



Amendment No. 1
of
MA 5600 NA170000017
for
Automated Passport Control Support and Maintenance
between
Precocity, LLC ("Contractor")
and the
City of Austin

1.0 The City hereby amends this Contract by adding an additional \$60,999 to the Total Contract Amount.

2.0 The City hereby amends this Contract by extending the contract by an additional 6 months.

Contract term is now 11/01/2016 – 04/30/2019
2020

Term	Action Amount	Total Contract Amount
Original Term: 11/01/2016 – 10/31/2019	\$134,000	\$134,000
Amendment No. 1: Administrative Increase & Contract Extension 11/01/2016 – 04/30/2020	\$60,999	\$194,999

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: _____

Handwritten signature of Tyler Ludwig.

Date: October 30, 2019

Printed Name: Tyler Ludwig
Authorized Representative

Precocity, LLC
~~6600 Dallas Parkway, Suite 100~~
~~Plano, TX 75024~~
14800 Landmark, Blvd.
Suite 230
Dallas, TX 75254

Signature: _____

Handwritten signature of Elisa Folco.
10/31/2019

Date: _____

Elisa Folco
Procurement Specialist IV

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

11/01/2016

The Austin City Council approved the execution of a contract with your company for Licensing and Software for Passport Control in accordance with the referenced solicitation.

Responsible Department:	Aviation Department
Department Contact Person:	Phillip Bays
Department Contact Email Address:	Phillip.Bays@austintexas.gov
Department Contact Telephone:	(512) 530-2638
Project Name:	Licensing and Software for Passport Control
Contractor Name:	Precocity LLC
Contract Number:	MA 5600 NA170000017
Contract Period:	11/01/2016 – 10/31/2019
Dollar Amount	\$134,000.00
Extension Options:	None
Requisition Number:	16110100078

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,

Sai Xoomsai Purcell
Senior Buyer Specialist
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
PRECOCITY, LLC.
For
AUTOMATED PASSPORT CONTROL SUPPORT AND MAINTENANCE**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Precocity, LLC, a Delaware limited liability company, ("Company"), having offices at 6860 Dallas Parkway, Ste. 130, Plano, Texas 75024.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be John Lutes, Phone: 312-550-9275, Email Address: JohnLutes@precocityllc.com. The City's Contract Manager for the engagement shall be Phillip Bays, Phone: (512) 530-2638, Email Address: Phillip.Bays@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

SECTION 3. COMPENSATION

3.1 Contract Amount. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$134,000.00 (\$58,000 for year one, \$38,000 for year two, and \$38,000 for year three).

3.2 Invoices.

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Aviation Department
Attn:	Phillip Bays
Address	Phillip.Bays@austintexas.gov

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

3.3 **Payment.**

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect from November 1, 2016 (the "Effective date") and for an initial term of 36 months.

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

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

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

4.4 **Termination.**

4.4.1 This Software License Agreement and the license shall commence as of the Effective Date hereof and shall continue in effect thereafter until the City terminates the Agreement upon 30 day advance notice or unless terminated in accordance with the terms of this Agreement.

4.4.2 Upon termination of the Agreement, the licensor agrees to hold over under the terms and conditions of this Agreement for such a period of time as is determined reasonably necessary by the City to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.4.3 This Agreement shall immediately terminate if either party fails to cure any material breach of this Agreement, or any other portion of the Agreement of which it is a part, within thirty (30) days of receiving notice of such breach from the non-breaching party. Upon any such termination, all Licenses shall immediately cease and Licensee shall: (i) immediately discontinue usage of the Software; (ii) promptly return or destroy all copies of the Software, including removal from the Approved Hardware and any other computer and/or server to which the Software had been copied (whether or not modified or incorporated with or into other software), along with all Documentation and other written materials; and (iii) verify these actions in writing to Licensor.

4.4.4 The terms of the Agreement relating to confidentiality shall survive termination of the Agreement or any portion thereof for any reason. Termination is not an exclusive remedy and all other remedies will be available whether or not the Agreement or the License(s) are terminated.

4.4.5 Upon termination of this Agreement as a result of your default, or upon expiration of the Term of your License unless renewed (but, in such case, only as to the Software whose licenses have expired), your license will terminate, and you are required to return or destroy, as requested by licensor, all copies of the Software in your possession (whether modified or unmodified), and all other materials pertaining to the Software, including all copies thereof. You agree to certify your compliance with such requirement upon Licensor's request.

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

SECTION 5. OTHER DELIVERABLES

5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No 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. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit A. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

SECTION 6. MISCELLANEOUS

6.1 Indemnity.

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

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

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

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

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

6.2 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.

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

To the City:

City of Austin, Purchasing Office

ATTN: Sai Xoomsai Purcell, Senior Buyer Specialist

P O Box 1088

Austin, TX 78767

To the Contractor:

Precocity, LLC.

ATTN: Tyler Ludwig

6860 Dallas Parkway, Suite 130

Plano, TX 75024

6.4 Confidentiality.

6.4.1 "Confidential Information" shall mean all information related to the business of the other party and its subsidiaries, affiliated companies, or clients that may be obtained by the receiving party from any source as a result of this Software License Agreement or the Agreement of which it is a part including, but not limited to, information relating to the pricing, methods, processes, financial data, lists, programs, research, developments, clients or related information of the disclosing party. Licensee specifically acknowledges that the Software, Documentation and other written materials provided hereunder are Confidential Information and constitute valuable trade secrets of Licensor and agrees to prevent their disclosure or use to or by any person, firm or enterprise other than Licensee, or this authorized subsidiaries and affiliated companies.

6.4.2 Confidential Information shall not include any information that : (i) becomes known to the receiving party prior to the disclosing of such information; (ii) was part of the public knowledge or literature, not as a result of any action or inaction of the receiving party; (iii) was subsequently disclosed to the receiving party from a source other than the disclosing party without an obligation of confidentiality to the disclosing party; (iv) was independently developed by the receiving party without access to disclosing party's Confidential Information; or (v) as required to be disclosed pursuant to a court order in any legal proceeding or its equivalent.

6.4.3 Neither party shall use the name of the other party in advertising or publicity releases without the prior written consent of the other. Notwithstanding the foregoing, Licensee hereby provides such written consent that its name be published as part of Licensor's standard customer list.

6.4.4 Each party agrees not to use the Confidential information disclosed to it by the other party for its own use or for any purpose except to carry out the intent of this Agreement and to take reasonable security precautions, at least as great as the precautions each takes to protect its own Confidential information, to maintain the confidentiality of the Confidential disclosing party. Each party agrees to notify the other in writing of any misuse or misappropriation of such Confidential information of the other which may come to its attention.

6.5 **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.

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

6.7 **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.

6.8 **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.

6.9 **Dispute Resolution.**

6.9.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll

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

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

6.10 **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.

6.11 **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.

6.12 **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.

6.13 **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.

6.14 **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.

6.15 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

6.16 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

6.16.1 This contract;

6.16.2 Attachment A – Automated Passport Control Support and Maintenance Agreement

6.16.3 Attachment B – Price Quote

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

Precocity, LLC

By: 

Signature

Name: Tyler Ludwig

Printed Name

Title: Contract Administrator

Date: 10/01/2016

CITY OF AUSTIN

By: 

Signature

Name: Sai Purcell

Printed Name

Title: Senior Buyer Specialist

Date: 11/1/16

List of Exhibits

Attachment A	Automated Passport Control Support and Maintenance Agreement
Attachment B	Price Quote
Exhibit A	Non Discrimination Certification, Section 0800
Exhibit B	Non-Suspension or Debarment Certification

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

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

**City of Austin
Minimum Standard Non-Discrimination in Employment Policy:**

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

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

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

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

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

Sanctions:

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

Term:

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

Dated this 1st day of NOVEMBER, 2014

CONTRACTOR
Authorized
Signature

Title

PRECOCITY, LLC
[Signature]
CONTRACT ADMINISTRATOR

EXHIBIT B

City of Austin, Texas
Section 0805

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. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Proximity, LLC

Signature of Officer or
Authorized
Representative:



Date:

11/01/2014

Printed Name:

Tyler Ludwig

Title

Contract Administrator

Attachment A

AUTOMATED PASSPORT CONTROL SUPPORT AND MAINTENANCE AGREEMENT

This Automated Passport Control ("APC") Support and Maintenance Agreement ("Agreement") is made by and between the City of Austin ("Customer"), a home-rule municipality incorporated by the State of Texas, and Precocity, LLC, a Delaware limited liability company, ("Company"), having offices at 6860 Dallas Parkway, Ste. 130, Plano, Texas 75024.

1. Definitions:

"Airport" means Austin-Bergstrom International Airport in Austin, Texas.

"Approved Hardware" means the Automated Passport Control kiosks and related hardware sold to Customer

"Business Day" means Monday through Sunday from 4 AM to 11:59 PM Central Time.

"Correction" means replacement distribution media or corrective code or documentation which rectifies an Issue. Company may, at its discretion, modify the end-user documentation to (i) remove inaccuracies in the documentation, or (ii) describes changes, modifications or improvements made to the Maintained Software or Approved Hardware. 'Correction' includes, but is not limited to, workarounds, support releases, update disks, immediate correction disks, component replacements, and patches.

"Issue" means (i) a defect in the distribution media or material difference between the operation of the Maintained Software and the description of the operation of the Maintained Software as provided in then current end-user documentation provided by Company for the Maintained Software (ii) any condition in the Approved Hardware which prevents the availability or the functionality of the APC system.

"License Agreement" means the End User License Agreement, or other form of written license agreement for Maintained Software, between Company (or one of Company' business partners, as the case may be), and Customer.

"Maintained Software" means the registered copy of the Company software product licensed to Customer and designated by Customer on the Maintenance Registration Form.

"Maintenance Registration Form" means the form supplied by Company which must be completed by each Customer providing Company with relevant information regarding Customer and the Maintained Software or Approved Hardware as it relates to the provision of support and maintenance services.

"Priority 1 Issue" means an Issue in the Maintained Software or Approved Hardware which causes substantial downtime of the system(s), or which causes data corruption, or which otherwise renders the Maintained Software or Approved Hardware unusable. Issues given this priority have no viable workaround or avoidance procedure.

"Priority 2 Issue" means a significant Issue in the Maintained Software or Approved Hardware which results in severe impact to users of the Maintained Software or Approved Hardware, but for which a workaround or avoidance procedure is available.

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"Priority 3 Issue" means any Issues that result in a partial, non-critical loss of functionality of the Maintained Software or the Approved Hardware, or a technical issue with a component that does not affect the usability of the Maintained Software or the Approved Hardware.

"Priority 4 Issue" means any Issue related to documentation, future enhancement request, or documentation defects.

"Support Contact" means the person authorized by Customer and designated on the Maintenance Registration Form to communicate with Company to request and receive the Maintenance Services (as defined below). The Support Contact may be an employee of Customer or an agent or consultant of Customer who provides services directly to Customer as the licensee of the Maintained Software. The Support Contact should be knowledgeable about how the Maintained Software and Approved Hardware are being used and about the computer/operating system on which Maintained Software is executed.

2. Support and Maintenance:

Subject to payment of the applicable support and maintenance fees and compliance by Customer with the terms of this Agreement and the License Agreement, Company will provide maintenance and support for the Maintained Software and Approved Hardware consisting of major releases; minor releases; fixes to reported Issues; and incident/support services, each as further described below in this Agreement ("Maintenance Services"). Major and minor releases shall be compatible with existing Customer and Airport systems.

a. Major Release:

Company may, but is not required, to release at various intervals, a major release of the Maintained Software which will contain a new set of software and may contain replacements for all or some of the existing documentation set. The timing and actual release of any such major release is solely under the control of the Company product management team. When a major release is prepared, a notice of this major release will be made available to Customer under this Agreement and the release will be available to Customer without additional charge. Notwithstanding the foregoing, if any release contains significant new or improved functionalities, Company shall have the right to make such release available to Customer. Customer shall only pay additional license fees and/or enter into other terms as Company requires of its licensees similarly situated as Customer for major releases that include additional third party software required for such release and installation.

b. Minor Release:

Company may from time to time prepare a minor release of the Maintained Software which will contain a new set of software and may contain replacements for all or some of the existing documentation set. The timing and actual release of any such minor release is solely under the control of the Company product management team but upon a minimum of 7 days advance notice to the Customer. In the event the minor release may have a significant impact on the Customer's business operations, the timing and actual release of such minor release shall be upon the mutual agreement of the parties. If a minor release is prepared, the release will be available to Customer without additional charge.

c. Fixes to Reported Issues:

In response to a confirmed Issue in the Maintained Software (whether reported by Customer or another user of the Maintained Software), Company shall use reasonable efforts, as mutually agreed upon by both parties, to provide a Correction. When provided under this Agreement, such Correction

Attachment A

will be provided to Customer without additional charge. Customer shall withdraw its request for Maintenance Services on a past workaround, support release, update disk or immediate correction disk, or electronic transfer equivalent, component replacement, patch or other form of Correction after accepting a subsequent major release, support release, update disk or electronic transfer equivalent containing a Correction of the Issue.

d. Incident/Support Services:

Incident/support services are provided on Business Days based on the Response Times set forth on Schedule 1 to this Agreement. Incident/support services are available by Customer contacting Company' Customer Support team via any of the means described on Schedule 2 to this Agreement. When a Customer contacts Company' Customer Support team, a support ticket is initiated. Each support ticket is assigned a unique ticket number that is used to track Customer's issue from its initiation to resolution. Customer is expected to use the assigned support ticket number for all communication relating to that specific issue.

e. Severity and Response Times:

When a Customer support ticket is created and assessed by a Company support technician, a case severity is assigned; severities are used to ensure that the most critical issues are given Urgent or High priority by the Company Support organization. Severity of a case is determined by a support technician at the time the case is created. During peak times where there are a high volume of support requests, cases with higher severity take precedence. Schedule 1 outlines each priority level, along with an anticipated initial response time (which is not necessarily reflective of the time for resolution). Any support request received after Business Day hours will have an initial response the next business day.

f. Connection Remote Tools

Customer agrees to provide Company Customer Support staff with the necessary access to the Maintained Software and Approved Hardware including remote web access or other customary means of Issue investigation. Upon prior advance notice and written approval from Customer, Company may record on-line system access for training and protection purposes. At all times during the term of this Agreement, Company agrees to comply with Customer's network security & remote access rules, procedures, and policies, as amended from time to time. g. Company shall install the necessary software and hardware as required under federal law and regulations to enable the APC system be accessible to passengers with disabilities by, including but not limited to: (1) ensuring that all automated airport kiosks installed on or after December 12, 2016, are models that meet the design specifications set forth in 14 CFR 382 until at least 25 percent of automated kiosks provided in each location at the Airport meets this specification; and (2) ensuring that at least 25 percent of automated kiosks at the Airport meet the design specifications set forth in 14 CFR 382 by December 12, 2022.

3. Software Not Covered by this Agreement:

The following items are explicitly excluded from coverage under this Agreement:

- a. Maintained Software that has been altered or modified by Customer;
- b. Any combination of Maintained Software and other software not covered by this Agreement;
- c. Any "custom built" applications, application integration, integration script, workflow script, or customer built or built by third-party or built by Company under a separate written agreement.
- d. A release of Maintained Software for which support and maintenance services has been discontinued;
- e. Issues caused by Customer's negligence or fault;

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- f. Issues resulting from Customer's hardware malfunction not including the Approved Hardware;
- g. Issues arising from or which are a part of CPB's system, unless Company was otherwise notified or advised by CPB of modifications;
- h. Issues that do not significantly impair or affect the operation of the Maintained Software unless it significantly impacts Customer's business operations; and
- i. Maintained Software used on a computer or operating system other than that accepted by Company on the product documentation.

4. Customer Responsibilities:

As a condition to receiving the benefits of this Agreement, Customer agrees to report all suspected Issues to the Company software Customer Support staff. Reports will include sufficient information for Company to reproduce the suspected Issue. Failure to provide this minimum sufficient information may cause delays in responding to the Issues. Customer agrees to use reasonable efforts to assist Company in its efforts to find Corrections to confirmed Issues reported by Customer.

Company shall provide Customer software upgrades, releases, and installation at no additional cost, except as required under Section 2 (a). Customer agrees to install (with Company's assistance if required) and use the newest release or change disk for the Maintained Software sent to Customer by Company within thirty (30) days from functionality and performance site testing demonstrating that the specified features and performance criteria are met and ready for production.

5. Payment:

Without limiting the provisions of the License Agreement pursuant to which Customer has obtained Maintenance Services, the three year warranty fee for Maintenance Services is ONE HUNDRED AND THIRTY FOUR THOUSAND AND NO CENTS (\$134,000.00) and paid in advance in yearly increments of the following:

November 1, 2016 - \$58,000.00

November 1, 2017 - \$38,000.00

November 1, 2018 - \$38,000.00

6. Term and Termination:

Without limiting the provisions of the License Agreement pursuant to which Customer has obtained a limited warranty, Maintenance Services will be provided starting upon final acceptance of the APC system and expire on October 31, 2019. The Maintenance Services provided under this Agreement would cease on midnight (12:00 AM) of November 1, 2019.

Company may, but is not required, to notify Customer of any impending maintenance expiration date. It is Customer's responsibility to exercise the option to renew maintenance prior to the expiration date.

The Customer shall have the right to terminate the Agreement, 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 Company shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The Customer shall pay the Company, 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.

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7. Consequences of Expiration:

If Customer's maintenance and support services expire, then Customer may elect either of the following options:

- (a) Customer must purchase an upgrade to the then current version of the Maintained Software in order to register for a new maintenance period; or
- (b) If Customer has previously received the current upgrade version of the Maintained Software, the start of the new maintenance period will be dated to begin on the date that the previous maintenance period expired so long as Customer has made payment for all amounts that would have been due and payable for such services for another year from that date.

8. Miscellaneous:

The following provisions shall apply to this Agreement:

- (a) Company and Customer may not assign this Agreement (nor its rights to support and maintenance services) to a third party without the prior written consent of the other party.
- (b) This Agreement and all software, documentation and media provided under it are subject to all the terms and conditions of the License Agreement, including, without limitation, the provisions therein regarding Disclaimer of Warranty and Limitation of Liability.
- (c) Company and Customer will comply with all applicable United States, Texas state, and local laws and regulations, including but not limited to, the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations issued by the Department of Commerce.
- (d) This Agreement will be governed in all respects by the laws of the State of Texas without reference to any choice of law's provisions.

9. Information Security:

- (a) In the event Company processes, stores, or transmits credit card information, Company shall comply with the Payment Card Industry Data Security Standards (PCI DSS) requirements, as amended from time to time, as applicable. Additionally, Company will adhere to and abide by the security measures and procedures established by Customer including, but not limited to, compliance with the PCI DSS requirements and all applicable laws pertaining to information security.
- (b) Company shall establish and maintain safeguards against the unauthorized use, destruction, loss, or alteration of Customer data or third party data that Company may gain access to or be in possession of in the performance of this Agreement ("Information Security Plan"). Company will not attempt to access, and will not allow its personnel access to, Customer data or third party data that is not required for the performance of the services of this Agreement by such personnel. Company shall make its Information Security Plan available to the Customer upon request.
- (c) Breach or Potential Breach. In the event Company or Company's subcontractor(s) (if any) discovers or is notified of a breach or potential breach of security relating to Customer's data or third party data, Company shall immediately: (1) notify Customer of such breach or potential breach; (2) if the applicable Customer data or third party data was in the possession of Company at the time of such breach or potential breach, Company will investigate and cure the breach or potential breach; and (3)

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make all information related to the breach or potential breach, including but not limited to, Company's response plan available to the Customer.

Schedule 1

Response Times

Priority	Description	Response Time – Business Day Hours	Response Time – After Hours
Priority 1 Issue	Emergency...system(s) down. Large scale services are deemed inoperable. User's technical resources and/or business operations are down.	15 mins or less. Contact Company's Support email address.	15 mins or less. Contact Company's Support email address.
Priority 2 Issue	System(s) are responding, but in a degraded state. The issue is causing significant impact to the business operations at a large scale. Example: Applications are working for a limited group. Not an enterprise outage.	30 mins or less. Contact Company's Support email address.	30 mins or less. Contact Company's Support email address.
Priority 3 Issue	System(s) are responding; however, there are technical issues which are affecting a user(s) in a negative manner. Example: Hardware or software technical issues; Intermittent network outages.	60 mins or less. Contact Company's Support email address.	60 mins or less. Contact Company's Support email address.
Priority 4 Issue	Systems(s) are operational; however, users may require assistance with a technical question. Example: Need new software installed.	24 hours or less. Contact Company's Support email address.	24 hours or less. Contact Company's Support email address.

Schedule 2

Customer Support Contact Information

Company's Support Phone Number: (972) 378-1030
Company's hours of operation: 8:00AM to 5:00PM CDT
Monday – Friday (Excluding Public and National Holidays)
Operations Manager Contact: John Lutes
(Includes after Business Day Hours) APCSupport@PrecocityLLC.com
Emergency/Urgent Contact: JohnLutes@PrecocityLLC.com
(312) 550-9275

ATTACHMENT B – PRICE QUOTE

ABIA APC KIOSK EXTENDED WARRANTY OF 8 APC UNITS

The extended warranty as referenced in "Attachment A" of the "End User License Agreement". Below is a general summary but please refer to the "Automated passport control support and Maintenance agreement." For the full details.

1. Major release
 - 1.1. Not including 3rd party additional software's required for such release and installation.
 - 1.1.1.Example: If Facial Recognition software additions are available, ABIA would have to pay for additional license fees if 3rd party software is needed but would not have to pay any extra fee for the implementation and installation.
 - 1.2. Hardware upgrades or changes are not included.
2. Minor releases and bug fixes
3. Fixes to reported issues
 - 3.1. Precocity will use reasonable efforts, as mutually agreed upon by both parties, to provide a

Pricing & Warranty Period

Extended Warranty Years	Start Date	End Date
Extended warranty for 8 kiosks for the additional three years after the original warranty including swap stock and training.	11/1/2016	10/31/2019

Extended Warranty Breakdown		Price
Year 11/1/16 – 10/31/2017	8 Kiosks warrantied + Spear Parts	\$58,000
Year 11/1/2017 – 10/31/2018	8 Kiosks warrantied	\$38,000
Year 11/1/2018 – 10/31/2019	8 Kiosks warrantied	\$38,000
Grand Total		\$134,000

Description	QTY	Unit Cost	Frequency	Sale Price
Extended warranty (8 kiosks) 3 year warranty	1	\$112,900	One Time Cost	\$112,900
Zebra Printer	2	\$530	One Time Cost	\$1,060
Zebra Power Supply	2	\$75	One Time Cost	\$150



6860 Dallas Parkway, Ste 130
Plano, Texas 75024
(972) 378-1030

ELO Touch Screen	2	\$925	One Time Cost	\$1,850
3M Document Scanner	2	\$2,360	One Time Cost	\$4,720
CrossMatch Fingerprint Scanner	1	\$4,400	One Time Cost	\$4,400
Dell CPU	2	\$1,460	One Time Cost	\$2,920
EZ 8 ADA Keypad	2	\$250	One Time Cost	\$500
Logitech Camera	2	\$250	One Time Cost	\$500
On-Site Hardware/Software maintenance training for up to 10 employees	1	\$5,000*	One Time Cost	\$5,000*
* Training is the discounted rate of 40 hours of one trainer			Total	\$134,000

Levels of warranty & swap stock

The warranty level offered is defined in the "Attachment A: Automated passport control support and Maintenance agreement". The only additions we recommend is a local swap pool of parts.

These swap parts would be kept at the airport for swapping any broken components. The broken component would be sent in for repair and received later to replenish the swap pool.

Signature

Austin Bergstrom International Airport

Precocity, LLC.

By: 

Phillip Bays, Information Systems Supervisor

Sai Russell

Date: 11/1/16

By: 

Tyler Ludwig, Contract Administrator

Date: 11/01/2016

**CITY OF AUSTIN
FSD - PURCHASING OFFICE**

CERTIFICATION OF EXEMPTION

DATE: <u>7/26/2016</u>	DEPT: <u>Aviation</u>
TO: <u>Purchasing Officer or Designee</u>	FROM: <u>Phillip Bays</u>
BUYER: _____	PHONE: <u>512-530-2638</u>

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

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

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

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

(Please check which exemption you are certifying)

- | | |
|---|---|
| <div><input type="checkbox"/> a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality</div> <div><input type="checkbox"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents</div> <div><input type="checkbox"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property</div> <div><input type="checkbox"/> a procurement for personal, professional, or planning services</div> <div><input type="checkbox"/> a procurement for work that is performed and paid for by the day as the work progresses</div> <div><input type="checkbox"/> a purchase of land or right-of-way</div> <div><input checked="" type="checkbox"/> a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library</div> | <div><input type="checkbox"/> materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits</div> <div><input type="checkbox"/> a purchase of rare books, papers, and other library materials for a public library</div> <div><input type="checkbox"/> paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements</div> <div><input type="checkbox"/> a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters</div> <div><input type="checkbox"/> a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212</div> |
|---|---|

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

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

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Precocity LLC is the end seller, developer and manufacturer of the Automated Passport Control (APC) system branded currently operating in the Austin-Bergstrom International Airport customs hall. Precocity owns all intellectual property rights (including but not limited to patent, copyright, trademark and trade secret rights, anywhere in the world) pertaining that particular Automated Passport Control (APC) system. Parts and software source code used to support the system are only available through Precocity LLC. Any Customs & Border Protection (CBP) required changes or updates to the APC units will not be possible without Precocity LLC support.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City.
- In 2014 ABIA started the Terminal East Infill CIP project which these kiosks were procured from via a competitive bid process. This is for maintenance and support of those devices.
6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Precocity, LLC which will cost approximately \$ 106,100.00.

Phillip Bays


Digitally signed by Phillip Bays
DN: cn=Phillip Bays, o=Information Systems, ou=City
Of Austin, email=phillip.bays@austintexas.gov, c=US
Date: 2016.07.26 14:02:23 -05'00'

Recommended Certification


Originator _____ Date _____

Approved Certification

 _____
Department Director or designee Date 7/27/16

 _____
Assistant City Manager / General Manager
or designee (if applicable) Date 8/3/16

Purchasing Review
(if applicable)

 _____
Buyer Date 11/1/16

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

11/14/12



6860 Dallas Parkway, Ste 130
Plano, Texas 75024
(972) 378-1030

Mr. Phillip Bays, ITIL
Information Systems Supervisor
City of Austin
Austin-Bergstrom International Airport

Dear Phillip,

Precocity LLC is the end seller, developer and manufacturer of the Automated Passport Control (APC) system branded currently operating in the Austin-Bergstrom International Airport customs hall.

Precocity owns all intellectual property rights (including but not limited to patent, copyright, trademark and trade secret rights, anywhere in the world) pertaining that particular APC system. Parts and software source code used to support the system are only available through Precocity LLC. Any CBP requited changes or updates to the APC units will not be possible without Precocity LLC support.

Thank you for your use of our kiosks.

Best regards,

A handwritten signature in black ink that reads "John R. Lutes III". The signature is written in a cursive, flowing style.

John Lutes
Product Manager
Precocity LLC