an onsite technician. The Contractor shall provide all personnel, administrative support, and other resources required for completing the functions as described in this SOW. The Contractor will promptly inform the AUS Contract Manager of any problem encountered that might threaten the timely completion or adequacy of results obtained in performing the services in the SOW.
3. Remote access to servers and workstations shall be provided by AUS via secure VPN connection.

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4. Contractor will provide full end-to-end operations and software support for the Alerton Compass Energy Control Software including all necessary and required licensing, minor and major software upgrades, incremental upgrades/updates, security patches and bug fixes.
5. Contractor shall provide and install all updates, upgrades, service packs, and monthly security patches for the EMCS server and workstation Operating System(s). However, if any updates or upgrades are NOT compatible with the EMCS software the contractor shall fall back to the latest working known version. For incompatible security patches, the contractor will provide a path and timeline for remediation of the issue and installation of the security patch.
6. For all AUS EMCS software, hardware components and integrations, the Contractor shall provide:
  - a) Maintenance
  - b) Support
  - c) Installation
  - d) Repairs
  - e) Licensing
  - f) Upgrades
  - g) Updates, bug fixes and security patches
7. Contractor support shall include preventative and corrective maintenance, performance monitoring, on-site factory certified instructor led training, renewal of software maintenance agreements and software licenses, database maintenance, troubleshooting, and moves, additions, and changes as directed by AUS.
8. Contractor shall assume responsibility for all existing software maintenance agreements and licenses related to the energy management and control system components.
9. Contractor shall assume responsibility for support, maintenance and repair of all new components and software. This includes new components and functionality installed by another installer as part of a construction contract.
10. True up and reconciliation of software licenses and end points shall be performed on an annual basis.
11. Contractor shall provide and maintain an Incident Tracking application.
12. Contractor shall be responsible for ensuring that all work area(s) are cleaned after the completion of their work. All empty boxes, extra equipment, unused cabling, cabling scraps, and trash shall be removed from the respective work area and properly disposed of or recycled when possible.
13. Contractor may be requested to perform services beyond those stated in the SOW, the Contractor and AUS will negotiate mutually acceptable terms and compensation for completing additional services.



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14. Contractor shall participate in various Airport work groups to actively support AUS' processes for improving the quality of services as requested and necessary.
15. Contractor shall coordinate as necessary with AUS Information System's Division for workstation and server hardware upgrades/replacements and additional networking needs.

**B. Preventative Maintenance**

1. Contractor shall perform preventative maintenance in accordance with the manufacturer's specifications.
2. All preventative maintenance shall be performed with no service disruption to AUS operations.
3. All failed parts and components identified during the monthly preventative maintenance activities will be replaced at the contractor's expense.
4. Preventative maintenance and performance monitoring events shall be scheduled with the Contract Manager or designated representative at least ten (10) business days in advance. AUS has the right to cancel a scheduled event due to AUS business needs.
5. Contractor shall submit monthly preventative maintenance and performance reports as outlined in Section 14, Reporting Requirements.
6. Routine preventative maintenance tasks shall include at a minimum the following:
  - a) Main Operator Workstation:
    - i. Perform routine and preventative maintenance SQL tasks based on Microsoft best practices.
    - ii. Review EMCS system for critical and off-line status indications.
    - iii. Review EMCS system for override and disabled status indications.
    - iv. Review event and alarm log with customer and discuss EMCS operational concerns.
    - v. Analyze the number of operator or system change occurrences for impact on performance.
    - vi. Perform or schedule reactive or proactive maintenance procedures as appropriate to resolve situations noted.
    - vii. Install appropriate EMCS software refinements and updates.
    - viii. Check monitor for clarity, focus, and color.
    - ix. Cycle power and listen for unusual motor/bearing noise.
    - x. Verify proper system restart; check system date, time and hardware status.
    - xi. Clean exterior surfaces, including monitor.
    - xii. Clean dust from internal surface(s).
    - xiii. General security/software maintenance of the main operator workstation.

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- xiv. Save/copy network workstation database, including custom graphics and resident Master Controller archive databases.
- xv. Verify and install all necessary compatible Microsoft security patches

**b) Network Analysis**

- i. Log onto the main operator workstation or global controller(s) to verify proper communication between all system components, hardware and software.
- ii. Review global controller error log.
- iii. For each main operator workstation and global controller unit:
- iv. Analyze communication.
- v. Perform online/offline test routine to determine power and communication restart.
- vi. Provide a report summarizing network analysis results.
- vii. Analyze the error rate & transmission rate.
- viii. Review trend logs.
- ix. Review alarm logs.
- x. Perform the network analysis tasks as appropriate to verify or discount suspected communication problems.
- xi. Perform communication “sniffing” if communication problems elude conventional troubleshooting (discussion of resource equipment needs to be discussed with owner).
- xii. Perform the network analysis tasks as appropriate to evaluate the impact on network performance of various configuration options, as part of a proposed system expansion or modification.

**c) Global Control Modules**

- i. Check indicators to verify proper DC power levels, appropriate transmit and receive activity on the communication trunks, and check for possible Error Code indications.
- ii. Confirm proper time sync of all Global Controller(s) with workstation.
- iii. Inspect wiring for signs of corrosion, fraying and rapid discoloration, defective shielding, or shield grounding.
- iv. Monitor LED sequencing for proper operation.
- v. Review Global Controller(s) device properties.
- vi. Remove excessive dust from internal surfaces.
- vii. Verify / calibrate other points and control processes, where the need for possible proactive maintenance is indicated.
- viii. Update firmware files, as required.
- ix. Review and maintain software documentation.

**d) Unitary Controllers**

- i. AHU Application Controller:
  - 1) Verify that HVAC Unit is controlled at the appropriate value(s).
  - 2) Change one set point value. Verify smooth transition and stable control at the new set point, as required.

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- 3) Return set point to original value.
- 4) Repeat for each additional control loop, as required.
- 5) Verify the proper operation of critical control processes and points associated with this unit. Make adjustments, as required.
- 6) Review and maintain software documentation.
- ii. Unitary Equipment Controller:
  - 1) Verify that controller is in control at the desired value(s).
  - 2) Change one set point value. Verify smooth transition and stable control at the new set point, as required.
  - 3) Return set point to original value.
  - 4) Repeat for each additional control loop, as required.
  - 5) Verify the proper operation of critical control processes and points associated with this unit. Make adjustments, as required.
  - 6) Review and maintain software documentation.
- C. Corrective Maintenance
  1. Corrective maintenance is defined as work required to repair equipment or software if there is a malfunction or outage.
  2. Contractor shall be responsible for all corrective maintenance of the ECMS system components, software, interfaces, and integration points.
  3. Contractor shall be responsible for all corrective maintenance of hardware including replacing/repairing damaged or non-functioning components when necessary.
  4. If repairs/replacement components/parts of hardware are needed, a quote shall be submitted and approved by the Contract Manager prior to work beginning.
  5. Contractor shall submit monthly reports of all corrective maintenance performed outlined in Section XII, Reporting Requirements.

**10. SOFTWARE UPDATES AND CHANGE CONTROL**

- A. No software updates, patches or bug fixes shall be performed without prior written approval of the Contract Manager.
- B. Software updates, patches or bug fixes, specific to AUS installed system, shall be provided, tested and installed at no additional costs.
- C. All changes to the EMCS shall be coordinated through the contract manager.
- D. AUS will approve Contractor's System Change Request form (SCR) prior to implementation. At minimum, SCR shall include the following information:
  1. **Description** - A brief narrative of what the change is intended to accomplish. Should be phrased in business terms, not technical terms.
  2. **Scope**
    - a. **Small** – change affects one module and few settings (all are listed)
    - b. **Medium** – change affects either one module and many settings, OR many modules and few settings (all are listed)
    - c. **Large** – change affects many modules and settings (all are listed).

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3. **Source** - The name of the organization(s) instigating the change.
4. **Urgency**
  - a. **Routine** – part of normal, day-to-day, system maintenance. Will be postponed if Urgent or Emergency Changes exist
  - b. **Urgent** – required to resolve a problem causing equipment or systems to not perform normally, or address a vulnerability. Will only be postponed if Emergency Changes exist
  - c. **Emergency** – required to resolve a significant problem or system outage as determined by AUS. Cannot be postponed without risk of complete system failure or severe operational disruption.
5. **Testing** - A brief narrative of the testing performed to ensure the change accomplishes what it is intended to and that the testing is comprehensive enough that it does not cause any unforeseen impacts.
6. **Training** - Any training required by the users of the impacted systems or modules.
7. **Implementation** - The steps required to implement the change.
8. **Back Out Procedures**- The steps required to remove the change if required, and restore the systems to their previous working state.
9. **QA Validation Checklist** – The steps required to validate that all prior operations, including standard and customized, remain fully functional post change.

**11. SINGLE POINT OF CONTACT (SPOC)**

- A. Contractor shall provide a designated Single Point of Contact/Account Manager (SPOC) that shall be responsible for the coordination of all service and support for AUS EMCS.
- B. SPOC shall be skilled, knowledgeable, and experienced in providing the types of services listed in this specification.
- C. SPOC shall have the authority to dispatch for emergency services and shall have full decision-making authority under this contract.
- D. SPOC shall be available and on-call twenty-four (24) hours daily including weekends and holidays. Contractor shall provide the office number, email address, pager and cell phone number for the SPOC.

**12. FUTURE PROJECTS AND NEW INSTALLATION**

Over the term of this contract, additions and changes to the EMCS will occur because of various construction and improvement projects, and by request of AUS. Some of the potential projects that may impact the EMCS may include, but are not limited to, the following:

- Terminal optimization, improvements, and expansion.
- Information Technologies Bldg.
- New Terminal Construction

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- A. Contractor shall perform MACs pertaining to the EMCS. AUS reserves the right to award contracts for new installations to other qualified contractors.
- B. All MAC work shall be performed during normal business working hours unless otherwise approved by the contract manager.
  - 1. Any other circumstances that may require additional after-hours work shall be approved by the contract manager prior to any work being performed.
  - 2. Contractor shall provide after-hours pricing on price sheet.
- C. ALL MAC work shall include all equipment, systems, software and appurtenances necessary for a fully functional Airport EMCS.
- D. Contractor shall supply all cabling, jumpers, patch cords, connectors, adapters, and terminators, necessary to interconnect all EMCS equipment including equipment located in the telecommunications closets.
- E. Contractor shall be responsible for the integrity of all fire ratings for all telecommunications pathways, spaces, and systems that are affected by the work performed by the contractor.
- F. Troubleshooting and testing shall be performed to ensure system components are fully operational.

**13. SERVICE HOURS**

Normal business hours are 7:00 AM to 5:00 PM, Monday through Friday. However, AUS is a twenty-four (24) hour, seven (7) day-a-week operation and technician(s) may be required to perform work during non-normal business hours to include weekends and holidays to support AUS' needs.

**14. RESPONSE AND ESCALATION**

Contractor support and time frames shall be as follow:

- A. Upon receiving a telephone request for service from AUS, the call will be ranked in accordance with the severity level listed in the chart below. AUS will be provided a call tracking number and a Contractor technician will immediately begin troubleshooting the situation.
- B. When dealing with an issue that holds a severity level of High or Medium, the Contractor will continue to work on the problem until either;
  - 1. The problem is resolved and the system is restored to the state it was in before the problem occurred; or
  - 2. The system is no longer in a High or Medium state.
  - 3. In the event that a higher severity level is downgraded to Low, the Contractor will continue to work on the problem based on the requirements of the lower level.

SEVERITY LEVEL	RESPONSE TIME	DESCRIPTION
HIGH	Call back response within 15 min	Energy Management Control System is 1 AHU and associated VAV's not operational and indoor comfort is adversely affected. Contractor response to

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	Onsite Technician within 4 hours	customer with offsite remote support shall be within 15 minutes. If technician is required to be onsite, The response time shall be within 4-hours of initial call.
MEDIUM	Call back response within 15 min  Onsite Technician within 8 hours	Energy Management Control System is operational but indoor comfort is affected in multiple areas. Contractor response to customer with offsite remote support shall be within 15 minutes. If technician is required to be onsite, response time shall be within eight (8) hours.
LOW	Call back response within 1 hour  Remote or onsite technician within 48 hours	Energy Management Control System is operational. Indoor comfort is not currently impacted. However, an issue has been identified that may affect indoor comfort if not addressed.

**15. REPORTING REQUIREMENTS**

- A. Contractor shall be required to submit a monthly maintenance report due the 1<sup>st</sup> of every month.. This report shall outline all service problems from the previous month. It shall describe the service problem, the technician who performed the service call and the steps and time frames required to clear the trouble.
- B. Contractor shall submit quarterly maintenance and performance summary report.
  - 1. Reports shall include a summary of all preventative and corrective maintenance completed during the reporting quarter, tasks and plans outlined for the upcoming quarter, financial status for the contract, identified risks and/or outstanding problems, and outstanding or pending action items.
  - 2. Contractor shall deliver quarterly reports for the prior quarter no later than the 15th day of the first month of the subsequent quarter.
  - 3. The reports shall be submitted via an electronic document.
  - 4. The document format shall be approved by the contract manager.
- C. Contractor shall provide documentation of all MACs upon completion of each work order.
- D. All on-call remote service support instances shall be documented within two (2) business days of the incident. Included in the incident report will be the following:
  - 1. AUS individual requesting the assistance
  - 2. Contractor engineer providing the support
  - 3. Detailed description of the fault or issue
  - 4. Corrective action, if any taken
  - 5. Identification of the root cause
  - 6. Time stamped start and end times

**16. TOOLS AND EQUIPMENT**

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ENERGY MANAGEMENT & CONTROL SYSTEM  
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- A. Contractor shall provide technicians with all vehicles, tools, equipment, and supplies necessary to perform their job responsibilities.
- B. AUS will provide the technician with a work area and a workstation connected to AUS network. The Technician shall be required to comply with all City of Austin acceptable use policies concerning AUS network.
- C. AUS will provide VPN access for remote troubleshooting.

**17. SECURITY AND CONFIDENTIALITY**

- A. Access to the premises is strictly controlled, employees, or agents of the contractor shall never enter a restricted or operational area of AUS without the express permission of AUS or the governmental bodies having jurisdiction. Contractor assumes full liability from any such unauthorized incursions.
- B. Contractor personnel will be required to obtain an airport security badge that shall be displayed at all times when on the AUS property. Failure to do so may be cause for removal of contractor personnel from the work site, without regard to contractor's schedule.
- C. All Contractor personnel assigned to work at AUS shall meet the minimum airport security requirements and be capable of obtaining and maintaining a current valid SIDA badge at AUS.
- D. Contractor remote personnel assigned to work at AUS will be required to sign an NDA.

**EXHIBIT A**

**CITY OF AUSTIN DATA SECURITY STANDARDS**

The requirements of this document shall remain in effect at all times while the Contract is in effect, including any renewals or extensions of the Contract term, and shall survive the expiration or termination of the Contract until such time as no Confidential Information remains in the possession or under the control of the Company.

**1. Definitions.** Capitalized terms used in this document have the meanings set forth below:

- A. “Authorized Person” mean an employee or agent of the Company, and also means an employee or agent of a Subcontractor, who has need to know or otherwise access Confidential Information to enable the Company to perform its obligations under this Agreement, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Agreement.
- B. “Company” means the entity that enters into the Contract with the City, and also includes all subcontractors and third parties performing any part of the Contract through or on behalf of the Company.
- C. “Confidential Information” means electronic data (including data compilations) which is located in the System or sent to the System for storage by any User, and which concerns the City’s present, past, or potential future legal affairs or legal business. By way of example and not limitation, Confidential Information includes: (1) court filings; (2) legal memoranda; (3) communications to or from a current or past member of the City Law Department; (4) files containing legal research, analysis, or other attorney work product; (5) legislative documents including, without limitation, City Council ordinances and resolutions; (6) non-public information about current or past City employees, including without limitation disciplinary documents, investigative materials, compensation information, or personal health information; (7) information related to pending, past, or threatened litigation involving the City, including without limitation demands, claims, discovery materials, expert reports, legal strategy communications, settlement materials, and similar materials; and (8) any other information that is marked or identified as confidential or would reasonably be understood to be confidential whether or not marked or identified as confidential. Confidential Information also includes Personal Information as defined in this document. “Confidential Information” remains subject to the Data Security Standards regardless of whether such data has been made public by the City or other person.
- D. “Contract” means the agreement between the City and the Company made pursuant to City solicitation No. RFP 5700 SAP3000.
- E. “Data Security Standards” means the physical, technical, administrative, and organizational safeguards stated in Section 2 of this document to protect the security of the System or protect Confidential Information.



- F. "Personal Information" means data provided to the Company by or at the direction of the City, or information created or obtained by the Company on behalf of the City, that: (i) identifies or can be used to identify an individual (including, without limitation, names, addresses, telephone numbers, e-mail addresses, Social Security numbers, driver's license numbers, credit or debit card numbers, or other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, system identification numbers, passwords, PINs, answers to security questions, or other user authentication information). "Personal Information" also includes biometric, genetic, medical, or medical insurance-related data provided to the Company by or at the direction of the City under the Contract.
- G. "Security Breach" means: (i) any breach of the Data Security Protections that results in unauthorized access by any person to Confidential Information; (ii) any act or omission that compromises the Data Security Protections and results in potential unauthorized access by any person to Confidential Information; (iii) receipt by the City or the Company of notice from any third party alleging a breach of the Data Security Protections resulting in unauthorized access to such third party's confidential information.
- H. "System" means all of the Company's matter management software application(s) deployed to meet the City's needs under the Contract, and also includes all hardware, network connections, data storage, third party applications, and other elements owned by or used by the Company to perform the Contract.

## **2. Data Security Standards.**

- A. The Company shall comply with all Data Security Standards so long as the Contract is in effect (including any option periods or extensions of the Contract), and for any such additional period of time that the Company has Confidential Information in its possession or under its control. The Company shall be responsible for compliance with these Data Security Standards by all Authorized Persons.
- B. The Company shall:
- (1) Keep and maintain all Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
  - (2) Not create, collect, receive, access, or use Confidential Information in violation of applicable law;
  - (3) Use and disclose Confidential Information solely and exclusively for the purposes for which such information, or access to it, is provided pursuant to the terms of the Contract, and shall not use, sell, rent, transfer, distribute, or otherwise disclose or make available Confidential Information for the Company's own purposes or for the benefit of anyone other than the City without the City's prior written consent; and
  - (4) Not directly or indirectly disclose Confidential Information to any person other than Authorized Persons without the City's prior written consent.

- C. The Company shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- D. The Company shall store and process all Confidential Information within the contiguous United States.
- E. The Company shall implement administrative, physical, and technical safeguards to protect Confidential Information from unauthorized access, acquisition, disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework standards and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. At a minimum, such safeguards shall include:
  - (1) Limiting access to Confidential Information to Authorized Persons such that Authorized Persons have only the minimum level of access required to perform the Company’s obligations under this Agreement;
  - (2) Securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability;
  - (3) Implementing network, application, database, and platform security;
  - (4) Securing information transmission, storage, and disposal;
  - (5) Implementing authentication and access controls within media, applications, operating systems, and equipment;
  - (6) Encrypting all Confidential Information during storage on any media and at all times while in transit over public or wireless networks;
  - (7) Strictly segregating Confidential Information from other information held by the Company such that Confidential Information is not commingled with any other types of data;
  - (8) Conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing at the Company’s sole cost and expense corrective action plans to correct any issues reported as a result of the testing;
  - (9) Implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law;

(10) Providing appropriate privacy and information security training to Authorized Persons;

(11) Prohibiting endpoint storage.

**F.** The Company shall, at all times, cause Authorized Persons to abide strictly by the Company's obligations under this Agreement. The Company further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Confidential Information by any Authorized Person. Upon the City's written request, the Company shall promptly identify for the City, in writing, all Authorized Persons as of the date of such request.

**G.** Upon the City's written request, the Company shall provide the City with a network diagram that outlines the Company's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under this Agreement, including, without limitation: (i) connectivity to the City and all third parties who may access the Company's network to the extent the network contains Confidential Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

**H. Security Breach Procedures.**

(1) In the event of a Security Breach the Company shall:

- a. Provide the City with the name and contact information for an employee of the Company who shall serve as the City's primary security contact and who shall be available to assist the City twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach; and
- b. Notify the City of a Security Breach as soon as practicable, but no later than four hours after the Company becomes aware of such breach, as follows:
  - i. To the City's Communications and Technology Management Department by telephone (512-974-4357) and e-mail ([cybersecurity@austintexas.gov](mailto:cybersecurity@austintexas.gov)); and
  - ii. To the City Attorney by telephone (512-974-2268) and fax transmission (512-974-2894).
- c. Notice sent by email and fax transmission under this subsection (b) shall include:
  - i. A description of type, size, and scope of the Security Breach;
  - ii. A description of the actions taken by the Company to remedy the Security Breach;

- iii. A statement of whether the Security Breach has been resolved or is ongoing; and
  - iv. contact information for the Company representative(s) available to the City to communicate about the Security Breach.
- (2) Immediately following the Company's notification to the City of a Security Breach, the Parties shall coordinate with each other to investigate the Security Breach. If the Security Breach results in the disclosure of Confidential Information, the City will notify affected persons and may notify the Texas Attorney General in accordance with Texas Business and Commerce Code § 521.053. The Company agrees to fully cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the City with physical access to the facilities and operations affected; (iii) facilitating interviews between the City and the Company's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.
- (3) The Company shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to, taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Company shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- (4) The Company agrees that it shall not inform any third party of any Security Breach without first obtaining the City's prior written consent. Further, the Company agrees that the City shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the City's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
- (5) The Company agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- (6) The Company agrees to fully cooperate, at its own expense, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- I. Oversight of Security Compliance.** On written request from the City, the Company shall permit the City (or third party designated by the City) to perform an assessment, audit, examination, or review of all controls in the Company's physical and/or technical environment in relation to all Confidential Information. The Company shall fully cooperate

with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transports Confidential Information for the City pursuant to this Agreement. In addition, upon the City's written request, the Company shall provide the City with the results of any audit performed by or on behalf of the Company that assesses the effectiveness of the Company's information security program as relevant to the security of Confidential Information.

- J. Return or Destruction of Personal Information.** On written request at any time during the term of the Contract, or at the termination or expiration of the Contract for any reason, the Company shall, and shall instruct all Authorized Persons to, promptly return to the City all Confidential Information (whether in written, electronic, or other form or media) in its possession or the possession of such Authorized Persons. The Parties may alternatively agree that the Company may dispose of some or all parts of the Confidential Information the Company holds and certify in writing to the City that such Confidential Information has been disposed of securely. The Company shall comply with all directions provided by the City with respect to the return or disposal of Confidential Information.
- K. Equitable Relief:** The Company acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding any exclusions or limitations in this Agreement to the contrary.

(Third Party Connections: Vendors, Consultants, etc.)  
City of Austin – CTM Department

# Citrix / VPN Request

## Instructions

Please complete this form in its entirety. Incomplete forms will be returned and completion of the request will be delayed. If you have any questions, please contact the Security Team at [CTMNetworkSecurity@austintexas.gov](mailto:CTMNetworkSecurity@austintexas.gov). E-sign the form and email to [CTMServiceDesk@austintexas.gov](mailto:CTMServiceDesk@austintexas.gov).

### 1. Requestor Information

Proposed Citrix / VPN User		Proposed Citrix / VPN User's Manager	
Name:		Name:	
Phone:		Phone:	
Mobile:		Mobile:	
Email:		Email:	
Office Location:		Office Location:	
Company:		Company:	

Proposed Citrix / VPN User's Technical Contact	
Name:	
Phone:	
Email:	

### 2. COA – Department Requesting Citrix / VPN User Account

Department Point of Contact		Manager	
Name:		Name:	
Division:		Division:	
Phone:		Phone:	
Email:		Email:	

Department Technical Contact	
Name:	
Phone:	
Email:	

### 3. Proposed Citrix / VPN User - Justification for Citrix / VPN Access:

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### 4. Type of Connections:

AnyConnect Please Choose

Citrix Please Choose

IP Addresses to be accessed: \_\_\_\_\_

Third Party Public IPs: \_\_\_\_\_

#### Other Applications / Protocols

TCP / UDP Ports Used: \_\_\_\_\_

## 5. Remote Device Security

City of Austin – CTM Department Network Security Policy sets minimum security criteria for all PCs that attach to City of Austin – CTM Department Network device must also meet the relevant security criteria. Please answer the following questions about remote device configuration and security management practices.

1) I agree to use strong passwords capable of logging into the remote device. Please Choose

- a. Please describe your strong password standards (i.e. length of password, how often password is changed).

2) I agree that sharing of my Citrix / VPN passwords is strictly prohibited. Please Choose

3) I agree that my Citrix / VPN system and applications are up-to-date with the most recent service packs and / or security patches. Please Choose

4) I agree that my Citrix / VPN system is protected by active anti-virus software which is maintained with the latest virus definition files. Please Choose

If yes, what is the brand and version of current anti-virus software? If no, enter NA.

5) Is the device protected by active firewalls or IP filters? Please Choose

If yes, what is the brand name? If no, enter NA

6) I agree to disconnect from my COA Citrix / VPN session when using my computer for personal use. Please Choose

7) I agree not to distribute the COA Citrix / VPN client software or share the COA Citrix / VPN connection information. Please Choose

8) List the operating system and service pack installed on the remote computer. Please Choose

## 6. Contract between Partner Company and CTM Department is effective from:

Effective From: \_\_\_\_\_ To date: \_\_\_\_\_

## 7. Access Dates:

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

## **Third Party Connection Acceptable Use Policy**

### **Purpose:**

To ensure that a secure method of connectivity is provided between City of Austin – CTM Department and Third Party (Partner) companies, and to provide guidelines for the use of network and computing resources associated with a Third Party Network as defined below.

### **Scope:**

This policy applies to any person(s) and / or contractor(s) (hereinafter referred to as “users”) whose access to or use of Internet, electronic mail, and / or computer use is funded by the City or is available through equipment owned or leased by the City.

### **Definition:**

A “Third Party Network Connection” is defined as connections that allow data sharing between the COA and a partner electronically. Allowable “Third Party Network Connections” are listed in Statement of the Policy.

### **Statement of the Policy:**

Third Party Network Connections are to be used for business purposes only. Third Party Connections must have an “Authorization for Third Party Connection” on file with the Network Security Team. In the text below, “user” refers to employees / contractors of the Partner Company who use the resources associated with the partner network.

1. The information provided on the Citrix / VPN Request Form is correct to the best of my knowledge.
2. The Partner Company shall notify the appropriate City of Austin – CTM Department personnel when an employee, who has access on City of Austin – CTM Department equipment per the partner connection, leaves the company or is transferred to another position which no longer requires access. The Partner Company will send termination notices within one business day of the employee’s last physical day with the account and IP information to [CTMServiceDesk@austintexas.gov](mailto:CTMServiceDesk@austintexas.gov).
3. The Partner Company shall assume all responsibility for protection of their private network(s) which may be interconnected via the Third Party Connection to City of Austin –CTM Department.
4. Only employees of the Partner Company who have approved access shall use the resources associated with the partner connection.
5. No sharing of Citrix / VPN accounts on shared systems will be permitted. Every Citrix / VPN account must have a unique person associated with it.
6. The point of contact at the Partner Company shall notify the City of Austin – CTM Department via the [CTMServiceDesk@austintexas.gov](mailto:CTMServiceDesk@austintexas.gov) account whenever there is a change in the user base for the work performed over the partner network. Changes have a two week lead time except when directed by City of Austin – CTM Department IT Manager or a City of Austin – CTM Department Assistant Director.
7. All access to City of Austin – CTM Department network will be monitored. For auditing reasons, the Partner Company will be required to keep 10 days of logs for all IPs connecting to City of Austin – CTM Department resources. This can be an intrusion detection system or simply a router with logging turned on and saved. Any noncompliance with these requirements will constitute a security violation and will be reported to the appropriate City of Austin – CTM Department personnel, and it may result in immediate termination of the partner agreement.



## **NONDISCLOSURE AGREEMENT**

THIS AGREEMENT ("Agreement") is by and between the City of Austin ("the City"), located at 301 W 2<sup>nd</sup> Street, Austin, Texas 78701, and ("the Company"), located at

setting forth the conditions under which the parties

are willing to disclose confidential information relative to their business relationship. The City and the Company are hereinafter referred to either individually as the "party," or collectively as the "parties."

1. From the acceptance date of this agreement, each party hereto shall keep confidential the information it receives from the other or its representatives, whether or oral, including the fact that the parties are engaged in discussions (the "Confidential Information"). Each party shall neither disclose Confidential Information to any third party, nor use Confidential Information to the detriment of the other party. All written information exchanged from one party to the other party shall be considered Confidential Information subject to the terms of this Agreement at the time of such disclosures. The obligation of confidentiality, nondisclosure and nonuse shall apply to any and all information exchanged between the parties or their representatives with the exception of that which:
  - a. is previously known to the receiving party, evidence by its written records,
  - b. was subsequently otherwise acquired by the receiving party from a third party having an independent right to disclose the information,
  - c. is in the public domain at the time of disclosure or otherwise becomes part of the public domain through no fault of the receiving party after such disclosure,
  - d. is developed by or for the receiving party independently of the disclosure hereunder, or
  - e. either party is required to disclose pursuant to law, including but not limited to the Texas Public Information Act (TEX. GOV'T CODE CHAPTER 552).
2. Notwithstanding any other provision in this Agreement, any party receiving Confidential Information may disclose such information, on a confidential basis, to employees, officers, directors, independent contractors, attorneys, accountants, financial advisors, or agents of the receiving party having a need to know such Confidential Information, provided such person agrees in advance to be bound by the terms of this Agreement.
3. The Company acknowledges that the City and this Agreement are subject to the Texas Public Information Act. The City agrees to use all reasonable precautions to protect the confidentiality of and to prevent the unauthorized use or disclosure of the Company's Confidential Information. The City shall disclose the Company's Confidential Information only as required by Texas Government Code Chapter 552, and will provide notice, as required by Texas Government Code Section 552.305, to the Company prior to any such disclosure. This Agreement shall be construed by and governed in accordance with the laws of the State of Texas. The parties irrevocably submit to the jurisdiction of the district courts in Travis County, Texas and the U.S. District Court Western District of Texas to resolve disputes which cannot be resolved by the parties.
4. The receiving party's obligation to protect Confidential Information disclosed under this Agreement shall expire two years from the date of this Agreement, but if any subsequent agreement is reached between the parties, then for a period extending five years beyond the expiration of such agreement. This Agreement may be terminated earlier by either party by giving 30 days written notice of termination to the other party, provided that each party's obligations under this Agreement will continue to apply in accordance with the terms of such obligations as to any Confidential Information disclosed prior to such termination.
5. Upon termination of this Agreement or written request by the disclosing party, the receiving party shall:
  - (a) cease using the Confidential Information, (b) return or destroy the Confidential Information and all copies, notes, or extracts thereof in accordance with its document retention schedule, and (c) upon request of the disclosing party, confirm in writing that the receiving party has complied with these obligations.

Neither party to this Agreement acquires any intellectual property rights or any other rights by action of this Agreement or the disclosure of any Confidential Information hereunder.

6. This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior or contemporaneous oral or written agreements or understandings between the parties regarding such subject matter. This Agreement may be modified only in writing signed by duly authorized representatives of the parties.
7. This Agreement shall be effective as of the last date of the below signature.

I have read and understand the Third Party Connection Acceptable Use Policy for use of a Third Party Partner connection and agree to abide by it.

\_\_\_\_\_  
Requestor Signature

\_\_\_\_\_  
Date

SIGNED ON BEHALF OF  
The City of Austin, Texas

SIGNED ON BEHALF OF  
\_\_\_\_\_

By: \_\_\_\_\_  
CTM Department – Division Manager/Sponsor

By: \_\_\_\_\_

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

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

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

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

CTM Information System Use Only			
Helpdesk Ticket #:		Access Start Date:	
Citrix / VPN Account:			

**By signing below, I represent and certify that I am submitting a binding Offer and am authorized to bind the Offeror to fully comply with the Solicitation to which I submit this Offer. I acknowledge that I have received, read, and understood the entire solicitation document packet sections, including any addenda issued, and agree to be bound by its terms. I understand and agree that Offers submitted with incomplete and/or unsigned Offer Sheets will not be considered and will be rejected as non-responsive.**

**By submitting this Offer, I certify the following statements are true now and will be for the term of any resulting contract:**

1. That my firm and its principals (collectively “we” or “us”) are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That we have not in any way directly or indirectly:
  - a. Colluded, conspired, or agreed with any other person, firm, corporation, Proposer or potential Proposer to the amount of this Proposal or the terms or conditions of this Proposal.
  - b. paid or agreed to pay any other person, firm, corporation Proposer or potential Proposer any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Proposal or the Proposal of any other Proposer.
3. That we have not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, we have not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Proposers, so as to have an unfair advantage over other Proposers, provided that we may have provided relevant product or process information to a consultant in the normal course of its business.
4. That we have not participated in the evaluation of Proposals or other decision making process for this Solicitation and, if we are awarded a Contract, no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with us, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that we may have provided relevant product or process information to a consultant in the normal course of its business.
5. In accordance with Chapter 176 of the Texas Local Government Code, that we:
  - a. do not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income
  - b. have not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100

- in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
- c. do not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

6. That we have and will continue to comply with the City's Anti-Lobbying Ordinance, Chapter 2-7, Article 6.

**No Lobbying Period.** The No-Lobbying Period begins on the date this Solicitation was initially published and continues through the earlier of (i) 60-days following Council authorization of any contracts resulting from this Solicitation, (ii) the date the last resulting contract is signed, (iii) the date this Solicitation is cancelled.

**Prohibited Communications.** During the No Lobbying Period, Respondents to this Solicitation or their Agents, shall not make prohibited communications to City officials or City employees.

**Ordinance.** [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=15&p=145](https://www.austintexas.gov/financeonline/afo_content.cfm?s=15&p=145)

**Rules.** [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=16&p=77](https://www.austintexas.gov/financeonline/afo_content.cfm?s=16&p=77)

7. Pursuant to City Council Resolution No. 20191114-056, we are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy. If the City determines in its sole discretion that we have, during the term of the resulting Contract, engaged in any such practices, the City may terminate this Contract without penalty to the City.
8. Pursuant to Texas Government Code §2271.002, we verify that we do not boycott Israel and will not boycott Israel during the term of the resulting contract.
9. Pursuant to Texas Government Code Chapter 2274, we verify that if we have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of any City contract, that we are not owned by or the majority of stock or other ownership interest of our firm is not held or controlled by:
- individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
  - headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.
10. Pursuant to Texas Government Code Chapter 2274, we verify that, if we have 10 or more full-time employees: (1) we do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the resulting contract against a firearm entity or firearm trade association.
11. Pursuant to Texas Government Code Chapter 2274, we certify that, if we have 10 or more full-time employees: (1) we do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

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

Company Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

City Vendor Registration No. : \_\_\_\_\_

Printed Name of Officer or Authorized Representative: \_\_\_\_\_

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

Signature of Officer or Authorized Representative: \_\_\_\_\_

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

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

### ACCEPTANCE BY THE CITY

**For City Staff only.** The City will complete and sign this section only if the City accepts the Offer.

Contract Number: \_\_\_\_\_

Printed Name of City's Authorized Procurement Staff: \_\_\_\_\_

Title of City's Authorized Procurement Staff: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**ACCEPTANCE:** The Offer is hereby accepted. Contractor is now bound to sell the materials or services specified in the Contract.

## NONRESIDENT BIDDER PROVISIONS

**Instruction.** Offerors shall read and checking the applicable boxes in response to both certifications below.

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☐ YES ☐ NO **OFFEROR HEREBY CERTIFIES**

(Check One) Offeror **IS (YES)** or **IS NOT (NO)** a Nonresident Bidder in accordance with Texas Government Code Ch. 2252.002.

If "Yes" is checked, provide the name of the state where  
Nonresident Bidder's Principle Place of Business is located.

**(State)**

☐ YES ☐ NO **OFFEROR HEREBY CERTIFIES**

(Check One) Offer **INCLUDES (YES)** or **DOES NOT INCLUDE (NO)** Equipment, Supplies and/or Materials in accordance with Texas Government Code Ch. 2252.002

If "YES" is checked, provide the name of the State where majority  
of the Equipment, Supplies and/or Materials were manufactured

**(State)**

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**Reciprocal Preference.** In accordance with Texas Government Code Ch. 2252.002 (see below), the City must apply a reciprocal preference to a Nonresident Bidder's offer, consistent with the applicable preference granted by the state of the Nonresident Bidder's principal place of business. The City will also apply a reciprocal preference to a Resident Bidder or Nonresident Bidder's offer, consistent with the applicable preference granted by the state where the majority of the equipment, supplies and/or materials were manufactured.

**Resident bidder.** An Offeror whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

**Nonresident Bidder.** An Offeror that is not a Resident Bidder.

**Statute:** <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm>

## LOCAL PRESENCE CERTIFICATION - OPTIONAL

**Instruction.** Offerors wishing to claim Local Presence shall read and acknowledge this certification by checking the applicable box and providing the physical address below.

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### OFFEROR HEREBY CERTIFIES

Offeror's **HEADQUARTERS** or a **BRANCH OFFICE** is within the Austin Corporate City Limits.

☐ **HEADQUARTERS**

Offeror's Physical Address.

☐ **BRANCH OFFICE**

(Physical Address of Offeror's Headquarters or Branch Office)

(Check One)

---

Do you employ anyone at the location checked above who is a resident of the City of Austin?

☐ **Yes**

☐ **No**

(Check One)

---

**Benefit to the City.** In accordance with Resolution No. 20140807-113, Council has determined that contracts awarded to local companies that provide employment to Austin residents are an economic benefit.

**Local Presence.** Offerors may claim Local Presence if at least one (1) of the following are located within the Austin Corporate City Limits, employing residents of Austin.

1. Headquarters; or
2. Branch office.

**Austin Corporate City Limits.** The City of Austin's Full Purpose Jurisdiction, not including the City's Extraterritorial Jurisdiction.

**Headquarters.** The Offeror's administrative center where most of the company's important functions and full responsibility for managing and coordinating the business activities of the firm are located.

**Branch Office.** A company office other than the Offeror's headquarters, that has been in place for at least five (5) years.

## LIVING WAGE – CONTRACTOR CERTIFICATION

*(Please duplicate as needed)*

Pursuant to the City's Living Wages Program, Rule R161-17.14 (reference Solicitation Instructions, Living Wage) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$20.00 per hour.

- (1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$20.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title

- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$20.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations



of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$20.00 per hour.

Contractor's Name:

Signature of Officer  
or Authorized  
Representative:

Date:

Printed Name:

Title

## SUBCONTRACTING UTILIZATION FORM

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Procurement Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

### Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
- b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.

☐ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

**Instructions:** Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

**Instructions:** Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name			
City Vendor ID Code			
Physical Address			
City, State Zip			
Phone Number		Email Address	
Is the Offeror City of Austin M/WBE certified?	<input type="checkbox"/> NO <input type="checkbox"/> YES      Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		
<b>Offeror Certification:</b> I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed <b>Subcontracting/Sub-Consulting Utilization Form</b> , and if applicable my completed <b>Subcontracting/Sub-Consulting Utilization Plan</b> , shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add			

Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

---

Name and Title of Authorized Representative (Print or Type)

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Signature/Date

## SUBCONTRACTING UTILIZATION PLAN

INSTRUCTIONS: Offerors who DO intend to use Subcontractors must either utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or [SMBRComplianceDocuments@austintexas.gov](mailto:SMBRComplianceDocuments@austintexas.gov)) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

**Instructions:** Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

### GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL of the following CHECK BOXES MUST be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.**

☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or [SMBRComplianceDocuments@austintexas.gov](mailto:SMBRComplianceDocuments@austintexas.gov)) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.

☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest

to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone <b>OR</b> <input type="checkbox"/> Email	

**FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:**

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

\_\_\_\_\_  
Reviewing Counselor

\_\_\_\_\_  
Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

\_\_\_\_\_  
Director/Assistant Director or Designee

\_\_\_\_\_  
Date