



Amendment No. 5
(Correction to
Amendment No. 3)
to
Contract No. NA140000169
for
Cable Television Services
between
Time Warner Entertainment Company LP
and the
City of Austin

1.0 The above referenced contract is amended as follows:

REVISE AMENDMENT NO. 2 to show an Administrative increase of \$8,000 for the Not-to-Exceed amount for the first Extension option of \$58,000.

REVISE AMENDMENT NO. 3 to show an Administrative increase of \$9,000 for a total Action amount of \$59,000.

REVISE AMENDMENT NO. 4 to show an Administrative increase of \$9,000 for a total action amount of \$59,000

EXERCISE AN EARLY EXTENSION OPTION as **AMENDMENT 5** for a total action amount of \$50,000

Term for the extension option will be January 24, 2018 through January 23, 2019 with no options remaining.

2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/17/2014 - 09/16/2015	\$50,000.00	\$50,000.00
Amendment No. 1: Option 1 - Extension 09/17/2015 - 09/16/2016	\$50,000.00	\$100,000.00
Amendment No. 2: Administrative Increase 05/13/2016	\$8,000.00	\$108,000.00
Amendment No. 3: Option 2 - Extension 09/17/2016 - 09/16/2017 Administrative Increase \$9,000	\$50,000.00 \$9,000.00	\$167,000.00
Amendment No. 4: Option 3 - Extension 09/17/2017 - 09/16/2018 Administrative Increase \$9,000	\$50,000.00 \$9,000.00	\$226,000.00
Amendment No. 5: Option 4 -- Early Extension 01/24/2018-01/23/2019	\$50,000.00	\$276,000.00

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:  / 1.23.18

Printed Name: Brian Bessford
Authorized Representative

Time Warner Entertainment Company LP
750 Canyon Drive, Suite 500
Coppell, Texas 75019
mark.tran@charter.com

Sign/Date:  1/24/18

James T. Howard
Procurement Manager- IT Procurement
City of Austin
Purchasing Office



Amendment No. 4
to
Contract No. NA140000169
for
Cable Television Services
between
Time Warner Entertainment Company LP
and the
City of Austin


- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective September 17, 2017 the term for the extension option will be September 17, 2017 through September 16, 2018 with one option remaining.
- 2.0 The total contract amount is increased by \$50,000.00 for the current extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/17/2014 – 09/16/2015	\$50,000.00	\$50,000.00
Amendment No. 1: Option 1 – Extension 09/17/2015 – 09/16/2016	\$50,000.00	\$100,000.00
Amendment No. 2: Administrative Increase 05/13/2016	\$25,000.00	\$125,000.00
Amendment No. 3: Option 2 – Extension 09/17/2016 – 09/16/2017	\$50,000.00	\$175,000.00
Amendment No. 4: Option 3 – Extension 09/17/2017 – 09/16/2018	\$50,000.00	\$225,000.00

- 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:

 9.25.17

Printed Name: Brian Beresford, Manager
Authorized Representative

Time Warner Entertainment Company LP
750 Canyon Drive, Suite 500
Coppell, Texas 75019
mark.tran@charter.com

Sign/Date:

 9/26/17

Paula Barriffe
Procurement Specialist I - IT Procurement
City of Austin
Purchasing Office



Amendment No. 3
to
Contract No. NA140000169
for
Cable Television Services
between
Time Warner Cable Information Services, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective September 17, 2016 through September 16, 2017. Two options will remain.
- 2.0 The total contract amount is increased by \$50,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/17/2014 – 09/16/2015	\$50,000.00	\$50,000.00
Amendment No. 1: Option 1 – Extension 09/17/2015 – 09/16/2016	\$50,000.00	\$100,000.00
Amendment No. 2: Administrative Increase 05/13/2016	\$25,000.00	\$125,000.00
Amendment No. 3: Option 2 – Extension 09/17/2016 – 09/16/2017	\$50,000.00	\$175,000.00

- 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:

10.3.16

Printed Name: Brian Beresford
Authorized Representative

Time Warner Cable Information Services, LLC
750 Canyon Drive Suite 500
Coppell, Texas 75019
Mark.tran@twcable.com

Sign/Date:

10-7-16

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



Amendment No. 2
to
MA 5600 NA140000169
for
Cable Television Services
between
Time Warner Information Services, LLC (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise the Compensation Section to increase the Not-to-Exceed amount for the first extension option to \$75,000.00. This is an increase of \$25,000.00.

2.0 The total Contract authorization is recapped below:

Term	Action Amount (Cost)	Total Contract Amount
Original Contract: Initial Term 9/17/14 – 9/16/15	\$50,000.00	\$50,000.00
Amendment No. 1: Extension Option 9/17/15 – 9/16/16	\$50,000.00	\$100,000.00
Amendment No. 2: Administrative Increase	\$25,000.00	\$125,000.00

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

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

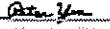
5.0 All other terms and conditions remain the same.

Peter Yen
E-signed 2016-05-12 04:55PM PDT
peter.yen@twcable.com
Time Warner Cable Business Class

Mark Tran
E-signed 2016-05-13 02:12PM EDT
mark.tran@twcable.com

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Signature: 

Printed Name: Peter Yen

Date: May 12, 2016

Time Warner Cable Information Services, LLC
750 Canyon Drive, Suite 500
Coppell, TX 75019

Signature: 
Mark Tran (May 13, 2016)

Email: mark.tran@twcable.com

Signature: 

City of Austin Purchasing Office
Printed Name: JAMES T. HOWARD

Date: 5/13/16

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701

Peter Yen
E-signed 2016-05-12 04:55PM PDT
peter.yen@twcable.com
Time Warner Cable Business Class

Mark Tran
E-signed 2016-05-13 02:12PM EDT
mark.tran@twcable.com



Amendment No. 1
to
MA 5600 NA140000169
for
Cable Television Services
between
Time Warner Information Services, LLC (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

The City hereby exercised the first extension option.

2.0 The total Contract authorization is recapped below:

Term	Action Amount (Cost)	Total Contract Amount
Original Contract: Initial Term 9/17/14 – 9/16/15	\$50,000.00	\$50,000.00
Amendment No. 1: Extension Option 9/17/15 – 9/16/16	\$50,000.00	\$100,000.00

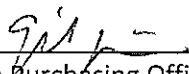
3.0 MBE/WBE goals were not established for this contract.

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

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Signature: 
City of Austin Purchasing Office
Printed Name: Gil Zink

Date: 5/12/16

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701



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

September 18, 2014

Time Warner Cable Business Class
Mark Tran, Major Account Executive II
12012 N. Mopac Expressway
Austin, TX, 78758

Mr. Tran:

The Austin City Council approved the execution of a contract with your company for Cable Television Services at City of Austin accordance with the referenced solicitation.

Responsible Department:	Communication Technology Management (CTM)
Department Contact Person:	Reba Bacon
Department Contact Email Address:	Reba.Bacon@austintexas.gov
Department Contact Telephone:	(512) 974-2395
Project Name:	Time Warner Cable Business Television Services
Contractor Name:	Time Warner Cable Information Services, LLC
Contract Number:	MA-5600-NA140000169
Contract Period:	September 17, 2014 through September 16, 2015
Dollar Amount:	Not-to-exceed \$50,000.00 per initial contract term and \$ 50,000.00 for the first extension option, \$50,000.00 for the second extension option, \$50,000.00 for the third extension option and \$50,000.00 for the final extension option. For a total contract not to exceed amount of \$250,000.00
Extension Options:	Four 12-month options
Requisition Number:	18831
Solicitation Number:	JXH0500
Agenda Item Number:	8
Council Approval Date:	August 7, 2014

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-1771.

Sincerely,

Jonathan Harris
Senior Buyer Specialist
Purchasing Office
Financial Services Department

cc: Reba Bacon, Senior Contract Compliance Specialist

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
TIME WARNER CABLE INFORMATION SERVICES, LLC ("Contractor")
FOR
CABLE TELEVISION SERVICES**

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 Time Warner Information Services, LLC having offices at 750 Canyon Drive, Suite 500, Coppell, TX 75019 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number JXH0500.

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, JXH0500 including all documents incorporated by reference
- 1.1.3 Time Warner Cable Business Class Offer, dated April 8, 2014, including subsequent clarifications

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

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

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

1.4 Compensation. The Contractor shall be paid a total not-to-exceed amount of \$50,000 for the initial Contract term and \$50,000 for each extension option, for a total contract amount not to exceed \$250,000. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

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

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

1.6.1 Exception Chart, attached hereto as Exhibit A

1.6.2 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Mark Tran, Phone: 512-531-7808, Email: Mark.tran@twcable.com. The City's Contract Managers for the engagement shall be Art Acuna for Austin Energy, Phone (512-322-6493), Email Art.Acuna@austinenergy.com and for the rest the City Reba Bacon, Phone: 512-974-2395, Email: Reba.Bacon@austintexas.gov.

1.6.3 Invoices. Invoices shall be mailed to the below address:

For Austin Energy:

	City of Austin
Department	Austin Energy
Attn:	Art Acuna
Address:	721 Barton Springs Road, Mail Room
City, State, Zip Code	Austin, Texas 78704

For the rest of the City:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767


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.

**TIME WARNER CABLE INFORMATION
SERVICES, LLC**

CITY OF AUSTIN

Brian Beresford
Printed Name of Authorized Person


Signature

manager, Gov / ed
Title:

9/16/14
Date:

Jonathan Nunn
Printed Name of Authorized Person


Signature

Senior Buyer Specialist
Title:

9.17.14
Date:

Exhibit A Exception Chart

Item #	Section	Page	Item	Title	City of Austin's Requirement	Time Warner Cable's Exception	Feedback from the City of Austin
RFP							
1		2 3		1st Paragraph (bound by RFP terms) Last paragraph (bound by RFP terms)		TWC agrees to the terms and conditions of the RFP, subject to TWC's Response and the exceptions set forth in this Exception Chart.	Acceptable to the City of Austin
2	0400 Supplemental Purchase Provisions	1	2.B.ii (2)(b)	Commercial General Liability Insurance	2.B.ii (1) (b) - Commercial General Liability Insurance : The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal And Advertising Injury). (1) The policy shall contain the following provisions: (b) Contractor/Subcontracted Work	Delete the word "Subcontracted Work". TWC's general liability policy does not cover work performed by its subcontractors; TWC's subcontractors carry their own general liability insurance.	Acceptable to the City of Austin
3	0400 Supplemental Purchase Provisions	1	3.A.	Term of Contract	The Contract shall be in effect for an initial term of twelve months and may be extended thereafter for up to four additional twelve month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.	TWC requires a minimum initial Contract term of 3 years. TWC agrees to the City's original contract term. The Contract shall be in effect for an initial term of twelve months and may be extended thereafter for up to four additional twelve month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.	Acceptable to the City of Austin
4	0400 Supplemental Purchase Provisions	2	3.D.	Term of Contract	Prices are firm and fixed for the first twelve months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.	TWC shall have the right to increase Service charges for each Service after the initial term of the Contract upon thirty (30) days written notice to City, in amounts determined by TWC in its sole discretion.	Acceptable to the City of Austin
5	0400 Supplemental Purchase Provisions	2	4	Quantities	The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.	The type and quantity of services set forth under any Purchase Order or the Contract are fixed and cannot be modified, increased, decreased or amended except as expressly agreed in writing by City and TWC. Notwithstanding the foregoing, City may add locations, Services, or increase speed and bandwidth of Services during the Term of the Contract by notifying TWC of the desired additional locations, Services, or increased speed and bandwidth and, provided that TWC is able and willing to provide the requested change in Services, by paying the corresponding increase in monthly Services Charges for such additional locations, Services, and increased speed and bandwidth, and construction and installation costs (if any).	Acceptable to the City of Austin

6	0400 Supplemental Purchase Provisions	6	7	Non-Solicitation	<p>7. Non-Solicitation:</p> <p>A. During the term of the contract, and for a period of six (6) months following termination of the Contract, the contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.</p> <p>B. In the event that breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.</p> <p>C. During the term of the Contract, and for a period of six (6) months following termination of the Contract, a department that engages the services of the Contractor or uses the services of a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.</p> <p>D. In the event that a breach of Paragraph C occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual</p>	<p>Due to the nature of TWC's Services, TWC does not agree to the non-solicitation requirements outlined in this Section.</p> <p>With regard to any provisions requiring payment of penalties or liquidated damages, TWC will not agree to pay such penalties or liquidated damages.</p>	Acceptable to the City of Austin
7	0400 Supplemental Purchase Provisions	1	10	Interlocal Purchasing Agreements	<p>10. Interlocal Purchasing Agreements:</p> <p>A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.</p> <p>B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.</p>	<p>City's monthly recurring Service charges will be fixed through the term of the Contract, and are established on a case-by-case basis for each customer, taking into consideration various factors, including TWC's construction costs and capital expenses. Accordingly, TWC cannot agree to provide or offer the same Contract prices and terms and conditions to other governmental entities around the City that have an interlocal agreement with the City.</p>	Acceptable to the City of Austin
8	Scope of Work Template	8 1 6				<p>TWC will use commercially reasonable efforts to complete new installation requests within the timeframes mutually agreed to by TWC and City and set forth in writing on a Service Order.</p>	Acceptable to the City of Austin
9	0600 Proposal Preparation Instructions and Evaluation Factors	2	J. Part XII	Cost Proposal	<p>J. Part XII. Cost Proposal:</p> <p>Information described in the following subsections is required from each Proposer. Your method of costing may or may not be used but should be described.</p> <p>i. Recurring costs for service to the City. This can be proposed as a monthly charge per tap, or based on a grouping such as a cost for up to 200 taps, then up to 250 taps, etc.</p> <p>ii. Any potential non-recurring charges including any charges for laying and installation of cable</p> <p>iii. Any other itemized direct costs.</p>	<p>Except to the extent expressly exempt as a matter of law, TWC may charge City, and shall have the right to recover from City, any federal, state, and local taxes, fees, charges, surcharges or similar exaction imposed on the Services and/or products that are the subject of the Contract currently or in the future, including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable, or which are imposed on TWC or TWC's services, or measured on TWC's receipts. As further described in the Terms and Conditions, in the event of any change in applicable law, regulation, decision, rule or order including, without limitation, any increase in fees, taxes, surcharges, or other government-imposed charges that increase the costs or other terms of delivery of Service to City, TWC may pass through to City any such increased costs.</p>	<p>add "... or other government-imposed charges that increase the costs or other terms of delivery of Service to City, TWC may pass through to City any such increased costs to the extent that the City is not exempt from paying such charges, fees, or costs."</p>
City of Austin Standard Purchase Definitions							
1	0100 Standard Purchase Definitions	1	1st Paragraph	UCC	<p>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.</p>	<p>Defined terms in the Contract shall have the definitions set forth in the Contract, and no external definitions, including definitions set forth in the Uniform Commercial Code, are incorporated.</p>	Acceptable to the City of Austin

2	0100 Standard Purchase Definitions	1	15	Contract	<p>15. Contract: A binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:</p> <p>A. any exceptions to the Offer accepted in writing by the City B. the Supplemental Purchase Terms and Conditions C. the Standard Purchase Terms and Conditions D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled</p>	TWC proposes that the Terms and Conditions govern the relationship of the parties with respect to, including TWC's provision of, the Services. If the Terms and Conditions are not used, then the Contract must include all exceptions noted in this Exception Chart. To the extent that any provisions in the Contract (including the terms of City's purchase order) conflict with the provisions set forth in the Exception Chart, are more broad than the provisions set forth in this Exception Chart, or would impose additional obligations or liabilities beyond the provisions set forth in this Exception Chart, then the provisions of this Exception Chart shall control, govern and replace such conflicting provisions.	Acceptable to the City of Austin
City of Austin Standard Solicitation Instructions							
1	0200 Solicitation Instructions	5	M.	Taxes	<p>M. Taxes: Purchases of Goods or Services for City use are usually exempt from City, State, and most Federal Taxes. Offers should not include exempted taxes. The successful Offeror should request a Tax Exemption Certificate from the Purchasing Office. Under no circumstances shall the City be liable to pay exempt taxes under any Contract.</p>	Except to the extent expressly exempt as a matter of law, TWC may charge City, and shall have the right to recover from City, any federal, state, and local taxes, fees, charges, surcharges or similar exaction imposed on the Services and/or products that are the subject of the Contract currently or in the future, including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable, or which are imposed on TWC or TWC's services, or measured on TWC's receipts. As further described in the Terms and Conditions, in the event of any change in applicable law, regulation, decision, rule or order including, without limitation, any increase in fees, taxes, surcharges, or other government-imposed charges that increase the costs or other terms of delivery of Service to City, TWC may pass through to City any such increased costs.	add "... or other government-imposed charges that increase the costs or other terms of delivery of Service to City. TWC may pass through to City any such increased costs to the extent that the City is not exempt from paying such charges, fees, or costs."
2	0200 Solicitation Instructions	8	16	Contract Incorporation	Offeror should be aware that the contents of the successful Offer will become a part of the subsequent contractual documents. Failure of the successful Offeror to accept this obligation may result in the cancellation of any award. Any damages accruing to the City as a result of the successful Offeror's failure to contract may be recovered from the successful Offeror.	Notwithstanding any failure by TWC to enter into a contract with City, in no case shall City have the right to recover from TWC any costs or damages incurred by City as a result of such failure to contract.	Acceptable to the City of Austin
City of Austin Standard Purchase Terms and Conditions							
1	0300 Standard Purchase Terms and Conditions	1	1st Paragraph of Document		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 2, 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.	TWC proposes that the Terms and Conditions govern the relationship of the parties with respect to, including TWC's provision of, the Services. If the Terms and Conditions are not used, then the Contract must include all exceptions noted in this Exception Chart. To the extent that any provisions in the Contract (including the terms of City's purchase order) conflict with the provisions set forth in the Exception Chart, are more broad than the provisions set forth in this Exception Chart, or would impose additional obligations or liabilities beyond the provisions set forth in this Exception Chart, then the provisions of this Exception Chart shall control, govern and replace such conflicting provisions.	Acceptable to the City of Austin
2	0300 Standard Purchase Terms and Conditions	1 5 10	Sections 3-8 Sections 20-21 Section 36		<p>Sections: 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 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 shipment not accompanied by packing lists. 4. Shipment under Reservation Prohibited: The Contractor is not authorized to ship the Deliverables under reservation and not 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 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</p>	Pursuant to the first paragraph of the City's Standard Purchase Terms and Conditions, these sections are deleted in their entirety as they apply to a Solicitation to purchase of goods, and TWC is submitting a Solicitation to provide services to City.	Acceptable to the City of Austin

				<p>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.</p> <p>8. No Replacement of Defective Tender: Every tender or delivery of Deliverables must fully comply with all provision 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.</p> <p>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</p> <p>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 specification, 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.</p> <p>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 exercise anywhere in the world of the rights associated with the</p>		
3	0300 Standard Purchase Terms and Conditions	1	Section 9 Place and Condition of Work	<p>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 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.</p>	<p>The last sentence of this section is deleted in its entirety. TWC understands and acknowledges that City's actual site or service conditions may differ from expected conditions.</p>	<p>Either leave this provision in, or rewrite it to say: "TWC understands and acknowledges that City's actual site or service conditions may differ from expected conditions."</p>

4	0300	2	Section 11	Compliance with Health, Safety, and Environmental Regulations (Indemnify language here in) Stop Work Notice (Indemnify language here in) Indemnity	<p>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.</p> <p>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.</p>	<p>Section 31 and the last sentences of Section 11 and Section 25 are deleted in their entirety.</p> <p>TWC will agree to provide the following indemnification: TWC agrees to defend, indemnify and hold harmless City including, without limitation, any of its boards, officers, agents and employees, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to bodily injury or tangible property damage caused by the gross negligence or willful misconduct of TWC or its employees or agents.</p> <p>To the extent permitted by state law, City agrees to defend, indemnify and hold harmless TWC, its officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to (a) the use of Services or (b) bodily injury or tangible property damage caused by the gross negligence or willful misconduct of City or its employees or agents.</p> <p>The Contract shall include the following provisions relating to TWC's liability: IN NO EVENT SHALL TWC BE LIABLE TO CITY, OR TO AN END USER OR ANY THIRD PARTY, FOR ANY INCIDENTAL, INDIRECT, PER DIEM, LIQUIDATED, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE CONTRACT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TWC'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE CONTRACT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CITY IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES.</p>	<p>Delete from proposed Indemnification: "To the extent permitted by state law, City agrees to defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to (a) the use of Services; or (b) bodily injury or tangible property damage caused by the gross negligence or willful misconduct of City or its employees or agents."</p>
		6	Section 25				
		8	Section 31		<p>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, workers 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,</p>		

5	0300 Standard Purchase Terms and Conditions	2	Section 12	Invoices Payment	<p>12. Invoices:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.</p> <p>12.A Payment:</p> <p>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.</p>	<p>Service Charges will be billed to City on a monthly basis, and are payable within thirty (30) days after the date appearing on the invoice.</p> <p>With respect to Section 12.E (tax exemptions): Except to the extent expressly exempt as a matter of law, TWC may charge City, and shall have the right to recover from City, any federal, state, and local taxes, fees, charges, surcharges or similar exaction imposed on the Services and/or products that are the subject of the Contract currently or in the future, including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable, or which are imposed on TWC or TWC's services, or measured on TWC's receipts. As further described in the Terms and Conditions, in the event of any change in applicable law, regulation, decision, rule or order including, without limitation, any increase in fees, taxes, surcharges, or other government-imposed charges that increase the costs or other terms of delivery of Service to City, TWC may pass through to City any such increased costs.</p>	<p>add "... or other government-imposed charges that increase the costs or other terms of delivery of Service to City, TWC may pass through to City any such increased costs to the extent that the City is not exempt from paying such charges, fees, or costs."</p>
6	0300 Standard Purchase Terms and Conditions	3	Section 13	Payment	<p>13. Payment:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> 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 	<p>Notwithstanding Section 13.D and any default, non-performance, late delivery, or failure to cure a defect or material breach by TWC, in no case shall City have the right to reimbursement from TWC, or the right to withhold from, deduct from, credit, or offset against, its current balance owed to TWC, for any costs or damages incurred by City, including, without limitation, any costs or damages incurred by City in connection with procuring the Services and/or products or any portion thereof from alternate providers.</p> <p>TWC shall have no obligation to begin installation of any TWC equipment or otherwise incur costs to provide such Services under a Service Order unless and until City confirms it has appropriated the amounts necessary to pay for the Services pursuant to the Contract.</p> <p>City may terminate Services at a particular location, without penalty or liability, if funds sufficient to pay for such Services are not appropriated. At least thirty (30) days prior to the end of the then-current fiscal year, or, if non-appropriation has not occurred by such date, immediately upon non-appropriation City shall certify in writing to TWC that (i) funds have not been appropriated for the fiscal period and (ii) such non-appropriation did not result from any act or failure by City. If City obtains funds that are legally available and sufficient to pay the applicable service charges for the Services at the location in question, it will enter into a new order with TWC for the same or comparable services, upon the same terms and conditions as before, which obligation shall</p>	<p>Acceptable to the City of Austin</p>
7	0300 Standard Purchase Terms and Conditions	4	Section 15	Final Payment and Close-Out	<p>15. Final Payment and Close-Out:</p> <p>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.</p> <p>B. The making and acceptance of final payment will constitute:</p> <ul style="list-style-type: none"> 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 	<p>TWC does not waive any claims against the City that TWC may have at any time and reserves the right to assert any claims it may have against the City under the Contract, at law or in equity.</p>	<p>Acceptable to the City of Austin</p>

8	0300 Standard Purchase Terms and Conditions	4	Section 16	Special Tools & Test Equipment	<p>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.</p>	This section is deleted in its entirety as it is not applicable. TWC is not creating any special tooling or test equipment for City.	Acceptable to the City of Austin
9	0300 Standard Purchase Terms and Conditions	4	Section 17	Right to Audit	<p>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.</p>	Section 17.B is deleted in its entirety. Unless otherwise prohibited by state law, City may review TWC's documents, information and records concerning TWC's provision of Services for the previous 12-month period from the date of review, not more than one time during any 1 year period. City's document review rights shall be limited to documents, information and records pertaining to Services provided to City and not with respect to other customers, any document review undertaken by City shall be limited to TWC's operations only (excluding any right to interview TWC employees or review sub-contractor documents, information or records), and TWC's confidential financial information, books, records and accounts shall not be made available for review. TWC may require City's reviewers to sign a reasonable non-disclosure agreement. Such review shall be at City's expense. TWC's records shall be available for review by City for up to 2 years after termination of the Contract or for so long as mandated under applicable state law.	Acceptable to the City of Austin
10	0300 Standard Purchase Terms and Conditions	4	Section 13	Subcontractors	<p>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. 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;</p>	TWC shall have the right to subcontract any of its obligations under the Contract without prior written consent of City, pursuant to a subcontract containing terms and conditions as mutually agreed by TWC and subcontractor in their sole discretion, provided TWC shall remain responsible for its obligations under the Contract. TWC shall pay each subcontractor pursuant to the payment terms and conditions set forth in the subcontract.	Acceptable to the City of Austin

11	0300 Standard Purchase Terms and Conditions	5 6	Section 19 Section 22	Warranty Price Warranty - Services	<p>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.</p> <p>22. Warranty - Services: The Contractor warrants and represents that all services to be provided by 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</p>	<p>TWC does not provide the warranty in Section 19 A. City's monthly recurring Service charges will be fixed through the term of the Contract, and are established on a case-by-case basis for each customer, taking into consideration various factors, including TWC's construction costs and capital expenses. Accordingly, TWC cannot warrant that City's Services pricing is no higher than TWC's current Services pricing for other customers. TWC is not a manufacturer of the equipment used to deliver the Services, so TWC cannot warrant that such equipment is free from defects. If the Services are not functioning properly, then TWC is obligated to fix such problem (which may include replacement of equipment.) Notwithstanding the foregoing, TWC requires use of its standard disclaimer of warranty. Accordingly, with respect to all references in the Contract to TWC's warranty obligations. Disclaimer of Warranty CITY ASSUMES RESPONSIBILITY FOR USE OF THE SERVICES AND USES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICES AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. THE SERVICES AND ANY AND ALL EQUIPMENT PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.</p> <p>Section 19.C is deleted in its entirety. Notwithstanding any default, non-performance, late delivery, or failure to cure a defect or material breach by TWC, in no case shall City have the right to reimbursement from TWC, or the right to withhold from, deduct from, credit, or offset against, its current balance owed to TWC, for any costs or damages incurred by City in connection with procuring the Services and/or products or any portion thereof from alternate providers.</p>	Acceptable to the City of Austin
12	0300 Standard Purchase Terms and Conditions	6	Section 23	Acceptance of Incomplete or Non-Conforming Deliverables	<p>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.</p>	<p>The last two sentences of this Section are deleted in their entirety. If City agrees to accept any defective or non-conforming Deliverables instead of requiring TWC to correct or remove and replace such Deliverables, City may do so at its own risk and expense, without any right to reimbursement from TWC, or the right to withhold from, deduct from, credit, or offset against, its current balance owed to TWC, for any claims, costs, losses or damages incurred by City in connection with such acceptance.</p>	Acceptable to the City of Austin

13	0300 Standard Purchase Terms and Conditions	7	Section 26 Section 27 Section 28	Default Termination for Cause Termination Without Cause	<p>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.</p> <p>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"</p> <p>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</p>	<p>City may terminate the Contract, subject to the following:</p> <p>Termination: For Convenience City may terminate the Services for convenience at any time, provided that City shall promptly pay TWC the full amount of remaining charges that City would have been charged under the Contract if such Services had not been terminated early.</p> <p>For Cause Either party may terminate the Contract, without penalty, (a) upon thirty (30) days written notice of the other party's material breach, provided that such material breach is not cured within such thirty (30) day period, or (b) immediately, in the event that the other party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provisions of law for general relief from its debtors, or initiates any proceeding seeking general protection from its creditors.</p> <p>Notwithstanding any default, non-performance, late delivery, or failure to cure a defect or material breach by TWC, in no case shall City have the right to reimbursement from TWC, or the right to withhold from, deduct from, credit, or offset against, its current balance owed to TWC, for any costs or damages incurred by City, including, without limitation, any costs or damages incurred by City in connection with procuring the Services and/or products or any portion thereof from alternate providers.</p>	Acceptable to the City of Austin
14	0300 Standard Purchase Terms and Conditions	7	Section 30	Delays	<p>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.</p> <p>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 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.</p>	<p>If City delays scheduled delivery or other due dates, then the term of the Contract shall be extended for the period of delay.</p>	Acceptable to the City of Austin

15	0300 Standard Purchase Terms and Conditions	8	Section 32	Insurance	<p>32. Insurance: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/02/99).</p> <p>A. General Requirements.</p> <p>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.</p> <p>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 Contractor 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.</p> <p>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.</p> <p>iv. The City may request that the Contractor submit certificates</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	Section A.viii is deleted in its entirety. With respect to Section A.xi, TWC does not disclose self-insured retentions on its Certificates of Insurance.	Acceptable to the City of Austin
16	0300 Standard Purchase Terms and Conditions	9	Section 33	Claims	<p>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 effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1068, Austin, Texas 78767.</p>	This section is deleted in its entirety. TWC does not agree to provide notice to City of any claims, demands, suits, actions or other confidential claims/litigation information of any nature asserted against TWC.	Acceptable to the City of Austin

17	0300 Standard Purchase Terms and Conditions	10	Section 35	Rights to Bid, Proposal and Contractual Material	<p>35. Right 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.</p>	<p>All Response material submitted to TWC to City in connection with the RFP shall become proprietary of City upon receipt, provided TWC does not transfer or assign any intellectual property or other proprietary rights in such material to City. TWC Materials (defined below) shall at all times remain the personal property of TWC. Accordingly, the Contract shall include the following provisions relating to TWC's proprietary rights and confidential information: Ownership of TWC Materials All materials including, without limitation, any equipment including any cabling, cable modems, related splitters, routers or other items (including related firmware), software, data and information provided by TWC, any identifiers or passwords used to access the Services or otherwise provided by TWC, and any know-how, methodologies or processes including, without limitation, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Services (collectively, "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Nothing in the Contract will convey any right or ownership interest to City or any other person or entity in or to such TWC Materials. City shall acquire no interest in the TWC Materials by virtue of the payments provided for under the Contract. City may use the TWC Materials solely for City's use of the Services during the term of the Contract. City shall not disassemble, decompile, reverse engineer, reproduce, modify or distribute the TWC Materials, in whole or in part, or use them for</p> <p>City shall not open, alter, misuse, tamper with or remove the TWC Materials as and where installed by TWC, and shall not remove any marking or labels from the TWC Materials indicating TWC's (or its suppliers') ownership or serial numbers. No representation or warranty of non-infringement of third party intellectual property is provided. Confidentiality: To the extent allowed by law, City shall maintain in confidence, and not disclose to third parties or use, except for such use as is expressly permitted in the Contract, the confidential and proprietary information of TWC including, without limitation, TWC Materials and any information and materials that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including without limitation, the specific content of the Contract.</p>	Acceptable to the City of Austin
18	0900 Standard Purchase Terms and Conditions	10	Section 57	Confidentiality	<p>57. 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</p>	<p>"Confidential Information" under this section shall only mean City information which is disclosed to TWC in writing and conspicuously marked "CONFIDENTIAL" at the time of disclosure, and shall not include information which: (i) is or becomes a part of the public domain other than as a result of disclosure by TWC; (ii) was available to TWC on a non-confidential basis prior to its disclosure by City; (iii) is lawfully disclosed to TWC by a third party who has the right to make such a disclosure; or (iv) is independently developed by TWC without reference to or reliance on the Confidential Information. TWC will protect City's Confidential Information using at least reasonable care.</p>	Acceptable to the City of Austin
19	0900 Standard Purchase Terms and Conditions	10	Section 39	Advertising	<p>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.</p>	<p>This section shall apply mutually to both TWC and City</p>	Acceptable to the City of Austin

20	0300 Standard Purchase Terms and Conditions	11	Section 43	Prohibition Against Personal Interest in Contracts	42. 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.	City acknowledges and agrees that (i) TWC is a publicly traded entity, (ii) there may be officers, employees, independent consultants, and elected officials of the City who hold, directly, or indirectly, shares or an interest or other form of equity in TWC, (iii) any contract which TWC enters into may affect the value of such shares, interest or equity.	Acceptable to the City of Austin
21	0300 Standard Purchase Terms and Conditions	11	Section 45	Assignment - Delegation	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 of 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.	With respect to all references in the Contract to TWC's assignment rights: Assignment: TWC may assign its rights and obligations under the contract, including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to City. Regardless of any such assignment, the rights and obligations of TWC under the Contract may accrue to, or be fulfilled by or delegated to, any TWC affiliate, as well as by TWC and/or its subcontractors.	Acceptable to the City of Austin
22	0300 Standard Purchase Terms and Conditions	11	Section 47	Interpretation	47. 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.	Defined terms in the Contract shall have the definitions set forth in the Contract, and no external definitions, including definitions set forth in the Uniform Commercial Code, are incorporated.	Acceptable to the City of Austin
23	0300 Standard Purchase Terms and Conditions	11	Section 48	Dispute Resolution	48. 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	TWC and City may use, but are under no obligation to use, mediation to resolve disputes between TWC and City, and any use of mediation between the parties is subject to both TWC and City agreeing, as determined by each party in its sole discretion, to enter into mediation.	Acceptable to the City of Austin

25	0300 Standard Purchase Terms and Conditions	12	Section 50	Invalidity	<p>50. 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.</p>	The parties will use good faith efforts to try to revise any provision of the Contract determined by a court of competent jurisdiction to be invalid or unenforceable so that such revised provision comes as close as possible to the intent of the invalid or unenforceable provision.	Acceptable to the City of Austin
26	0300 Standard Purchase Terms and Conditions	13	Section 52	Survivability of Obligations	<p>52. 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.</p>	Any terms and conditions that survive the termination of the Contract shall be as mutually agreed by the parties and set forth in the Contract.	Acceptable to the City of Austin
27	0300 Standard Purchase Terms and Conditions	13	Section 55	Buy American Act Supplies	<p>55. Buy American Act Supplies: 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</p>	This section is deleted in its entirety as it is not applicable to the Services to be provided by TWC under the Contract.	Acceptable to the City of Austin