



Amendment No. 3
to
Contract No. NA160000131
For
Internet Services
Between
Alpheus Data Services, LLC
and the
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
Vendor Name	Alpheus Data Services, LLC	Logix Holding Company, LLC dba Logix Fiber Networks
Vendor Code	V00000909970	V00000904219
FEIN	[REDACTED]	[REDACTED]

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

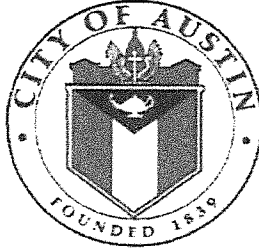
BY THE SIGNATURE affixed below, this Amendment No. 3 is hereby incorporated into and made a part of the Contract.

A handwritten signature in blue ink, reading "Linell Goodin-Brown".

Linell Goodin-Brown
Contract Management Supervisor II
City of Austin, Purchasing Office

11-7-19

Date



Amendment No. 2
to
Contract No. 8200 NA160000131
for
Internet Services
between
Alpheus Data Services, LLC. (Contractor)
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be October 01, 2018, through September 30, 2021. One (12) month options will remain.
- 2.0 The total contract amount is increased by \$174,130.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 10/01/2016 – 09/30/2018	\$174,130.00	\$174,130.00
Amendment No. 1: Exhibit A Modification Alpheus Data Services, LLC Offer Modification	\$0.00	\$174,130.00
Amendment No. 2: Option 1 – Extension (including an additional 12 months with an administrative increase of \$53,000.00) 10/01/2018 – 09/30/2021	\$227,130.00	\$401,260.00

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

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

Sign/Date: Lance Steckel 9/28/18

Printed Name: LANCE STECKEL
Authorized Representative

Alpheus Data Services, LLC.
2590 North Loop West
8th Floor
Houston, TX 77092

Sign/Date: Bartley Tyler 9/28/18

Printed Name: Bartley Tyler
Authorized Representative

Sign/Date: Jane S. T. Haworth 9/28/18
Printed Name: JANE S. T. HAWORTH

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



Amendment No. 1
of
NA160000131
for
Internet Services
between
Alpheus Data Services, LLC. ("Contractor")
and the
City of Austin

- 1.0 The City hereby amends this Contract by modifying Exhibit A, Alpheus Data Services, LLC Offer.
- 1.1 Replacing current internet service with an upgraded infrastructure to improve service performance, attached hereto. This is a zero-cost service upgrade.
- 2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Term: 10/1/16 – 9/30/18	\$174,130.00	\$174,130.00
Amendment No. 1: Exhibit A Modification Alpheus Data Services, LLC Offer Modification	\$0.00	\$174,130.00

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

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

Signature: 

Date: 7/31/18

Printed Name: WILLIAM I. SEAKS
Authorized Representative

Alpheus Data Services, LLC.
1301 Fannin, 20th Floor
Houston, TX 77002

Signature: 

Date: 8/3/18

Daniel Dellemonache
Procurement Specialist III

City of Austin
Purchasing Office
124 W. 8th Street, Suite 310
Austin, TX 78701



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

August 23, 2016

Responsible Department:	Convention Center
Department Contact Person:	Sharon Patterson
Department Contact Email Address:	Sharon.Patterson@austintexas.gov
Department Contact Telephone:	512-404-4355
Project Name:	Internet Services
Contractor Name:	Alpheus Data Services, LLC
Contract Number:	MA 8200 NA160000131
Contract Period:	10/01/16 – 09/30/18
Dollar Amount	\$174,130
Extension Options:	3 – 24 Month Options
Requisition Number:	16022900288
Solicitation Type & Number:	RFP PAX0132
Agenda Item Number:	35
Council Approval Date:	08/04/16

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,

Elisa Folco
Corporate Contract Administrator

City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
ALPHEUS DATA SERVICES, LLC. ("Contractor")
FOR
INTERNET SERVICES**

CONTRACT NUMBER: MA 8200 NA160000131

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

This Contract is between Alpheus Data Services, LLC having offices at 1301 Fannin, 20th Floor, Houston, TX 77002 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number RFP PAX0132.

1.1 The Contract is composed of the following documents:

- 1.1.1 This Contract document;
- 1.1.2 The City's Solicitation, RFP, PAX0132 including all documents incorporated by reference;
- 1.1.3 Alpheus Data Services, LLC Offer, including subsequent clarifications, (Exhibit A)
- 1.1.4 Alpheus Product Supplement – Dedicated Internet Access, (Exhibit B)

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be solely resolved by the City, in a reasonable and consistent manner, by giving the documents precedence in the following order:

- 1.2.1 This Contract document;
- 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference;
- 1.2.3 Alpheus Offer as referenced in Section 1.1.3, including subsequent clarifications; (Exhibit A)
- 1.2.4 Alpheus Product Supplement – Dedicated Internet Access, (Exhibit B);

1.3 Term of Contract. The Contract will be in effect on October 1, 2016 (Effective Date) for an initial term of 24 months and may be extended thereafter for up to 3 additional 24 month extension options, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.4 Compensation. The Contractor shall be paid a total not-to-exceed amount of \$174,130 for the initial Contract term, \$174,130 for extension option 1, \$174,130 for extension option 2, \$174,130 for extension option 3, for a total contract amount not- to-exceed \$696,520.

- 1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order
- 1.6 **Clarifications and Additional Agreements.** The following are incorporated into the Contract.
- 1.6.1 Alpheus Data Services will provide pricing on an event per event basis for any additional internet services not included in original proposal.

ALPHEUS DATA SERVICES, LLC

KAREN E. HANSON-FLOWERS

Printed Name of Authorized Person



Signature

SENIOR VICE PRESIDENT
CONTRACT ADMINISTRATION

Title:

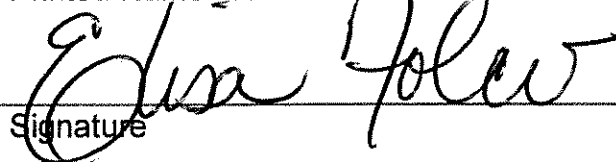
12 August, 2016

Date:

CITY OF AUSTIN

Elisa Folco

Printed Name of Authorized Person



Signature

Corporate Contract Administrator

Title:

8/23/2016

Date:

Exhibit A
Alpheus Data Services, LLC Offer

SECTION 0601: PRICE PROPOSAL

Proposers may include such items as alternates for consideration; however any specifications, unit pricing, discount pricing, installation, and warranty information must be clearly provided and described. The Proposer is responsible for defining the technical requirements and associated configuration as stated in the Request for Proposal. The City reserves the right to award in our best interest. For additional information on submission of Price Proposal, reference Item K of Section 0600, Proposal Preparation Instruction.

1. Installation and Maintenance/Support Costs

Description	Year One Price	Option One Price	Option Two Price	Option Three Price	Option Four Price	Option Five Price
Cost of Installation	\$0					
Maintenance Fee (if not included in above)*	\$0					
Technical Support Fee (if not included in above)*	\$0					
Other Annual Cost (if required and not included in above)**	\$0					
Per Year Total	\$75,708	75,708	75,708	75,708	75,708	75,708

*Indicate if cost is included elsewhere, and if so which line item it is included.

**Include a detailed breakdown of other specific costs not referenced above as a supplemental to the cost proposal.

2. Other Specified Services

Description	Cost
On-site ("Stand-by") Cost – Per day, flat fee*	\$0

* Indicate if cost is included elsewhere, and if so which line item it is included.

3. Any additional costs involved with your proposal not covered in the sections above

Include a detailed breakdown of other specific costs not referenced above, or not listed as a requirement of the RFP, on a separate piece of paper. Detail the cost structure and any assumptions being made (hourly, per diem, quantity, % mark up to cost or % discount to list, etc.) as well as cost for future consideration. This is used for informational purposes only – to allow ACCD the opportunity to purchase non-specified items. There is no guarantee that ACCD will purchase the items listed below.

Description	Cost
-------------	------

Bursting rate on ACCD 1G burst to 10G is \$3.75/ MB.	
Alpheus provides 1 Gbps burstable to 10Gbps Internet connection of enterprise-class quality at Austin Convention Center delivered by fiber and terminated in the South Main Distribution Frame at 500 E. Cesar Chavez Austin, TX 78701, via the Hilton hard splice. The monthly charge is \$3518 MRC on a 12 month term with the five year option per the attached RFP. Bursting rate is \$3.75/ MB.	
Alpheus provides 1 Gbps commit on 1G DIA connection of enterprise-class quality at Palmer Events Center delivered by fiber and terminated in the Main Distribution Frame at 900 Barton Creek Springs Rd, Austin, TX 78704. The monthly charge is \$2791 MRC on a 12 month term with the five year option per the attached RFP.	

Exhibit B Master Service Agreement

Alphacore Product Supplement - DIA

PRODUCT SUPPLEMENT - DEDICATED INTERNET ACCESS

~~For the
Master Service Agreement~~

~~This Product Supplement - Dedicated Internet Access (this "Supplement") is incorporated by reference into and made part of each certain Master Service Agreement (including all attachments and incorporated documents, the "Agreement") entered into between the Seller and the Buyer who signed the Master Service Agreement, as expressly provided therein and shall be effective as of the Effective Date defined in the Master Service Agreement. This Supplement provides additional terms and conditions governing the DIA Services.~~

1. SERVICE DESCRIPTION

1.1 "Dedicated Internet Access" or "DIA" shall mean a dedicated high-speed connection to the Internet. Over a single access port connection ("Port"), Buyer may select from several connectivity options, speeds, and billing methods as outlined below and/or as set forth on any Service Order for which Seller has issued a FOC. The available configurations are subject to technical limitations, and Seller shall determine the actual allowed and available configurations from time to time consistent with then current technical considerations. Among other things, due to protocol overhead, IP addresses may be assigned to Buyer by Seller as deemed appropriate by Seller at rates agreed to by the Parties, but such IP addresses remain the property of Seller and are not transferred to Buyer or its User upon termination or expiration of this Supplement or any respective Service Order. Buyer and its Users will promptly return such IP addresses, and cooperate with any additional documentation of same, upon termination or expiration of this Supplement or any respective Service Order.

1.2 Technical Specifications. The DIA Service and related offerings shall conform with the technical standards as specified by the Internet Engineering Task Force ("IETF").

1.3 Service Options: DIA may be offered in two service types: "Committed Bandwidth" and "Bursting Bandwidth". The selected type of service, pricing and length of term commitment shall be specified on the Service Order form.

(a) "Committed Bandwidth" is the provision of a fixed capacity internet access port. A fixed capacity Port is provisioned as a Port up to the bandwidth purchased by Buyer, giving Buyer the ability to use the full Port bandwidth. The monthly Recurring Charge ("MRC") is fixed each month and does not change due to usage of the Port.

(b) "Bursting Bandwidth" allows the Buyer to use bandwidth above its Committed Bandwidth rate up to levels as agreed to in the Service Order consistent with the terms herein. The MRC for Bursting Bandwidth shall be calculated as follows: Seller will measure bandwidth usage, in five minute intervals, for each point of connection between Buyer and Seller's DIA network in two categories: incoming and outgoing traffic. At the end of each month, all data samples in each category in excess of the Committed Bandwidth rate will be sorted from highest to lowest and the top five percent (5%) of such measurements will be discarded. The highest remaining data sample in the higher of the two categories will then constitute the bandwidth usage level for that particular month. Bursting Bandwidth is the amount by which bandwidth usage for the particular month exceeds the Committed Bandwidth.

(c) Invoicing for the MRC shall be in advance for Committed Bandwidth charges and in arrears for Bursting Bandwidth charges. Billing for a Bursting Bandwidth service period shall be billed in arrears no later than the second billing cycle following the period measured.

1.4 Definitions. Capitalized terms or phrases not defined in this Supplement shall have the definitions ascribed thereto in the Agreement. In addition to terms or phrases defined elsewhere in the Agreement or this Supplement, the following terms or phrases, where capitalized, shall be defined as follows:

"BGP-4 Routing" shall mean Border Gateway Protocol, version 4 ("BGP-4"), a routing protocol enabling packets with user data to travel between remote locations on the internet and in exchange information between autonomous systems within the internet. The provision of BGP-4 is subject to certain policies and procedures which will be reviewed with Buyer upon request.

"Demarc Extension" or "Extended Demarc" shall mean a build to extend Services from Seller's stated Point of Demarcation to Buyer's Point of Demarcation. In most cases, Seller's stated Point of Demarcation is the Incumbent

Local Exchange Carriers' ("ILEC") minimum point of entry ("MPOE"). Non-Recurring Charges for any Demarc Extension will be on an individual case basis.

"DNS" or "Domain Name Server" shall mean a system for converting host names and domain names into IP addresses on the Internet or on local networks that use the TCP/IP protocol.

"E-BGP" shall mean an External Border Gateway Protocol, a routing protocol enabling packets with user data to travel between remote locations on the Internet and to exchange information between autonomous systems within the Internet.

"HSRP" shall mean a Hot Standby Routing Protocol, a proprietary routing protocol from CISCO for fault tolerant IP routing which enables a set of routers to work together to present the appearance of a single virtual router or default gateways to the hosts on a local area network ("LAN").

"Internet Protocol Address" or "IP Address" shall mean an address in four-part numerical format that uniquely identifies a computer accessible over a TCP/IP-based LAN or the Internet, for example, 127.0.0.10.

"Local Loop Service" shall mean any transport service requested by Buyer and provided by Seller to connect a site with a Port.

2. PROVISIONING INTERVALS FOR FACILITIES

2.1 Provisioning Intervals. Seller will use reasonable commercial efforts to meet the following Provisioning Intervals for the DIA Services that are provided entirely on Seller's Facilities:

<u>Service Description</u>	<u>Minimum Provisioning Intervals</u> <u>(in Business Days from date of Service Order)</u>
Port Only	10
Port and Local Loop Service (DS-1)	15
Port and Local Loop Service (DS-3 with no vendor equip. Required)	30
Port and Local Loop Service (DS-3) with vendor equip. required)	ICB
Port and Local Loop Service (OCn with no vendor equip. required)	30
Port and Local Loop Service (OCn with vendor equip. required)	ICB
Port and Local Loop Service (Ethernet)	ICB

The Provisioning Intervals for all other Services shall be provided by Seller on an individual case basis and as set forth in the applicable Service Order FOC.

2.2 Remedies. If the Commencement Date does not occur prior to the Scheduled Service Date with regard to Services and such delay in the Commencement Date is not due to a Force Majeure Event or an act or omission of Buyer, Buyer's Users or their respective representatives, then the following remedies shall apply:

- (a) Delay of Recurring Charge. Buyer shall not be obligated to pay the Recurring Charges until such time as the Service commences.
- (b) Termination of Service. If the Commencement Date does not occur on or before sixty (60) days following the applicable Scheduled Service Date, then Buyer shall have the right to terminate the applicable Service by providing written notice to Seller to the extent that such notice is provided prior to the Commencement Date. In such event, unless otherwise provided in the Service Order, Buyer shall not be obligated to pay, and shall receive reimbursement for any amounts previously paid with regard to, any Recurring Charges or Non-Recurring Charges associated with such Service.
- (c) **SOLE AND EXCLUSIVE REMEDIES. THE PARTIES ACKNOWLEDGE THAT THE REMEDIES IN THIS SECTION 2 SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR THE FAILURE OF THE COMMENCEMENT DATE TO OCCUR PRIOR TO THE SCHEDULED SERVICE DATE OR ANY OTHER DELAY IN PROVIDING THE SERVICE.**

2.3 Supp or Deferral Rights. With respect to any Services provided entirely on Seller's Facilities, Buyer shall have the right to request up to three (3) deferrals of the Scheduled Service Date; provided that, unless otherwise agreed by Seller, in no event may Buyer request a deferral of more than thirty (30) days in aggregate from the Scheduled Service Date set forth in the Initial FOC for the Service. The Supp Charges applicable to any such deferrals of the Scheduled Service Date are as set forth in Seller's Miscellaneous Price Schedule. With respect to any Services

provided in whole or in part on Third Party Facilities, any rights of Buyer to defer the Scheduled Service Date and any associated charges shall be determined by Seller on an individual case basis.

3. TESTING PROCEDURES FOR FACILITIES

Seller agrees to use reasonable commercial efforts throughout the provisioning process so that the Service, when tendered to Buyer, meets the technical specifications set forth in this Supplement.

4. PERFORMANCE AND OPERATING STANDARDS FOR FACILITIES

4.1 Availability. If a Service Outage (as defined below) occurs with respect to Services provided entirely on Seller's Facilities and Seller is unable to provide the Services at the Availability Factors (as defined below), then Seller will credit Buyer's invoice for the applicable period with an amount equal to the Service Outage Credit (as defined below) in the month following the request by Buyer and determination of the applicable Service Outage Credit pursuant to the provisions set forth below; provided that Buyer must request such Service Outage Credit and such request must be made within thirty (30) days of the applicable Service Outage. If a Chronic Service Outage (as defined below) occurs for any Service, then Buyer shall have the right to terminate the applicable Service consistent with paragraph (e) of Section 4.2.

4.2 Service Outage. A "Service Outage" shall mean that Buyer is unable to exchange IP packets over the Service via the Network Port.

- (a) A Service Outage shall begin upon the earlier of Seller's actual knowledge of the Service Outage or Seller's receipt of written notice from Buyer of the Service Outage and shall end upon the correction of the loss of service.
- (b) Notwithstanding the above, a Service Outage shall not be deemed to have occurred and no Service Outage Credits will apply:
 - (i) during periods (A) of less than ten (10) minutes, (B) in which Seller is not given access to its Facilities or equipment that are required to provide the Services or to remedy any Service Outage, (C) in which planned or scheduled maintenance and repair activities are occurring, (D) in which Buyer or its User continues to use the Services on an impaired basis, or (E) that are not reported to Seller within thirty (30) days of the date the Service was affected;
 - (ii) for interruptions that are caused by or due to (A) acts or omissions of Buyer, its User or another third party, (B) the failure or malfunction of facilities or equipment not owned or operated by Seller, including without limitation the failure of the power supply, or (C) a Force Majeure Event or (D) disconnections by Seller for non-payment or other contract default or breaches by Buyer; and
 - (iii) for Services utilizing in whole or in part Third Party Facilities.
- (c) Availability Factor. The following Availability Factors shall apply to DIA Services that are provided entirely on Seller's Facilities:
 - (i) Port Only – 99.999%
 - (ii) Port with DS-1 Local Loop Service – 99.90%
 - (iii) Port with DS-3 Local Loop Service – 99.95%
 - (iv) Port with OCn Local Loop Service – 99.99%
 - (v) Port with Ethernet Private Line Local Loop Service
 - i. Unprotected – 99.0%
 - ii. Protected (Network protection; no client protection) – 99.9%
 - iii. Load Shared – 99.99% one of the two diverse paths will be available.
 - (vi) Port with Metro Ethernet Service – 99.90%

The Availability Factors set forth above shall apply for each calendar quarter and is a measurement of the percent of total time that Service is operative and deemed available to Buyer in accordance with the above specifications when measured over such period. The Availability Factor for any other Service will be as agreed to by Seller and Buyer in writing.

- (d) Service Outage Credit. With respect to any Service Outages in excess of the Availability Factors, the Service Outage Credit shall be equal to an amount equal to (a) the Recurring Charge applicable to the affected Service during the calendar quarter in which the Service Outage occurred multiplied by (b) the number of hours or fractions thereof that the Service Outage occurred during the applicable period divided by 2160 hours. Service Outage Credits are calculated after deduction of all discounts and other special pricing arrangements, and are not applied to governmental fees, taxes, surcharges and similar additional charges, nor are credits available for any usage based Services. **OTHER THAN THE ADDITIONAL TERMINATION REMEDY SET FORTH**

BELOW FOR CHRONIC SERVICE OUTAGES, BUYER'S RIGHT TO RECEIVE SUCH SERVICE OUTAGE CREDIT SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE SELLER'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A SERVICE OUTAGE OR FOR ANY OTHER CLAIM THAT SELLER FAILED TO MEET ITS OBLIGATIONS IN THE PROVIDING OF THE SERVICE.

- (c) **Chronic Service Outage.** An affected Service shall be deemed to have experienced a "Chronic Service Outage" to the extent that in any calendar month (i) three or more Service Outages have occurred with each such Service Outage having a duration of more than thirty (30) minutes or (ii) one Service Outage has occurred for a duration of more than forty-eight (48) hours, in each case where the applicable Service Outage has been reported by Buyer to Seller with respect to any Service within ten (10) days. If a Chronic Service Outage occurs, then Buyer shall have the right to terminate the affected Service upon providing written notice to Seller, without the incurrence of any Termination Charge; provided that Buyer terminates the applicable Service on or before the expiration of the calendar month following which the Chronic Service Outage occurred. **BUYER'S RIGHT TO TERMINATE THE AFFECTED SERVICE SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND THE SELLER'S SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A CHRONIC SERVICE OUTAGE.**

4.3 PERFORMANCE LIQUIDATED DAMAGES. FOR THIS SUPPLEMENT, THE REMEDIES OF BUYER IN SECTIONS 2.2(C), 4.2(D), AND 4.2(E) HEREOF SHALL CONSTITUTE BUYER'S PERFORMANCE LIQUIDATED DAMAGES FOR THE SERVICE OFFERED UNDER THIS SUPPLEMENT AND CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY PERFORMANCE FAILURE RELATED TO OR ARISING FROM THE SERVICE OFFERED HEREUNDER.

5. RULES AND REGULATIONS FOR USE OF DIA SERVICE

- (a) As a condition of Buyer's use of the DIA Service, Buyer warrants to Seller that neither it nor its Users will use the DIA Service for any purpose that is unlawful or prohibited by these terms, conditions, and notices. Buyer agrees to abide by, and shall cause its Users to abide by, all applicable local, state, national and international laws and regulations. Buyer is solely responsible for all acts or omissions that occur under its account, including the content of Buyer's and its Users' transmissions through the DIA Service.
- (b) Buyer agrees that it and its Users shall comply in all respects with Seller's Acceptable Use Policy ("AUP"), as set forth under the AUP link at www.alpheuscommunications.com. Buyer acknowledges that it has reviewed and agrees to the provisions of the AUP.



CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR PROPOSAL (RFP)
OFFER SHEET

SOLICITATION NO: RFP PAX0132

COMMODITY/SERVICE DESCRIPTION: Internet Service Provider

DATE ISSUED: 04/18/2016

REQUISITION NO.: 16022900288

PRE-PROPOSAL CONFERENCE TIME AND DATE: 04/27/2016,
10:00 am, local time.

COMMODITY CODE: 91551

LOCATION: Austin Convention Center; 500 East Cesar Chavez;
Austin, Texas 78701
Enter through the Administration Offices off Cesar Chavez
Street. Upon entry, notify receptionist that you are attending the Pre-
Proposal meeting for the Internet Service Provider RFP. Visitor
parking available on Red River Street. For directions and alternate
parking options:

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

PROPOSAL DUE PRIOR TO: 05/17/2016, 2:00 pm, local time

Sai Xoomsai Purcell
Senior Buyer Specialist
E Mail: sai.xoomsai@austintexas.gov
Phone: (512) 974-3058

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
 RM 308, AUSTIN, TEXAS 78701

After submitting a sealed Offer, use the correct address for the type of service desired, as shown below.

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # PAX0132	Purchasing Office-Response Enclosed for Solicitation # PAX0132
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and unopened at the Purchasing Office prior to the Due Date and time. It is the responsibility of the Offeror to ensure that their Offer arrives at the Purchasing Office prior to the Due Date and time indicated. Offers at the City's discretion may be opened, or payment may be made conditional on Offer being received by the Due Date. See Section 2.100 for additional solicitation instructions.

All Offers that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINAL AND 5 ELECTRONIC COPY OF YOUR RESPONSE

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	4
0500	SCOPE OF WORK	4
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	6
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0700	REFERENCE SHEET – Complete and return if required	1
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE NO GOALS FORM – Complete & return	2
Section 0601	Cost Proposal	2

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to submit to the City a complete Form 1295 "Certificate of Interested Parties" that is signed and notarized prior to contract execution for a contract award requiring council authorization. The full text versions of the * Sections and Form 1295 are available on the Internet at the following online address:**

If you do not have access to the Internet, you may obtain a copy of these Sections or Form 1295 from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: ALPHEUS DATA SERVICES LLC
Company Address: 1301 FANNIN, 20TH FLOOR
City, State, Zip: HOUSTON, TEXAS 77002
Federal Tax ID No. [REDACTED]
Printed Name of Officer or Authorized Representative: KAREN E. HANSON-FLOWERS
Title: SENIOR VICE PRESIDENT
CONTRACT ADMINISTRATION
Signature of Officer or Authorized Representative: [Signature]
Date: 17 May, 2016
Email Address: KAREN@ALPHEUS.NET
Phone Number: 213-336-6370

*** Proposal response must be submitted with this Offer sheet to be considered for award**

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

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

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

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

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

10. WORKFORCE

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

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

12. INVOICES:

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

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

13. PAYMENT:

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

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

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

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

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

15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. RIGHT TO AUDIT:

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

18. SUBCONTRACTORS:

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

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

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

19. WARRANTY-PRICE:

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

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

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

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

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

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

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

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.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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

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

31. INDEMNITY:

A. Definitions:

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

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

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

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

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

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

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

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

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

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

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **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.
39. **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.
40. **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.

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

41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **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.
44. **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.
45. **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.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days

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

after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
49. **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.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

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

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

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

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

53. **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.

54. **EQUAL OPPORTUNITY**

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

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

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

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

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

- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to sai.xoomsai@austintexas.gov no later than close of business on 04/28/2016.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. 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 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. 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.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

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

B. **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.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) 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

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

- (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:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
 - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. 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.
3. **TERM OF CONTRACT:**
- A. The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to five (5) additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
 - B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
 - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
 - D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)
- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Convention Center

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

Attn:	Accounts Payable
Address	500 East Cesar Chavez
City, State Zip Code	Austin, TX 78704

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the Convention Center Department building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Convention Center Department building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Convention Center Department building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirement.

7. INTERLOCAL PURCHASING AGREEMENTS: (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

8. **CONTRACT MANAGER**: The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Debbie Gosset

Debbie.Gossett@austintexas.gov

512-404-4034

**CITY OF AUSTIN
SCOPE OF WORK/SPECIFICATIONS
FOR
INTERNET SERVICE PROVIDER (ISP) SERVICES**

1.0 PURPOSE

The City of Austin hereinafter referred to as the "City" or "ACCD", seeks proposals in response to this Request for Proposal (RFP) from qualified Vendors to provide Internet Service Provider (ISP) services to include physical networking infrastructure (eg. Fiber), connection pipe, IP addresses for two separate physical locations (Palmer Events Center ("PEC") and Austin Convention Center ("ACC")), Internet speeds of 1 Gbps internet connection of enterprise-class quality at Palmer Events Center and 1Gbps enterprise-class quality internet at Austin Convention Center, secondary DNS, bandwidth data for utilization reporting, maintenance and 24-7-365 technical support and other ISP related services.

The Contract shall be in effect for an initial term of twenty four (24) months, after this initial term, the Contract may then be extended thereafter for up to three (3) additional twenty four (24) month options, subject to approval of the Contractor and the City Purchasing Officer or designee.

2.0 BACKGROUND

The Austin Convention Center Department (ACCD) is an enterprise Department within the City of Austin that provides significant impact to the local economy and is responsible for managing the daily operations of the Austin Convention Center (ACC), Palmer Events Center (PEC), and three Parking Garages.

The Mission of the Austin Convention Center Department is to provide its patrons with the best convention, conference, trade show or special event experience possible, ensuring the return of our clients and visitors to the City of Austin and the Austin Convention Center Department and its related facilities.

ACC is one of the most technologically advanced convention centers in the country. Stretching over six city blocks, comprised of 881,400 gross square feet, the ACC offers 246,097 square feet of column free exhibit space divisible into five contiguous halls. The Grand Ballroom is one of the largest in Texas, with 43,300 square feet and enough space for over 3,000 guests and Clients. The ACC has 54 meeting rooms and show offices that offer 61,440 square feet located on all four levels. ACC is a Gold LEED certified building and has a goal of maintaining this certification. ACC continues to identify opportunity to reduce its carbon emissions through various means such as; the purchase of lower-emission equipment and vehicles, use of sustainable products, use of products made of recycled content, and reducing the use of paper.

PEC is located in a park setting and adjacent to the Long Center for the Performing Arts, which provides a home and venue for performing arts organizations. The PEC is 130,000 square feet, with a 70,000 square foot exhibit area capable of subdividing into two smaller exhibit areas that can be used simultaneously. In addition, there are a series of meeting rooms of approximately 7,000 total square feet used by smaller groups. The PEC is a smaller events type of facility that caters to local public events, smaller conventions, trade shows, and a large number of community or civic events. These include arts and crafts shows, antique and memorabilia shows, local trade and technical programs, civic luncheons, local fundraising events, and sporting events.

Table 1: Event by Fiscal Year for Austin Convention Center

Event Type	2010	2011	2012	2013	2014	2015
Conventions	36	36	39	34	37	40
Consumer Shows	13	11	19	18	19	14
Conference/Meetings	40	53	45	47	49	39
Food & Beverage	12	13	11	14	9	6
Trade Shows	6	9	8	6	5	2

**CITY OF AUSTIN
SCOPE OF WORK/SPECIFICATIONS
FOR
INTERNET SERVICE PROVIDER (ISP) SERVICES**

Others	35	37	34	26	31	25
Total	142	159	156	145	149	126

Table 2: Event by Fiscal Year for Palmer Events Center

Event Type	2010	2011	2012	2013	2014	2015
Conventions	1	1	2	3	4	1
Consumer Shows	47	48	43	53	52	38
Conference/Meetings	24	39	51	48	41	35
Food & Beverage	15	13	16	18	18	16
Trade Shows	4	4	3	14	8	4
Others	20	24	24	30	44	39
Total	111	129	138	166	166	148

3.0 CURRENT ENVIRONMENT

ACCD currently has internet service speeds of 1 Gbps internet connection at PEC located at 900 Barton Springs Rd, Austin TX 78704 and at ACC located at 500 E Cesar Chavez St, Austin TX 78701, secondary DNS, IP Addresses, Contractor-provided hardware, maintenance and 24-7-365 technical support. Although ACC has current internet service speeds of 1 Gbps, the facility is capable of speeds burstable up to 10 Gbps.

4.0 PROPOSER ELIGIBILITY

Proposer shall have a minimum of ten (10) years' continuous experience delivering enterprise level, business critical Internet Service Provider (ISP) services.

5.0 CONTRACTOR'S RESPONSIBILITIES

The Contractor shall provide ISP services as required by the written Contract. If, during the term of the Contract, ACCD's requirements or Scope of Work change due to improvements, upgrades, expansion, or changes in technology, ACCD may choose to re-solicit for a new Contract or amend this Contract. Any amendments made to this Contract shall be mutually agreed-upon by both parties and in written form.

5.1 General Requirements:

- 5.1.1 The Contractor shall provide ISP services as required by this Scope of Work at both PEC and ACC. Throughout the term of the Contract, ACCD reserves the right to extend/expand services within a location and to add or remove location(s) covered under the Contract.
- 5.1.2 The Contractor shall provide 1 Gbps Internet connection of enterprise-class quality at Palmer Events Center delivered by fiber and terminated in the Main Distribution Frame at 900 Barton Springs Rd. Austin, TX 78704.
- 5.1.3 The Contractor shall provide 1 Gbps burstable to 10Gbps Internet connection of enterprise-class quality at Austin Convention Center delivered by fiber and terminated in the South Main Distribution Frame at 500 E. Cesar Chavez Austin, TX 78701.
- 5.1.4 The Contractor shall provide each site (ACC and PEC) with its own 24-bit network with public routable IPv4 addresses and have transition network between the site and the provider.

**CITY OF AUSTIN
SCOPE OF WORK/SPECIFICATIONS
FOR
INTERNET SERVICE PROVIDER (ISP) SERVICES**

- 5.1.5 The Contractor shall document and provide a guaranteed quality of service. Due to ACCD's business environment, ACCD requires a minimum service availability of 99.99% per month with a maximum of 15 minute response (problem acknowledgement to ACCD) and a maximum of 4 hours resolution to problems. Unless otherwise agreed to by ACCD, the selected Contractor will issue a documented credit if the response time and/or downtime do not meet the Contracted limits.
- 5.1.6 The Contractor shall provide full bandwidth and technical support 365 days a year, 7 days per week, 24 hours a day.
- 5.1.7 The Contractor shall provide and install all physical networking infrastructure and equipment included in proposal.
 - 5.1.7.1 The Contractor shall coordinate the timing and transportation of equipment and materials to the work area. If equipment or materials are transported through the interior of a facility, the Contractor shall take every precaution to ensure public safety. Under no circumstances shall the Contractor transport equipment or materials through the interior of a facility without prior coordination and approval by the ACCD's Contract Manager.
 - 5.1.7.2 Contractor shall perform all steps reasonably necessary to protect City property and persons from harm. Failure to perform installation in a prompt and professional manner may result in termination of the Contract.
 - 5.1.7.3 Contractor shall be responsible for any and all damage to City equipment or property as a direct result of Contractor's employees or Contractor's Subcontractor's actions.
 - 5.1.7.4 Damages to City equipment or property by Contractor's employees or its Subcontractor shall be replaced or repaired to the satisfaction of the City of Austin by the Contractor, at no cost to the City. The City may, however, at its sole discretion, elect to make repairs or replacements of damaged equipment or property and deduct the cost from any payments owed to Contractor or to recover costs if no payments are owed.
 - 5.1.7.5 All work is subject to inspection and acceptance by the Contract Manger or designee.
 - 5.1.7.6 Upon completion of installation, the Contractor shall be responsible for the immediate clean-up of the work area and removal of debris.
- 5.1.8 As part of ACCD's LEED certification efforts and the City of Austin's goal of Zero Waste by 2040, the Contractor should recommend sustainable and environmentally-friendly programs, products, and initiatives.
- 5.1.9 The Contractor shall maintain real-time network monitoring capability on all ACCD connections and provide bandwidth utilization reporting.
- 5.1.10 The Contractor shall provide maintenance to systems as required by the written Contract. Maintenance schedules shall be pre-arranged and agreed to by the Contract Manager and the Contractor. Maintenance shall not be performed without the prior agreement of the Contract Manager.
- 5.1.11 The Contractor shall limit service outages to a maximum of two (2) per year with a two (2) hour outage window.

**CITY OF AUSTIN
SCOPE OF WORK/SPECIFICATIONS
FOR
INTERNET SERVICE PROVIDER (ISP) SERVICES**

5.2 Additional Requirements:

- 5.2.1 The Contractor shall provide a Service Level Agreement.
- 5.2.2 The Contractor shall have an established policy on bursting bandwidth utilization.
- 5.2.3 The Contractor understands and agrees that the scheduling of events at ACCD take precedence over any other schedule(s) agreed to by ACCD and the Contractor. The Contractor shall not hold ACCD liable, financially or otherwise, if alterations in the ACCD schedule require ACCD to reschedule the installation, implementation, or other previously scheduled services.

6.0 CITY'S OBLIGATIONS

- 6.1 ACCD's personnel will be responsible for connecting the Contractor to appropriate resources within ACCD in order to implement the Internet Service Provider (ISP) service. If applicable or needed, ACCD will provide:
 - 6.2 Project prioritization and scheduling with the Contractor's project manager.
 - 6.3 Access to office sites during normal business hours, based on approved Criminal Background Investigation and formal badging process.
 - 6.4 Related documentation and/or access to appropriate technical resources.
 - 6.5 Issue identification, prioritization, and communication to Contractor's support staff.
 - 6.6 Scheduling and coordinating of regular project team meetings and work sessions as needed.
 - 6.7 Work space for Contractor's project management or technical resource staff, if needed.
 - 6.8 Facilities for all meetings, work sessions, and training classes, including any necessary audio-visual equipment.
 - 6.9 Conduct acceptance testing with assistance, if necessary, by Contractor.
 - 6.10 Review and approval of milestones, deliverables, status reports and invoices.

7.0 TRANSITION/CONTRACT CLOSE-OUT

The Contractor agrees that the services provided by any resulting Contract are vital to ACCD's overall operations; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of any resulting Contract a successor may continue these services; the successor shall need phase-in training; and that Contractor shall cooperate in order to effect an orderly and efficient transition. Accordingly, the Contractor shall provide transition/contract-close out services for no less than ninety (90) days, unless otherwise stated in the Contract, prior to Contract expiration to its successor at no extra charge to ACCD.

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	ALPHEUS	
Physical Address	1905 E. 6TH STREET, AUSTIN, TX 78702	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	<input checked="" type="radio"/> No
Or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	<input checked="" type="radio"/> YES	
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	<input checked="" type="radio"/> Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
Or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference SheetResponding Company Name ALPHEUS

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

1. Company's Name ESC REGION 13
Name and Title of Contact STEVE STROUD CISSP
Project Name DIA COLOCATION AND TRANSPORT (16+)
Present Address 5701 SPRINGDALE RD
City, State, Zip Code AUSTIN, TX 78723
Telephone Number (512) 850-5001 Fax Number ()
Email Address steve.stroud@esc13.txed.net

2. Company's Name RIGHT ROUND
Name and Title of Contact CLIFF SKOLNICK
Project Name DIA, COLO, TRANSPORT, ETC.
Present Address 1107 W. 8TH
City, State, Zip Code AUSTIN, TX 78704
Telephone Number (415) 867-4750 Fax Number (512) 321-0000
Email Address cliff@rightround.com

3. Company's Name SXSW LLC
Name and Title of Contact PETE WHITFIELD
Project Name IT DIRECTOR
Present Address 400 Bowie
City, State, Zip Code AUSTIN, TX 78701
Telephone Number (512) 674-5323 Fax Number ()
Email Address pete@sxsw.com

Section 0835: Non-Resident Bidder Provisions

Company Name ALPHEUS

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: RESIDENT BIDDER

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Section 0900: Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Form

SOLICITATION NUMBER	PAX0132
PROJECT NAME:	Internet Service Provider

The City of Austin has determined that no goals are appropriate for this project. Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) 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 Bidder/Proposer 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.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No ☒ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope

Yes ☐ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though goals were not assigned, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

ALPHEUS DATA SERVICES, LLC
Company Name KAREN E. HANSON-FLOWERS
SENIOR VICE PRESIDENT
CONTRACT ADMINISTRATION

Name and Title of Authorized Representative (Print or Type)

Karen E. Hanson-Flowers
Signature

17 May 2016
Date

Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Utilization Plan
 (Please duplicate as needed)

SOLICITATION NUMBER:	PAX0132
PROJECT NAME:	Internet Service Provider

PRIME CONTRACTOR / CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone Number		Fax Number	
Name of Contact Person			
Is Company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

 Name and Title of Authorized Representative (Print or Type)

 Signature

 Date

Provide a list of all proposed subcontractors / sub-consultants / suppliers that will be used in the performance of this Contract. **Attach Good Faith Effort documentation if non MBE/WBE firms will be used.**

Sub-Contractor / Sub-Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethics / Gender Code: <input type="checkbox"/> Non-Certified		
Vendor ID Code			
Contact Person		Phone Number	
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor / Sub-Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethics / Gender Code: <input type="checkbox"/> Non-Certified		
Vendor ID Code			
Contact Person		Phone Number	
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS

WE DO NOT CARRY EXPLOSION, COLLAPSE AND/OR
UNDERGROUND COVERAGE IN OUR GENERAL LIABILITY
Policy.

CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

**OFFICE USE ONLY
CERTIFICATION OF FILING**

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

Alpheus Data Services, L.L.C.
Houston, TX United States

Certificate Number:
2016-99535

Date Filed:
08/15/2016

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

City of Austin

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

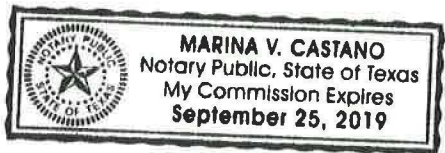
MA 8200 NA160000131
Dedicated Internet Access

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

5 Check only if there is NO Interested Party.

**6 AFFIDAVIT**

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



Karen E. Hanson-Flowers
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said *Karen E. Hanson-Flowers*, this the 15 day of August, 2016, to certify which, witness my hand and seal of office.

M. V. Castano

Signature of officer administering oath

MARINA CASTANO

Printed name of officer administering oath

Contract Administrator

Title of officer administering oath