



Amendment No. 1
to
Contract No. PA160000017
for
Total Productive Maintenance Training & Facilitation for Austin Water Treatment Program Area
between
Opex Soultions, Inc.
and the
City of Austin

- 1.0 The City hereby exercises an administrative increase to the above referenced contract in the amount of \$29,347.
- 2.0 The total contract amount is increased by \$29,347 for initial term. The total contract authorization is recapped below:

Term	Contract Amount for the Term	Total Contract Amount
Basic Term: 12/29/2015 – 12/28/2018	\$85,960.00	\$85,960.00
Amendment No. 1: Administrative Increase	\$29,347.00	\$115,307.00

- 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.

Signature: 

Authorized Representative
OpEx Soultions, Inc.
PO Box 5663
Round Rock, TX 78683

Date

6/9/2017

Signature: 

Printed Name: Georgia L. Billela
Procurement Specialist III
City of Austin
Purchasing Office

Date

6/9/2017



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

December 29, 2015

Opex Solutions Inc.
Martin Nazareth
President
P.O. Box 5663
Round Rock, Tx. 78683

mnazareth@opexsolutions.org

Dear Mr. Nazareth:

The City of Austin approved the execution of a contract with your company for Total Productive Maintenance Training & Facilitation for Austin Water Treatment Program Area in accordance with the referenced solicitation.

Responsible Department:	FSD
Department Contact Person:	Darrell Richmond
Department Contact Email Address:	Darrell.richmond@austintexas.gov
Department Contact Telephone:	512-972-0313
Project Name:	Total Productive Maintenance Training & Facilitation for Austin Water Treatment Program
Contractor Name:	Opex Solutions Inc.
Contract Number:	PA160000017
Contract Period:	December 29, 2015 – December 28, 2018
Dollar Amount	\$86,000.00
Extension Options:	N/A
Requisition Number:	RQM 2200 15032600254
Solicitation Type & Number:	
Agenda Item Number:	
Council Approval Date:	

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.

Sincerely,


Irene Sanchez-Rocha
Senior Buyer
City of Austin

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
OPEX SOLUTIONS, INC.
FOR
TOTAL PRODUCTIVE MAINTENANCE TRAINING & FACILITATION FOR AUSTIN WATER UTILITY
TREATMENT PROGRAM AREA**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and OpEx Solutions, Inc. ("Contractor"), at PO Box 5663, Round Rock, Texas 78683.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Martin Nazareth, Phone: (512) 551-8406, Email Address: mnazareth@opexsolutions.org. The City's Contract Manager for the engagement shall be Bruce Coe, Phone: (512) 972-0289, Email Address: bruce.coe@austintexas.org. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall provide total productive maintenance training and facilitation for the AWU Treatment Program Area in accordance with the City of Austin Purchase Specifications for Total Productive Maintenance ("TPM") Training & Facilitation for Austin Water Utility Treatment Program Area attached as Exhibit A and the Contractor's Proposal attached as Exhibit B.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$85,960 for all fees and expenses.

3.2 **Invoices.**

3.2.1 Invoices shall be submitted within 10 calendar days after delivery training and contain the Contractor's name on a professionally pre-printed form, the Contractor's address and phone number,

the date of training, 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. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin	
Department	Austin Water Utility	
Attn:	Accounts Payable	
Address	625 East 10 th Street	
City, State, Zip Code	Austin, Texas 78701	

3.2.2 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.

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

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

3.3 Payment.

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

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

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

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

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

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

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

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

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

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

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

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

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

3.5 Final Payment and Close-Out.

3.5.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall become effective on the date executed by the City ("Effective Date") and be in effect for a term of 36 months.

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

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default

by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirements apply.

5.1.1 General Requirements.

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

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

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

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

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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

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

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

5.1.2.1.7

Worker's Compensation and Employers' Liability Insurance. Waived (see waiver on file in the Purchasing Office)

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

5.2 Equal Opportunity.

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

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

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

5.4 Delays.

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

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will

be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

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

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

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

5.5.3 Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.6 Rights to 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.

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

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

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

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

6.2.1 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.

6.2.2 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 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 of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 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.

SECTION 7. MISCELLANEOUS

7.1 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.

7.2 Workforce.

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

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

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

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

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

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

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters

that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

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

7.7 **Indemnity.**

7.7.1 Definitions:

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

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Tracy Franklin, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

ATTN: Martin Nazareth

PO Box 5663

Round Rock, TX 78683

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

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

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

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an Independent contractor.

The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

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

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

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

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

7.20 Dispute Resolution.

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

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

7.21 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors.

7.22.1 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.

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

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

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

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

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

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

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

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

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

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

7.25 **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
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

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

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

7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

7.29 Order of Precedence. The Contract includes, without limitation, all Exhibits attached hereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

7.29.1 the main body of the Contract;

7.29.2 Exhibit A;

7.29.3 Exhibit B;

7.29.4 Exhibit C.

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

OPEX SOLUTIONS, INC.

By: 
Signature

Name: MARTIN D. NAZARETH
Printed Name

Title: PRESIDENT

Date: 11/30/15

CITY OF AUSTIN

By: 
Signature

Name: Irene Sanchez-Rocha
Printed Name

Title: Senior Buyer

Date: 12/29/15



Proposal

FOR

Austin Water Utility Total Productive Maintenance

Proposal Date: June 19, 2015

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I. BACKGROUND

OpEx Solutions, Inc. (OSI) has previously worked with Austin Water Utility (AWU) leadership to model their Total Productive Maintenance (TPM) aligned with the equipment reliability and asset management strategy. In addition, OSI helped AWU to pilot the TPM program at one of the plants. The pilot team at the lift station pumps projected that the TPM program would pay for itself by reducing bearing and other equipment failures. In accordance with the TPM strategy, the next step would include implementation and deployment of TPM throughout the organization to improve early intervention of equipment failures and improved performance of equipment.

II. REQUIREMENTS PER RFQ

We understand that it is Austin Water Utility's intent to train up to 30 top-level management personnel and up to 107 two-day participants.

Per the RFQ dated June 1, 2015, OSI has listed the requirements as follows under two specific categories. :

1. Top management staff (leaders) — three-day sessions
 - A. Up to 10 top management staff per session
 - B. Up to 30 top management staff trained
 - C. This also includes up to 30, 2-day participants
 - D. Variable cost based on number of attendees
2. Two-day participants (practitioners) — two-day sessions with up to 107 participants trained
 - A. 107 participants (up to 30 may be covered in the 3-day top management sessions)
 - B. Variable cost based on number of attendees

III. OSI APPROACH TO MEET AWU REQUIREMENTS

Per the RFQ dated June 1, 2015, OSI proposes to conduct the following:

1. Four, 3-day dedicated training sessions at four of Austin Water Utility's facilities with up to 10 top management staff and 10, 2-day participants per session (*see Appendix A for course details*)
2. Six (6), 2-day sessions of dedicated training at Austin Water Utility's facilities (*see Appendix A for course details*)
3. In order to minimize the cost to AWU, we propose the dedicated approach, which includes a fixed cost based on the number of days of training and a variable cost based on the number of attendees (*see "OpEx Solutions' Rates" below*)
4. Each attendee is issued a 3-day or 2-day TPM training manual

5. OSI combines each in-class training with a hands-on exercise on AWU's equipment (*Figures 1 & 2*) which helps AWU progress on the TPM journey

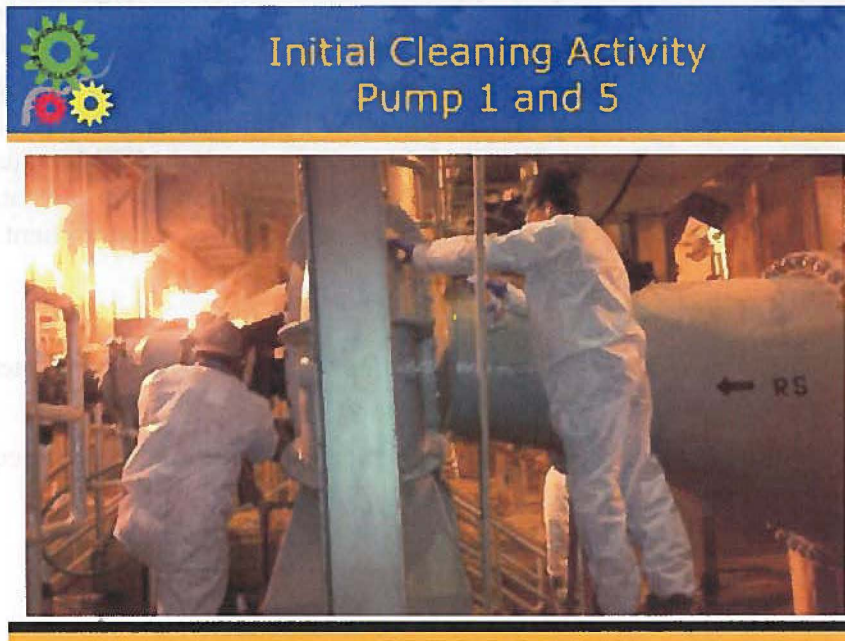


Figure 1. Hands-on exercise



Figure 2. Before and after TPM session

6. In contrast to many organizations that perform event-based TPM activity, OSI uses a 7-step approach (*Figure 3*) which enables continuous engagement and ownership of

operators with a true partnership with maintenance staff. Details of our training can be found in Appendix A.

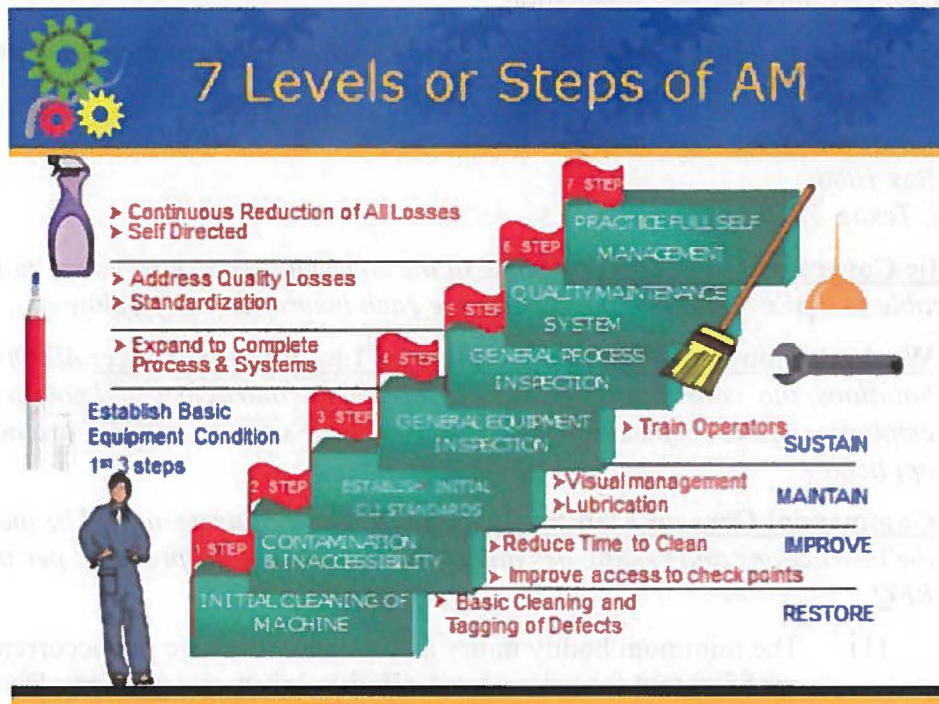


Figure 3. 7 levels of Autonomous Maintenance

- The approach OSI uses integrates the different components of TPM — Autonomous Maintenance (AM), reliability and asset management (Figure 4)

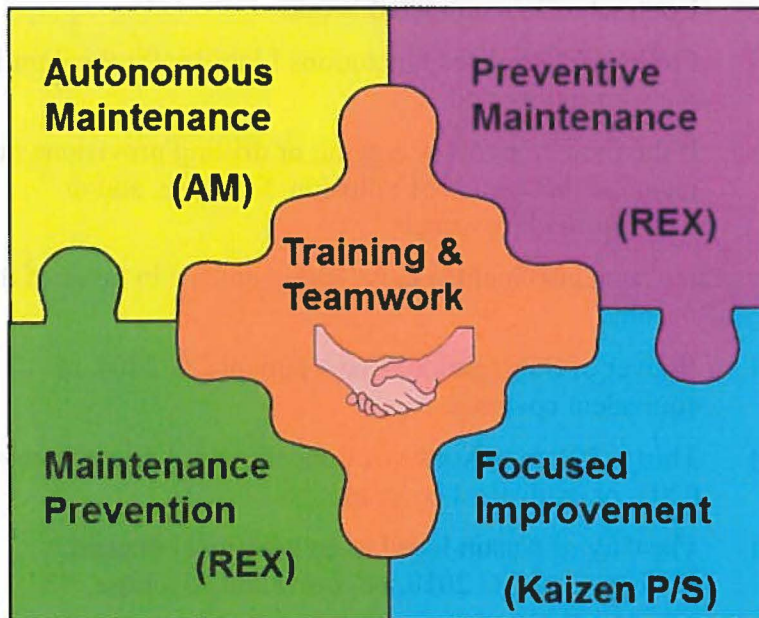


Figure 4. Alignment between different aspects of TPM

IV. INSURANCE

1. **INSURANCE** is required for this solicitation.

- A. **General Requirements:** *Certificates of applicable insurance will be mailed prior to contract execution to:*

*City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767*

- B. **Specific Coverage Requirements:** *Some of the coverage requirements are not applicable to OpEx Solutions, Inc. Please see each insurance entry below.*

- i. **Worker's Compensation and Employers' Liability Insurance:** *All OpEx Solutions, Inc. consultants are 1099 independent contractors and not direct employees of the corporation therefore Workmen's Comp and ELI are not applicable.*
- ii. **Commercial General Liability Insurance:** *This requirement will be met per the instructions and certificates and endorsements will be provided per this RFQ.*
 - (1) 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).
 - (a) The policy shall contain the following provisions:
 - (b) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (c) Contractor/Subcontracted Work.
 - (d) Products/Completed Operations Liability for the duration of the warranty period.
 - (e) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** *OpEx Solutions, Inc. does not own any vehicles. All consultants will use their personal vehicles for transportation to and from the AWU sites. These personal vehicles are insured*

in compliance with Texas State law (proof of insurance will be provided if needed).

- C. **Endorsements:** *Endorsements for Commercial General Liability Insurance will be provided per applicable subsections of Section IBii of the Commercial General Liability Insurance during training sessions.*

V. OSI PROPOSED TEAM

(Curricula Vitae in Appendix B)

1. Martin Nazareth, Principal Consultant and Project Lead – Based in Austin
2. Warren Gary Johnson, Jr., Principal Consultant – Based in Rockdale

VI. OPEX SOLUTIONS' RATES

Alternative I: Variable Only (open enrollment)

Session	Rate	Member Discount	No. of Attendees	Total After Discount	Member Discount Applied
2-Day Participants	\$1,195	\$100	107	\$117,965	\$10,700
3-Day Top Management	\$1,795	\$200	30	\$47,850	\$6,000
* Core Team Coaching	\$2,500/ day	\$250		\$9,000/ year (based on 1/ qtr)	\$1,000
Total				\$174,815	\$17,700

Alternative II: Fixed & Variable (dedicated with time and material)

Session	Fixed Daily Rate	Member Discount	No. of Attendees	Approximate Number of Sessions	Fixed Cost After Discount	Variable Cost	Total Cost After Discount	Member Discount Applied
2-Day Participants	\$2,500	\$250	107	6 (12 days)	\$27,000	\$80 X 107 = \$8,560	\$35,560	\$3,000
3-Day Top Management	\$2,500	\$250	30	4 (12 days)	\$27,000	\$120 X 30 = \$3,600	\$30,600	\$3,000
Program Mgt. & Administration					20% of fixed = \$10,800			
Total before Optional							\$76,960	\$7,000
* Core Team Coaching	\$2,500/day	\$250		4/ year	\$9,000		\$9,000	\$1,000
Total Incl. Optional							\$85,960	\$7,000

** Optional, not included in RFQ — strongly recommended to enhance the probability of sustaining the gains.*

VII. RECOMMENDATION:

OSI recommends the following:

- Alternative II:
 - The cost of alternative II is significantly lower when an organization has adequate number of attendees. Based on the fact that AWU has enough participants to justify dedicated sessions, it would be a better choice.
 - Alternative II enables scaling of the number of days of consulting, coaching and training — it will be prudent to specify the maximum for a financial year during the award of the contract.
 - OSI helps prepare the coordination and reports for the TPM training events conducted by OSI — covered under Program Management and Administration.
- Although it was not clearly specified to include coaching to the core team and follow up, OSI strongly recommends ongoing coaching to the core team that manages the TPM program for AWU and follow up to training and TPM activity, to ensure a sustainable TPM journey — a minimum of one day per quarter is recommended.

A. *Payment Terms*

OSI would like to invoice AWU on a monthly basis for the services provided in the month and would like the payment term to be net 30 days based on the email date of the invoice.

VIII. TERM OF CONTRACT

If the proposal is acceptable to AWU and OSI is selected to provide the service, a service agreement or contract will have to be written for clear understanding of obligations of both parties, AWU and OSI. At that time additional services, limitation of liability, dispute resolution, and force majeure will be addressed.

The term of agreement as informed by AWU will be until the end of 2018, unless terminated by mutual agreement of the parties based on 30 days written notice.

A. *Service Support*

OSI has a track record of offering clarifications over the phone up to 30 days beyond the project at no cost to the customer. In many cases this includes the customer need due to change in personnel. However, OSI will not provide on-site support at no cost beyond the project closedown or beyond the project scope.

B. *Quality Assurance*

OSI is measured by:

- A customer satisfaction survey at the end of the service. This includes all the target groups from the Units, which emphasizes the need to satisfy all involved and thereby make the project a success.
- OSI also tracks on-time and within-budget execution of projects

C. *Miscellaneous*

OSI will provide a list of any additional services or benefits not otherwise identified in this document that OSI would propose to provide to AWU. Additional services will be billable and will be provided only upon written approval from AWU.

Additional benefits offered by OSI that are typically not offered by other organizations:

- Membership to the CenTex OpEx Consortium will allow AWU to benefit from a membership discount up to twice the amount of membership fee with an exception for Level 4 membership where the discount has no limit. However, a special concession is offered to allow AWU to benefit from the membership discount up to three times the amount of the membership fee — this is due to the AWU long-term membership of three years.
- OSI is an approved Registered Education Provider for PMI and participants in some of the training sessions may be able to earn PDUs.
- Most of OSI's associates are within driving distance from AWU, hence, travel costs will be low and based on IRS guidelines.

IX. ASSUMPTIONS

- OSI assumes that office space and conference room will be provided to execute this project
- All meetings, workshops, and sessions performed for data gathering, analysis, and reporting will be performed at the AWU sites
- While OSI, Inc. and its people have had a good track record in working effectively with the client's staff, it is important to note that the ability to execute within schedule and budget, and achieve the targets will be affected by:
 - AWUs ownership and engagement in working with OSI
 - AWU completing their actions in a timely manner
 - AWU follows the prescribed cadence of workshops and monthly sessions
- Some of the issues/risks that OSI would not have in their control, including but not limited to, are:
 - Late sourcing
 - Non-availability of key personnel from the various departments at AWU
 - Non-alignment of key personnel from the various departments at AWU
 - Non-cooperation and resistance to share information by AWU
 - Organizational changes and/or changes in key personnel at AWU during the project
 - Scope changes
- AWU will name a project manager/leader (not 100% dedicated) and sponsor to liaise with OSI
- The project proposed includes coaching, developing solutions, and providing implementation assistance, however, AWU has final responsibility for implementation decisions, implementation and the results.

APPENDIX A

Total Productive Maintenance (TPM)



Global OpEx Solutions

3 Days — Leader; 2 Days — Practitioner

Trng. Code: TPM-V01

Many companies suffer from inadequate capacity, productivity and morale due to equipment related breakdowns, accidents, defects and changeovers. TPM helps change the underlying cause, the culture, from "I operate you fix" to "equipment ownership & engagement" resulting in significant reduction in breakdowns, accidents and defects. In addition, TPM drives rapid model and tool changeovers that improves the equipment utilization, resulting in significant increase in capacity with no capital expenditure. To put it all together, the Overall Equipment Effectiveness (OEE) provides an effective way of identifying opportunities for improvement while providing an overall index on performance.

Learning Objectives

- ◊ TPM Philosophy & Integrated Management System
- ◊ The twelve elements of executing a TPM program
- ◊ Measuring equipment effectiveness using OEE
- ◊ How to apply Single Minute Exchange of Dies (SMED) to reduce changeover time
- ◊ The seven steps of Autonomous Maintenance (AM)
- ◊ Hands on activity at a manufacturing location
- ◊ One Point Lessons
- ◊ Provisional cleaning standards
- ◊ Developing a AM/TPM Activity Board to surface problems and ensure sustenance
- ◊ Pitfalls in the culture change through TPM/AM

Key Topics

- ◊ TPM Philosophy & Integrated Management System
- ◊ Seven Steps of Autonomous Maintenance
- ◊ Overall Equipment Effectiveness (OEE)
- ◊ Set-Up Reduction (SMED)
- ◊ TPM Activity Board

Who should attend—Two Levels?

Leader Level

Corporate Executives
Plant Managers & Business Unit Leaders
Continuous Improvement Leaders

Practitioner Level

Operations, Maintenance and Supporting staff

Days/Levels/Times

Day 1 Both Levels 8:00 - 5:00
Day 2 Both Levels 8:00 - 5:00
Day 3 Leader Level 8:00 - 4:30

Location

By Request



Instructors

Martin Nazareth PMP, MSIE, President - OpEx Solutions. Led strategic deployment of operational excellence at over 100 plants globally across several industries in Lean, TPM, FMEA/PCP and Error Proofing. He held senior level positions at Alcoa, Delphi and EDS, served as a board member of AME's SW Region and is a director of IIE's Lean Division and Industry Advisory Board.

Warren Gary Johnson, Jr., Principal Consultant - OpEx Solutions, is a mechanical engineer and a Certified Maintenance and Reliability Professional. His main areas of expertise are maximizing asset utilization, reliability, asset tracking, cost reduction and planning and scheduling. He developed a system for real-time asset utilization monitoring for Alcoa where he worked for 34 years in various capacities. He has won numerous awards including the MSHA Holmes National Safety Award for Most Safe Surface Mine in the U.S..



OpEx Solutions, Inc.
PO Box 5663 • Round Rock, TX 78683
www.opexsolutions.org

Phone: (512) 551-8406 • Fax: (888) 607-9866
opex@opexsolutions.org



APPENDIX B

Martin D. Nazareth, President



Global OpEx Solutions



MSIE — The University of Texas at Austin

Project Management Professional (PMP)

Industry Advisory Board Member, Institute of Industrial Engineers (IIE)

OpEx Solutions, Inc. — Round Rock, TX
President/Founder: 2000 – Present

- Formed the company with two divisions: Global OpEx Solutions and CenTex OpEx Consortium
- Implemented systems to ensure Lean operations with satisfied clients
- Developed a strong clientele including Fortune 500 companies within a short period of time
- Provide training/workshop sessions with an excellent feedback rating of over 4.7/5.0

Alcoa Inc., Global Primary Products, — Knoxville, TN
Senior Manager-ABS: 2005 – 2009

- Led the Global Autonomous Maintenance & 5S Initiative for Global Primary Products
 - Implemented 95% of an aggressive plan and growth of 25% more equipment each year
 - Sustained the initiative through several organizational, structural and senior leadership changes
 - Led the OEE Dashboard development to link and track savings to OEE
 - Conducted several training sessions from leadership to operators
- Jointly led the Alcoa Business System (ABS) and Focus Plant initiative for Global Primary Metals
 - Supported two plants directly with respect to ABS
 - Conducted kaizens to integrate key ABS tools to enhance effectiveness and reduce redundancy
 - Coordinated and taught three Alcoa University ABS training sessions
 - Participated in Manufacturing Analysis and the Strategic MA initiative along with McKinsey
 - Participated in operational excellence audits as special auditor

Delphi Automotive Systems — Lockport, NY
Customer Quality Manager (Supervisor): 1998 – 2005

- Managed NA Program Quality for future programs from new business to launch (\$1B sales/yr.)
 - Supervised four customer quality managers to cover all Thermal & Interior advanced programs
 - Achieved flawless launches in program and project management using Six Sigma tools
 - Developed and coordinated reliability/durability test planning to drive robust engineering
 - Conducted benchmarking for future products using the JD Power metrics
- Subject Matter Expert — Failure Modes and Effects Analysis (FMEA) and Process Control Plan
 - Co-authored Delphi FMEA training manual and conducted training globally

Electronic Data Systems (EDS) — Lockport, NY
Advanced Manufacturing Systems Engineer, Consultant to Delphi Thermal: 1994 – 1998

- Led the Labeling Initiative and developed common systems
- Developed sales proposals for integrated plant floor monitoring/control and shipping systems
- Participated in developing a product line to reduce cost & lead time and increase sales (2M sales/yr.)
- Implemented real-time SPC using GageTalker quality system resulting in reduced oil cooler rejects

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opexinfo@opexsolutions.org



Warren Gary Johnson, Jr., Principal Consultant



Global OpEx Solutions



BSME — The University of Texas at Austin
Registered Professional Engineer (Inactive)
Certified Maintenance and Reliability Professional

Alcoa, Inc. — Knoxville, TN
Primary Metals Global Reliability & Maintenance Manager: 2000 – 2007
Led Global Primary Metals Asset Reliability Team — 32 Locations

- 19 sub teams
- Founding member of Alcoa Corporate Reliability Lead Team
- Led numerous reliability benchmarking visits outside of Alcoa
- Developed Alcoa Maintenance 101 and 201 training books
- Led team to develop a global reliability strategy
- Selected consultants to help implement reliability strategy
- Published paper on "3 Waves to Reliability Excellence"
- Made numerous reliability excellence presentations at conferences including Society of Maintenance and Reliability Professionals (SMRP); International Maintenance Conference (IMC); Productivity, Inc.; Noria; University of Tennessee; Marcon; and Clemson
- Led Alcoa Primary Metals Global Reliability Rollout in improving plant reliability which resulted in more than \$80M savings to date

Technology, Quality and Alcoa Business System Superintendent: 1995 – 2000

- Operating plan development/deployment/tracking
- Developed in control and capable tracking
- Developed charts for tracking plant KPI's
- Developed/achieved ISO certification – Rockdale smelter & ingot
- Four business unit: Leader — Maintenance Steering Team — EMPAC maintenance management system development and deployment
- Instituted Rockdale operations public tours and beautification project
- Coordinated Rockdale operations strike contingency plans
- Rockdale Fall Prevention Team - Leader

Mine Maintenance & Engineering Superintendent: 1988 – 1995

- 1988 takeover from Texas Utilities
- Hired new workforce — new contract
- Improved planning & scheduling
- Instituted predictive maintenance on B.E. 2570 walking draglines
- Developed process for vibration analysis dragline D.C. motors
- MSHA Holmes National Safety Award for most safe surface mine in U.S.
- Alcoa merit award for dragline design improvement savings of 1.2 m/yr
- Developed system for real time asset utilization monitoring
- Improved reliability of draglines & rolling stock to benchmark levels
- Developed parts pool agreement with North America Dragline owners to significantly reduce inventory costs
- Reduced mine maintenance costs over \$5.0 million/year

Retired from Alcoa in 2007.

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**CITY OF AUSTIN
PURCHASE SPECIFICATIONS
For**

**Total Productive Maintenance (TPM) Training & Facilitation for Austin Water
Utility Treatment Program Area**

1.0 Scope

- 1.1 Each instructor/facilitator shall have sufficient field experience to provide a real world perspective in the classroom and hands-on field pilot projects; and equally important - the ability to effectively communicate that knowledge. Instructors/facilitators shall be articulate, resourceful, organized, patient, sensitive to students' needs, and dedicated to providing an extraordinary learning experience.

Scope will include TPM training & coaching for AWU Treatment Program Leaders.

TPM training and pilot project implementation shall be provided in a designated facility (WTP, WWTP or field operations) and at a date and time determined by AWU Treatment management.

1.2 Course Curriculum

Course curriculum shall be developed using expert analysis resulting in well-defined objectives that are relevant to current industry needs. Effective language, illustrations, supplementary materials, and logical presentation sequence shall be integrated into the course to ensure each student leaves with the skills and tools to do the job. Instructor shall provide training manuals for each student attending the course.

Pilot TPM projects shall provide learners with hands-on experience of TPM processes and techniques to effectively transfer knowledge and apply TPM methodology for use in future projects.

1.3 Classification

The courses shall be provided to City of Austin employees only.

<u>Date</u>	<u>Prepared by</u>	<u>Issuance/Revision</u>	<u>Department Approval</u>	<u>Purchasing Approval</u>
1/5/2015	Bruce Coe Aden	Issuance	Andy Ramirez	Steve

This specification, until revised or rescinded, shall apply to each future purchase and contract for the commodity described.

2.0 SPECIFICATION

- 2.1 Instructor/facilitator shall provide training manuals for each student attending the course.
- 2.2 Instructor/facilitator shall provide available dates to conduct training.
- 2.3 Course availability shall be Monday-Friday 7am-3pm.
- 2.4 Location for the training shall be at a City of Austin facility to be determined.
- 2.5 Approximately 8-15 students to attend each session.

3.0 TPM Classroom Training shall include:

- 3.1 Definition and overview of TPM
- 3.2 Understanding the importance of TPM and how it Shall benefit AWU
- 3.3 Levels of TPM implementation
- 3.4 Planning and preparing for TPM steps 1-3
- 3.5 Development of Cleaning, Lubrication & Inspection (CLI) standards
- 3.6 Overview, planning & preparation for TPM pilot project
- 3.7 Classroom debrief of pilot project and identification and discussion of lessons learned
- 3.8 Leader training to support, manage & sustain TPM program implementation

4.0 TPM Pilot Project exercise shall include:

- 4.1 Pilot project planning & preparation
- 4.2 Discussion of safe workplace practices and appropriate PPE
- 4.3 Pilot project team assignments
- 4.4 Hands-on application of TPM methods on designated equipment
- 4.5 Identification, resolution and tracking of maintenance repair tags
- 4.6 Classroom debrief of project and identification and discussion of lessons learned

5.0 DELIVERY

- 5.1 Vendor shall coordinate with Bruce Coe on planning training dates. Contact phone number is (512) 972-0289.

6.0 INVOICING REQUIREMENTS

- 6.1 The vendor shall submit an invoice within 10 calendar days after delivery training. Invoice shall include, but is not limited to, the following:
 - ◇ Contractor's name, on a professionally pre-printed form
 - ◇ Contractor's address and phone number
 - ◇ City's contract number/purchase order number
 - ◇ Date of training

EXHIBIT C
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.

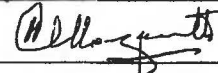
Dated this 30th day of NOVEMBER, 2015

CONTRACTOR

Authorized
Signature

Title

OpEx SOLUTIONS, INC.



PRESIDENT

**CITY OF AUSTIN
FSD - PURCHASING OFFICE**

CERTIFICATION OF EXEMPTION

DATE: 08/07/2015	DEPT: Austin Water Utility
TO: Purchasing Officer or Designee	FROM: Bruce Coe
BUYER:	PHONE: 512-972-0289

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase.

(Please check which exemption you are certifying)

- | | |
|--|---|
| <ul style="list-style-type: none"><input type="checkbox"/> a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality<input type="checkbox"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents<input type="checkbox"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property<input checked="" type="checkbox"/> a procurement for personal, professional, or planning services<input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses<input type="checkbox"/> a purchase of land or right-of-way<input type="checkbox"/> a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library | <ul style="list-style-type: none">materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits<input type="checkbox"/> a purchase of rare books, papers, and other library materials for a public library<input type="checkbox"/> paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements<input type="checkbox"/> a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters<input type="checkbox"/> a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212 |
|--|---|

- | | |
|---|---|
| <input type="checkbox"/> personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a | <input type="checkbox"/> regional planning commission established under Chapter 391
<input type="checkbox"/> services performed by blind or severely disabled persons
<input type="checkbox"/> goods purchased by a municipality for subsequent retail sale by the municipality
electricity
advertising, other than legal notices
<input type="checkbox"/> Critical Business Need (Austin Energy Only) |
|---|---|

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.

OpEx Solutions, Inc. (Martin Nazareth, Senior Consultant) will provide training and coaching services for the design, implementation and deployment of a Total Productive Maintenance (TPM) program in the AWU Treatment Program area.

- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

4. Please attach any documentation that supports this exemption.
See attached memorandum.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City.

OpEx Solutions, Inc. (Martin Nazareth Senior Consultant) previously worked with AWU Treatment to conduct a pilot TPM program at the South Austin Regional (SAR) wastewater treatment plant, training all levels of staff and conducting pilot TPM projects in Lift Stations 1 & 2 and on the Train C blowers. During the SAR pilot Mr. Nazareth successfully delivered training that was specifically designed for AWU staff. Mr. Nazareth possesses a Master of Science in Industrial Engineering from the University of Texas at Austin, is a certified Project Management Professional (PMP), and is an Industry Advisory Board Member of the Institute of Industrial Engineers. Mr. Nazareth was formerly the manager of global TPM implementation at Alcoa, Inc. and has extensive experience in designing and implementing TPM systems in flow process industries such as petroleum refineries and chemical manufacturers. Mr. Nazareth is considered an expert in these areas and is a highly regarded, internationally known operational excellence consultant.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with OpEx Solutions, Inc. which will cost approximately \$86,000 for a 36 month period.

Recommended Certification

Jane Bouraza 8-17-15
Originator Date

Approved Certification

T. Dal M. 8/18/2015
Department Director or designee Date

RCE 9/23
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Jane S. Smith 10/7/15
Buyer Date

Manager Initials

Exemption Authorized
(if applicable)

Steve T. A. 10/7/15
Purchasing Officer or designee Date

11/14/12



MEMORANDUM

To: James Scarboro, Purchasing Officer, Financial Services
From: Greg Meszaros, Director, Austin Water
Date: August 12, 2015
Subject: **Professional Services for Total Productive Maintenance Consulting/Training**

Austin Water (AW) declares these professional services to assist with training and coaching of AWU staff in the implementation and deployment of a Total Productive Maintenance (TPM) program in the Treatment Program Area to be a professional service exempt under Texas Local Government Code, Chapter 252.022 (a) (4) since the services being provided are of an intellectual nature, regarding special knowledge, experience, skills and education.

AW seeks to contract with OpEx Solutions, Inc. to assist with the training and coaching of Treatment staff in the design and implementation of a TPM program within water and wastewater treatment facilities. OpEx Solutions will conduct TPM training sessions with all staff levels within Treatment to include senior management to frontline O&M personnel, and provide coaching and guidance to Treatment management during the implementation and deployment phase of the TPM program.

OpEx Solutions, Inc. has previously worked with AW Treatment to conduct a pilot TPM program at the South Austin Regional (SAR) wastewater treatment plant, training a total of 38 staff members, including management and frontline personnel, and conducting pilot TPM projects in Lift Stations 1 & 2 and on Train C blowers. During the SAR pilot OpEx Solutions successfully delivered training that was specifically designed for AW staff. Continued successful deployment of TPM will improve early intervention of equipment failures resulting in improved equipment performance and a reduction in overall maintenance costs.

Additionally, AW is a member of the CenTex OpEx Consortium, a group of local manufacturers and service providers who are a support network of organizations working to implement operational excellence methodologies (such as TPM). Martin Nazareth, President and senior consultant of OpEx Solutions Inc., is the founding member and director of the OpEx Consortium.

Martin Nazareth possesses a Master of Science in Industrial Engineering from the University of Texas at Austin, is a certified Project Management Professional (PMP), and is an Industry Advisory Board Member of the Institute of Industrial Engineers. Mr. Nazareth was formerly the

manager of global TPM implementation at Alcoa Inc. and he has extensive experience in designing and implementing TPM systems in flow process industries such as petroleum refineries and chemical manufacturers. Mr. Nazareth is considered an expert in these areas and is a highly regarded, internationally known operational excellence consultant.

AW Treatment expects that billings for this professional service direct contract with this consultant will not exceed \$86,000 for a period of 36 months after the contract is executed for anticipated billings of approximately \$28,700 per year.

Should you have any questions or comments, please do not hesitate to contact me at (512) 972-0108 or Bruce Coe, (512) 972-0289.

Greg Meszaros, Director
Austin Water Utility

cc: Jane Burazer, Assistant Director, Austin Water Utility Treatment Program
Steve Aden, Manager, Purchasing Department
Irene Sanchez-Rocha, Manager, Purchasing Department
Darrell Richmond, Buyer Senior



MEMORANDUM

To: Robert Goode, Assistant City Manager, Austin
From: David Anders, Assistant Director, Austin Water 
Date: September 9, 2015
Subject: Professional Services for Total Productive Maintenance (TPM)
Consulting/Training Purchase

This purchase request is to procure TPM training and coaching for the Austin Water Treatment Program facilities. The initial purchase request form was on an annual contract estimate of \$48,000; however, the actual cost for the service that will be provided is \$28,700 per year. This will not require Council action.

The contract will be for one year with two 1-year extension options bringing the total contract amount to \$86,100. We are requesting a signature of the enclosed Certificate of Exemption for the full contract total of \$86,100.

Please let me know if you require additional information or if you have any questions.

Thank you,

David Anders

Cc: Greg Meszaros, Director, Austin Water
Jane Burazer, Assistant Director, Austin Water