



Amendment No. 9
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Campbell-Hill Aviation Group, LLC
and the
City of Austin

1.0 The City hereby amends the above referenced Contract as follows:

1.1 Exhibit B.4 is deleted and replaced with Exhibit B.5.

2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Replace Exhibit B with Exhibit B.1 10/13/2014	\$0.00	\$950,000.00
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2 02/10/2015	\$0.00	\$950,000.00
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3 06/08/2015	\$0.00	\$950,000.00
Amendment No. 4: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00
Amendment No. 5: Replace Exhibit B.3 with Exhibit B.4 05/17/2017	\$0.00	\$1,300,000.00
Amendment No. 6: Option 2 – Extension 07/30/2017 – 07/29/2018	\$350,000.00	\$1,650,000.00
Amendment No. 7: Administrative Increase 05/03/2018	\$59,000.00	\$1,709,000.00
Amendment No. 8: Option 3 – Extension 07/30/2018 – 07/29/2019	\$350,000.00	\$2,059,000.00
Amendment No. 9: Replace Exhibit B.4 with Exhibit B.5 09/11/2018	\$0.00	\$2,059,000.00

3.0 MBE/WBE goals do not apply to this contract.

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

5.0 All other terms and conditions remain the same.

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

Sign/Date: Kevin Schorr 9/11/18

Printed Name: KEVIN SCHORR
Authorized Representative

Campbell-Hill Aviation Group, LLC
700 North Fairfax, Suite 300
Alexandria, Virginia 22314
(703) 229-4304
kschorr@av-econ.com

Sign/Date: Cyrenthia Ellis 9/11/2018

Cyrenthia Ellis
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Exhibit B.5
Fee Schedule
Contract NA130000115
Campbell-Hill Aviation Group, LLC
(Amendment No. 9)

Staff Member	Title	Hourly Rate
Dean Hill	Principal	\$350.00
Brian Campbell	Principal	\$350.00
Kevin Healy	Principal	\$350.00
Reid Appleby	Vice President	\$290.00
Rex Edwards	Vice President	\$290.00
Eric Ford	Vice President	\$290.00
James Lundy	Vice President	\$290.00
Kevin Schorr	Vice President	\$290.00
Howard Mann	Vice President	\$290.00
Nico Gurwicz	Director	\$250.00
Todd Schroder	Research Director	\$200.00
Katie Niehaus	Research Director	\$200.00
Brooks Hill	Senior Analyst	\$185.00
Ethan Wolinsky	Project Analyst	\$175.00
Marion Chenkin	Administration	\$65.00



Amendment No. 8
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Campbell-Hill Aviation Group, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 30, 2018 through July 29, 2019. No options will remain.
- 2.0 The total contract amount is increased by \$350,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Replace Exhibit B with Exhibit B.1 10/13/2014	\$0.00	\$950,000.00
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2 02/10/2015	\$0.00	\$950,000.00
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3 06/08/2015	\$0.00	\$950,000.00
Amendment No. 4: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00
Amendment No. 5: Replace Exhibit B.3 with Exhibit B.4 05/17/2017	\$0.00	\$1,300,000.00
Amendment No. 6: Option 2 – Extension 07/30/2017 – 07/29/2018	\$350,000.00	\$1,650,000.00
Amendment No. 7: Administrative Increase 05/03/2018	\$59,000.00	\$1,709,000.00
Amendment No. 8: Option 3 – Extension 07/30/2018 – 07/29/2019	\$350,000.00	\$2,059,000.00

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

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

Sign/Date: Kevin Schorr 5/7/18

Printed Name: KEVIN SCHORR
Authorized Representative

Campbell-Hill Aviation Group, LLC
700 North Fairfax, Suite 300
Alexandria, Virginia 22314
(703) 229-4304
kschorr@av-econ.com

Sign/Date: Cyrenthia Ellis 6/14/2018

Cyrenthia Ellis
Procurement Manager
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 7
to
Contract No. MA 8100 NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Campbell-Hill Aviation Group, LLC
and the
City of Austin

1.0 The City hereby exercises an increase to the above-referenced contract in the amount of \$59,000.

2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Replace Exhibit B with Exhibit B.1 10/13/2014	\$0.00	\$950,000.00
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2 02/10/2015	\$0.00	\$950,000.00
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3 06/08/2015	\$0.00	\$950,000.00
Amendment No. 4: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00
Amendment No. 5: Replace Exhibit B.3 with Exhibit B.4 05/17/2017	\$0.00	\$1,300,000.00
Amendment No. 6: Option 2 – Extension 07/30/2017 – 07/29/2018	\$350,000.00	\$1,650,000.00
Amendment No. 7: Administrative Increase 05/03/2018	\$59,000.00	\$1,709,000.00

3.0 MBE/WBE goals do not apply to this contract.

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

5.0 All other terms and conditions remain the same.

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

Sign/Date: Kevin Schorr 5/4/18

Printed Name: KEVIN SCHORR
Authorized Representative

Campbell-Hill Aviation Group, LLC
700 North Fairfax, Suite 300
Alexandria, Virginia 22314
(703) 229-4304
kschorr@av-econ.com

Sign/Date: [Signature] 05/22/2018

Marty James
Procurement Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

Approved By

Signature & Date:

Cyrenthia Ellis 5.25.18

Cyrenthia Ellis, Procurement Manager
City of Austin
Purchasing Office



Amendment No. 2
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Barry Clark & Associates, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 30, 2017 through July 29, 2018. One option will remain.
- 2.0 The total contract amount is increased by \$350,000.00 each and combined by this extension period. The total contract authorization is recapped below:

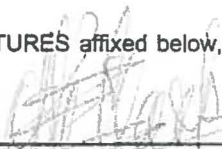
Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00
Amendment No. 2: Option 2 – Extension 07/30/2017 – 07/29/2018	\$350,000.00	\$1,300,000.00

\$1,650,000.00
M2

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

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


Sign/Date:

 6/15/2017

Printed Name: H.R. Clarke
Authorized Representative

Barry Clark & Associates, Inc.
230 Oak Hill Drive
Roanoke, Texas 76262-5457
(817) 430-0634
barry_bca@sbcglobal.net

Sign/Date:

 7-6-17

Linell Goodin-Brown
Contract Compliance Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Barry Clark & Associates, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 30, 2016 through July 29, 2017. Two options will remain.
- 2.0 The total contract amount is increased by \$350,000.00 each and combined by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00

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

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

Sign/Date:

Handwritten signature of H. R. Clark in black ink.

6/21/2016

Printed Name: H. R. CLARK
Authorized Representative

Barry Clark & Associates, Inc.
230 Oak Hill Drive
Roanoke, Texas 76262-5457
(817) 430-0634
barry.bca@sbcglobal.net

Sign/Date:

Handwritten signature of Linell Goodin-Brown in black ink.

7-20-16

Linell Goodin-Brown
Contract Compliance Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 6
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Campbell-Hill Aviation Group, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 30, 2017 through July 29, 2018. One option will remain.
- 2.0 The total contract amount is increased by \$350,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Replace Exhibit B with Exhibit B.1 10/13/2014	\$0.00	\$950,000.00
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2 02/10/2015	\$0.00	\$950,000.00
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3 06/08/2015	\$0.00	\$950,000.00
Amendment No. 4: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00
Amendment No. 5: Replace Exhibit B.3 with Exhibit B.4 05/17/2017	\$0.00	\$1,300,000.00
Amendment No. 6: Option 2 – Extension 07/30/2017 – 07/29/2018	\$350,000.00	\$1,650,000.00

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

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

Sign/Date: Kevin Schorr 6/23/17

Printed Name: KEVIN SCHORR
Authorized Representative

Campbell-Hill Aviation Group, LLC
700 North Fairfax, Suite 300
Alexandria, Virginia 22314
(703) 229-4304
kschorr@av-econ.com

Sign/Date: Linell Goodin-Brown 7-6-17

Linell Goodin-Brown
Contract Compliance Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 5
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
Campbell-Hill Aviation, LLC
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract as follows:

1.1 Exhibit B.3 in is deleted and replaced with Exhibit B.4, attached hereto

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 7/30/2013 – 7/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Replace Exhibit B with Exhibit B.1 10/13/2014	\$0.00	\$950,000.00
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2 02/10/2015	\$0.00	\$950,000.00
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3 06/08/2015	\$0.00	\$950,000.00
Amendment No. 4: Exercise Extension Option 1 07/30/16 – 07/29/2017	\$350,000.00	\$1,300,000.00
Amendment No. 5: Replace Exhibit B.3 with Exhibit B.4	\$0.00	\$1,300,000.00

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

4.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

Kevin Schorr

Printed Name: KEVIN SCHORR

Authorized Representative
Campbell-Hill Aviation Group, LLC

Date: 5/17/17

Signature & Date:

Monica McClure

Printed Name: Monica McClure

Monica McClure, Contract Mgmt Specialist IV
City of Austin, Purchasing Office

Date: May 17, 2017

EXHIBIT B.4

STAFF MEMBER	TITLE	HOURLY RATE
Dean Hill	Principal	\$350
Brian Campbell	Principal	\$350
Kevin Healy	President	\$350
Reid Appleby	Vice President	\$290
Rex Edwards	Vice President	\$290
Eric Ford	Vice President	\$290
James Lundy	Vice President	\$290
Kevin Schorr	Vice President	\$290
Evan Berg	Vice President	\$290
Howard Mann	Vice President	\$290
Todd Schroder	Research Director	\$200
Katie Niehaus	Research Director	\$200
Brooks Hill	Senior Analyst	\$185
Katie Black	Project Analyst	\$175
Ethan Wolinsky	Project Analyst	\$175
Marion Chenkin	Administration	\$65



Amendment No. 4
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services for ABIA
between
Campbell-Hill Aviation Group, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be July 30, 2016 through July 29, 2017. Two options will remain.
- 2.0 The total contract amount is increased by \$350,000.00 each and combined by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 07/30/2013 – 07/29/2016	\$950,000.00	\$950,000.00
Amendment No. 1: Replace Exhibit B with Exhibit B.1 10/13/2014	\$0.00	\$950,000.00
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2 02/10/2015	\$0.00	\$950,000.00
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3 06/08/2015	\$0.00	\$950,000.00
Amendment No. 4: Option 1 – Extension 07/30/2016 – 07/29/2017	\$350,000.00	\$1,300,000.00

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

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

Sign/Date:

Handwritten signature of Dean R. Hill.

Printed Name: DEAN R. HILL
Authorized Representative

Campbell-Hill Aviation Group, LLC
700 North Fairfax, Suite 300
Alexandria, Virginia 22314
(703) 229-4304
kschorr@av-econ.com

Sign/Date:

Handwritten signature of Linell Goodin-Brown.
7-29-16

Linell Goodin-Brown
Contract Compliance Supervisor
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 3
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services
Between
Campbell-Hill Aviation Group, LLC. ("Contractor")
and the
City of Austin

1.0 The above referenced Contract (hereinafter "Contract") is hereby amended as follows:

1.1 Exhibit B.1 is deleted and replaced with Exhibit B.3, attached.

2.0 The total Contract amount is summarized below:

Action	Action Amount	Total Contract Amount
Original Contract: Award of \$950,000 contract, each and combined. Contract period of 7/30/2013 to 7/29/2016 with three 12-month options at \$350,000 per option.	\$950,000	\$950,000
Amendment No. 1: Replace Exhibit B with Exhibit B.1.	\$0	\$950,000
Amendment No. 2: Replace Exhibit B.1 with Exhibit B.2.	\$0	\$950,000
Amendment No. 3: Replace Exhibit B.2 with Exhibit B.3.	\$0	\$950,000

3.0 All other terms and conditions remain the same.

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

Signature: 

Printed Name
City of Austin
Purchasing Office

Date

6/8/2015

Signature: 

Printed Name
Authorized Representative
Campbell-Hill Aviation Group, LLC.

Date

6/5/15



Amendment No. 2
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services
Between
Campbell-Hill Aviation Group, LLC. ("Contractor")
and the
City of Austin

1.0 The above referenced Contract (hereinafter "Contract") is hereby amended as follows:

1.1 Exhibit B.1 is deleted and replaced with Exhibit B.2, attached.

2.0 The total Contract amount is summarized below:

Action	Action Amount	Total Contract Amount
Original Contract: Award of \$950,000 contract, each and combined. Contract period of 7/30/2013 to 7/29/2016 with three 12-month options at \$350,000 per option.	\$950,000	\$950,000
Amendment No. 1: Replace Exhibit B with Exhibit B.1.	\$0	\$950,000

3.0 All other terms and conditions remain the same.

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

Signature: Sai Purcell
Printed Name Sai Purcell
City of Austin
Purchasing Office

2/10/15
Date

Signature: Kevin Erhun
Printed Name
Authorized Representative
Campbell-Hill Aviation Group, LLC.

2/10/15
Date

Exhibit B.2

Fee Schedule Inclusive of All Expenses

Staff Member	Title	Hourly Rate
Brian Campbell	Chairman	\$320.00
Marion Chenkin	Administrative	\$65.00
Rex Edwards	Vice President	\$260.00
Eric Ford	Vice President	\$260.00
Howard Mann	Vice President	\$260.00
Josh Grafman	Project Analyst	\$175.00
Kevin Healy	Sr. Vice President	\$320.00
Dean Hill	President	\$320.00
Brooks Hill	Senior Analyst	\$185.00
James Lundy	Vice President	\$260.00
Katie Neihaus	Research Manager	\$185.00
Kevin Schorr	Project Manager	\$260.00
Todd Schroder	Research Director	\$200.00



Amendment No. 1
to
Contract No. NA130000115
for
Air Service Market Evaluation and Development Services
Between
Campbell-Hill Aviation Group, LLC. ("Contractor")
and the
City of Austin

1.0 The above referenced Contract (hereinafter "Contract") is hereby amended as follows:

1.1 Exhibit B is deleted and replaced with Exhibit B.1, attached.

2.0 The total Contract amount is summarized below:

Action	Action Amount	Total Contract Amount
Original Contract: Award of \$950,000 contract, each and combined. Contract period of 7/30/2013 to 7/29/2016 with three 12-month options at \$350,000 per option.	\$950,000	\$950,000
Amendment No. 1: Replace Exhibit B with Exhibit B.1.	\$0	\$950,000

3.0 All other terms and conditions remain the same.

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

Signature: *Ann Reilly*
Printed Name
City of Austin
Purchasing Office

Date

10/13/14

Signature: DEAN B HILL
Printed Name
Authorized Representative
Campbell-Hill Aviation Group, LLC.

Date

Dean B Hill
10/13/14

Exhibit B.1

Fee Schedule Inclusive of All Expenses

Staff Member	Title	Hourly Rate
Brian Campbell	Chairman	\$320.00
Marion Chenkin	Administrative	\$65.00
Rex Edwards	Vice President	\$260.00
Eric Ford	Vice President	\$260.00
Josh Grafman	Project Analyst	\$175.00
Kevin Healy	Sr. Vice President	\$320.00
Dean Hill	President	\$320.00
Brooks Hill	Senior Analyst	\$185.00
James Lundy	Vice President	\$260.00
Katie Neihaus	Research Manager	\$185.00
Kevin Schorr	Project Manager	\$260.00
Todd Schroder	Research Director	\$200.00



**Financial and Administrative Service Department
Purchasing Office**
PO Box 1088, Austin, Texas, 78767

July 30, 2013

Barry Clark & Associates, Inc.
230 Oak Hill Dr.
Roanoke, TX 76262-5457
Contact: Barry Clark

Campbell-Hill Aviation Group, LLC.
2400 Pershing Rd. Ste. 400
Alexandria, VA 22314-2040

The City of Austin has approved the award and execution of a contract with your company to provide Air Service Market Evaluation and Development Services in accordance with solicitation RFP PAX0107.

Responsible Department:	Aviation Department
Department Contact Person:	Jamy Kazanoff
Department Contact Email:	Jamy.kazanoff@austintexas.gov
Department Contact Telephone:	512-530-6681
Project Name:	Air Service market Evaluation and Development Services
Contractor Name:	Barry Clark & Associates, Inc. Campbell-Hill Aviation Group, LLC.
Contract Number:	MA 8100 NA130000115
Contract Period:	07/30/2013 – 07/29/2016
Dollar Value:	\$950,000 each and combined
Extension Options:	Three 12-Month options/\$350,000 per option
Requisition Number:	8100 12111900076
Solicitation Number:	PAX0107
Agenda Item Number:	43
Council Approval Date:	05/23/2013

A copy of the contract has been attached.

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person above.

Sincerely,

Sai Xoomsai,
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
Campbell-Hill Aviation Group LLC ("Contractor")
for
Air Service Market Evaluation and Development Services for
Austin-Bergstrom International Airport
Commercial Passenger Service**

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

This Contract is between Campbell-Hill Aviation Group LLC having offices at 700 North Fairfax Street, Suite 300, Alexandria, Virginia 22314, and the City of Austin, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number PAX0107.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Request for Proposal, Solicitation Number: PAX0107 including all documents incorporated by reference
- 1.1.3 Campbell-Hill Aviation Group LLC's Offer, dated January 4, 2013, including subsequent clarifications
- 1.1.4 Scope of Work, attached hereto as Exhibit A.
- 1.1.5 Fee Schedule, attached hereto as Exhibit B.

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

- 1.2.1 This Contract
- 1.2.2 The Scope of Work as referenced in Section 1.1.4
- 1.2.3 Fee Schedule as referenced in Section 1.1.5
- 1.2.4 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.5 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.4 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on as as-needed basis as specified by the City in each Delivery Order. Upon notification of an upcoming project, Contractor shall provide

the City with a detailed project plan and estimated cost for City's written approval prior to performing the work.

- 1.5 **Compensation.** Contracts have been awarded to two Contractors with a combined annual not-to-exceed amount of \$950,000.00, and a combined annual amount not-to-exceed \$350,000.00 per option, for a total combined amount not-to-exceed \$2,000,000.00. The Contractor shall be paid monthly in accordance with Exhibit B for work performed and accepted by the City in writing.

- 1.6 **Clarifications and Additional Agreements.** The following are incorporated into the Contract.

- 1.6.1 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 Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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

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

- 1.6.2 City reserves the option to purchase additional services and/or support services available as referenced in Contractor's Offer as referenced in Section 1.1.3 herein.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

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

CAMPBELL-HILL AVIATION GROUP
LLC.

CITY OF AUSTIN

DEAN B. HILL
Printed Name of Authorized Person

Stephen T. Aden
Printed Name of Authorized Person

Dean B Hill
Signature

Step T Aden
Signature

PRESIDENT
Title:

Purchasing Manager
Title:

7/22/13
Date:

7/24/13
Date:

List of Exhibits

Exhibit A - Scope of Work
Exhibit B - Fee Schedule

Exhibit A
CITY OF AUSTIN
SCOPE OF WORK
AIR SERVICE MARKET EVALUATION AND DEVELOPMENT SERVICES FOR
AUSTIN-BERGSTROM INTERNATIONAL AIRPORT

1.0 SCOPE OF WORK

The Contractor shall provide the following deliverables:

- A. Review available market data and identify underserved areas in commercial passenger service destinations that are within economic parameters for Austin;
- B. Develop marketing strategies and presentations for commercial airline carriers aimed at capturing the identified underserved destinations;
- C. Provide advice to Department of Aviation upon request from the Director and/or his designee and make such investigations, certifications, and determinations as necessary or required throughout the term of the contract;
- D. Respond within 24 hours to the Department of Aviation's requests, either by phone call or e-mail;
- E. As directed by the Director and/or his designee, prepare materials including power point presentations, video, data analysis, and other necessary information for and participate in meetings and strategy sessions related to air service development activities as they relate to commercial passenger service destinations;
- F. Participate in-person and on tele-conferences for air carrier verbal and written presentations (including power point presentations, video, data analysis, and other necessary information) relating to the commercial passenger service destinations as requested by Austin-Bergstrom Airport staff;
- G. Assist the Airport in developing and setting benchmarks and best practices to ensure a competitive program;
- H. Conduct and provide research and information on air service development relating to the commercial passenger service destinations as needed by the Department of Aviation and requested by the Director and/or his designee throughout the term of the contract;
- I. Provide written reports on the overall assessment of Austin's long-term future in air service development (5 and 10 years out) as it relates to commercial passenger service destinations; and
- J. Other consulting services as required such as providing advice on regulatory requirements and incentive programs, drafting correspondence to federal agencies and/or officials, and identifying new and unique opportunities for air service.

2.0 ACCEPTANCE OF WORK

Contractor shall present complete presentations, including but not limited to, photos, slides, narratives, etc., that portray Austin as viable place to provide additional commercial passenger service. City must accept such presentations in writing prior to presentation to commercial passenger airline providers.

3.0 PROGRESS REPORTS

The Contractor shall submit monthly progress reports to the City's Contract Manager. The

**Exhibit A
CITY OF AUSTIN
SCOPE OF WORK
AIR SERVICE MARKET EVALUATION AND DEVELOPMENT SERVICES FOR
AUSTIN-BERGSTROM INTERNATIONAL AIRPORT**

reports shall describe significant achievements and issues which have potential effect on schedule or costs. The monthly progress reports should be sufficiently detailed to assure that directions being pursued are in compliance with established and/or projected systems.

Exhibit B

Fee Schedule

Inclusive of all Expenses

Staff Member	Title	Hourly Rate
Kevin Schorr	Project Manager	\$260.00
Dean Hill	President	\$320.00
Kevin Healy	Sr. Vice President	\$320.00
James Lundy	Vice President	\$260.00
Todd Schroder	Research Director	\$200.00
Katie Neihaus	Research Manager	\$185.00
Brian Campbell	Chairman	\$320.00
Rex Edwards	Vice President	\$260.00
Eric Ford	Vice President	\$260.00
Brooks Hill	Senior Analyst	\$185.00
Marion Chenkin	Administrative	\$ 65.00

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

City of Austin
Minimum Standard Non-Discrimination In Employment Policy:

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

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

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

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

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

Sanctions:

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

Term:

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

Dated this 22nd day of JULY, 2013

CONTRACTOR CAMPBELL-HILL AVIATION GROUP LLC

Authorized Signature [Signature]

Title PRESIDENT

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

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

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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13. PAYMENT:

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

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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

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PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. RIGHT TO AUDIT:

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

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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

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

19. **WARRANTY-PRICE:**

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

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

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

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

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

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

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

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

31. INDEMNITY:

A. Definitions:

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

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

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

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55. **EQUAL OPPORTUNITY**

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

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

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

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

- A. Definitions. As used in this paragraph –

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

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



TO: Veronica Lara, Director
Department of Small and Minority Business Resources

FROM: Sai Xoomsai, Senior Buyer
Purchasing Office

DATE: November 27, 2012

SUBJECT: Approval to use Zero Goals for Solicitation No. IFB PAX0107
Project Name: Air Service Market Evaluation & Development Services

Commodity Code(s): 91800
Estimated Value: \$350,000.00

The Purchasing Office has determined that the following Goals are appropriate for this Commodity solicitation:

X No Goals (Goal of 0%)

This determination is based on the following reason:

This solicitation will be bid by and awarded to a prime contractor. No subcontracting opportunities have been identified.

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 972-4016.

X Approval is hereby granted to use the above Goals.

Approval is hereby denied. Recommend the use of the following goals based on the below reasons:

a. Goals: _____ % MBE _____ % WBE

b. Subgoals: _____ % African American _____ % Hispanic

_____ % Native/Asian American _____ % WBE

This determination is based on the following reasons:

This solicitation contains one scope of service therefore there are no subcontracting opportunities for this project


Veronica Lara, Director

Date: 11/27/12