



Amendment No. 6  
of  
Contract Number MA 5600 15121700007  
for  
Kiosk Maintenance  
between  
IER Inc.  
and the  
City of Austin

1.0 The City hereby amends this Contract by adding an additional \$60,000 to the Total Contract Amount.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Initial Term: 12/15/2015 – 12/16/2016	\$22,007.50	\$22,007.50
Amendment No. 1: 1.1 Administrative Increase, add Kiosks. 1.2 Increase options to \$24,600 each 09/06/2016	\$3,410.40	\$25,417.90
Amendment No. 2: Option 1 – Extension 12/17/2016 – 12/16/2017	\$24,600.00	\$50,017.90
Amendment No. 3: Option 2 – Extension 12/17/2017 – 12/16/2018	\$24,600.00	\$74,617.90
Amendment No. 4: Option 4 – Extension 12/17/2018 – 12/16/2019	\$24,600.00	\$99,217.90
Amendment No. 5: Option 5 – Extension 12/17/2019 – 12/16/2020	\$24,600.00	\$123,817.90
Administrative Increase 1/13/2020	\$60,000.00	\$183,817.90

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: \_\_\_\_\_ January 13, 2020 \_\_\_\_\_

Printed Name: \_\_\_\_\_ Herve Muller \_\_\_\_\_  
General Manager

IER, Inc.  
1000 Industrial Park Road  
Belton, Texas 76513  
[djoliet@ier.aero](mailto:djoliet@ier.aero)

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ 01/13/2020 \_\_\_\_\_

Elisa Folco  
Procurement Specialist IV

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



Amendment No. 5  
to  
Contract No. MA 5600 15121700007  
for  
Kiosk Maintenance  
between  
IER Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective December 17, 2019 to December 16, 2020. No options will remain.
- 2.0 The total contract amount is increased by \$24,600 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/14/2015 – 12/16/2016	\$22,007.50	\$22,007.50
Amendment No. 1: 1.1 Administrative increase, add Kiosks. 1.2 increase options to \$24,600 each 09/06/2016	\$3,410.40 \$0.00 \$3,410.40	\$25,417.90
Amendment No. 2: Option 1 – Extension 12/17/2016 – 12/16/2017	\$24,600.00	\$50,017.90
Amendment No. 3: Option 2 – Extension 12/17/2017 – 12/16/2018	\$24,600.00	\$50,017.90
Amendment No. 4: Option 3 – Extension 12/17/2018 – 12/16/2019	\$24,600.00	\$74,617.90
Amendment No. 5: Option 4 – Extension 12/17/2019 – 12/16/2020	\$24,600.00	\$99,217.90

- 3.0 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.
- 4.0 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: Sharon L. Dolgener 12/26/2019

Printed Name: Sharon L. Dolgener- Treasurer -IER  
Authorized Representative  
IER, Inc.  
1000 Industrial Park Road  
Belton, Texas 76513  
[djoliet@ier.aero](mailto:djoliet@ier.aero)  
214-336-7383

Sign/Date: Jim Howard 12/22/19

Jim Howard  
Procurement Manager  
Austin Energy  
721 Barton Springs Road  
Austin, Texas 78704



Amendment No. 4  
to  
Contract No. 5600 15121700007  
for  
Kiosk Maintenance  
between  
IER Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be December 17, 2018, through December 16, 2019. One (12 month) option will remain.
- 2.0 The total contract amount is increased by \$24,600.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/17/2015 – 12/16/2016	\$22,007.50	\$22,007.50
Amendment No. 1: Additional Kiosks and increase the extension options to \$24,600.00	\$3,410.40	\$25,417.90
Amendment No. 2: Option 1 – Extension 12/17/2016 – 12/16/2017	\$24,600.00	\$50,017.90
Amendment No. 3: Option 2 – Extension 12/17/2017 – 12/16/2018	\$24,600.00	\$74,617.90
Amendment No. 4: Option 3 – Extension 12/17/2018 – 12/16/2019	\$24,600.00	\$99,217.90

- 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: Dan Joliet December 12, 2018

Printed Name: Dan Joliet  
Authorized Representative

Dan Joliet  
IER, Inc.  
1000 Industrial Park Rd.  
Belton, TX 76513  
djoliet@ier.aero

Sign/Date: Bartley Tyler 12/13/18

Printed Name: Bartley Tyler  
Authorized Representative

Sign/Date: [Signature]  
Printed Name: JAMES T. HOUDELL  
12/13/18



Amendment No. 3  
to  
Contract No. 15121700007  
for  
Kiosk Maintenance  
between  
IER Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective December 17, 2017 the term for the extension option will be December 17, 2017 through December 16, 2018 and there are two (2) options remaining.
- 2.0 The total contract amount is increased by \$24,600.00 for the current extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/17/2015 – 12/16/2016	\$22,007.50	\$22,007.50
Amendment No. 1: Additional Kiosks	\$3,410.40	\$25,417.90
Amendment No. 2: Option 1 – Extension 12/17/2016 – 12/16/2017	\$24,600.00	\$50,017.90
Amendment No. 3: Option 2 – Extension 12/17/2017 – 12/16/2018	\$24,600.00	\$74,617.90

- 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.

**Dan Joliet**

Digitally signed by Dan Joliet  
DN: cn=Dan Joliet, o=IER Inc.,  
ou, email=djoliet@ier.aero, c=US  
Date: 2017.10.18 12:50:58 -06'00'

Sign/Date:

Dan Joliet

Printed Name:  
Authorized Representative

Dan Joliet  
IER Inc.  
1000 Industrial Park Road  
Belton, TX 76513  
[djoliet@ier.aero](mailto:djoliet@ier.aero)

Sign/Date:

*Paula Barriffe* 10/20/2017

Paula Barriffe  
Procurement Specialist 1 – IT Procurement Team  
City of Austin  
Purchasing Office



Amendment No. 2  
to  
Contract No. 15121700007  
for  
Kiosk Maintenance  
between  
IER Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises the extension options for the above-referenced contract. Effective December 17, 2016 the term for the extension option will be December 17, 2016 through December 16, 2017 and there are three (3) options remaining.
- 2.0 The total contract amount is increased by \$24,600.00 for option 1 for the extension option period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 12/17/2015 – 12/16/2016	\$22,007.50	\$22,007.50
Amendment No. 1: Additional Kiosks	\$3,410.40	\$25,417.90
Amendment No. 2: Option 1 – Extension 12/17/2016 – 12/16/2017	\$24,600.00	\$50,017.90

- 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: Sharon L. Dolgener 11/15/2016

Printed Name: Sharon L. Dolgener- Treasurer  
Authorized Representative

IER Inc.  
1000 Industrial Park Road  
Belton, TX 76513

Sign/Date: Sai Xoomsai Purcell 11/17/16

Sai Xoomsai Purcell  
Senior Buyer Specialist – IT Procurement Team  
City of Austin  
Purchasing Office



Amendment No. 1  
to  
MA 5600 15121700007  
for  
Kiosk Maintenance  
between  
IER, Inc. (Contractor)  
and the  
City of Austin

1.0 The above referenced contract is amended as follows:

Revise the **Compensation** Section to **increase the initial term not to exceed to \$25,417.90**. This is an increase of \$3,410.40; and **increase the first extension not to exceed to \$24,600.00**. This is an increase of \$11,400.00; and **increase the second extension not to exceed to \$24,600.00**. This is an increase of \$10,200.00; and **increase the third extension not to exceed to \$24,600.00**. This is an increase of \$10,200.00; and **increase the fourth extension not to exceed to \$24,600.00**. This is an increase of \$10,200.00; for a **total estimated contract amount not to exceed \$123,817.90**. This is an increase of \$45,410.40;

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 12/17/15 – 12/16/16	\$22,007.50	\$22,007.50
Amendment No. 1: Additional kiosks	\$3,410.40	\$25,417.90

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

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

5.0 All other terms and conditions remain the same.

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

Authorized Representative:

Contractor Signature: \_\_\_\_\_

Printed Name: Herve Muller

Date: August 19, 2016

IER, Inc.  
1000 Industrial Park Rd.  
Belton, TX 76513

Signature: \_\_\_\_\_

City of Austin Purchasing Office

Printed Name: Gil Bilka

Date: 8/30/16

City of Austin  
124 W. 8<sup>th</sup> St., Ste. 310  
Austin, TX 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
IER Inc.  
For  
Kiosk Maintenance**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and IER Inc. ("Contractor"), having offices at 1000 Industrial Park Rd, Belton, TX 76513.

**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 Dan Joliet, Phone: (214) 336-7383, Email Address: [djoliet@ier.aero](mailto:djoliet@ier.aero). The City's Contract Manager for the engagement shall be Phillip Bays, Phone: (512) 530-2638, Email Address: [Phillip.Bays@austintexas.gov](mailto: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, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$22,007.50 for the initial term, \$13,200.00 for the first extension, \$14,400.00 for the second extension, \$14,400.00 for the third extension, and \$14,400.00 for the fourth extension, for a total estimated contract amount not to exceed \$78,407.50 comprising the software maintenance and support fees.

#### 3.2 **Economic Price Adjustment.**

3.2.1. **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12 period of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed ten percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

3.2.2 **Effective Date.** Mutually approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

3.2.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

3.2.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

3.2.4.1 The following definitions apply:

3.2.4.1.1 **Base Period:** Month and year of the original contracted price (the solicitation close date).

3.2.4.1.2 **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.

3.2.4.1.3 **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

3.2.4.1.4 **Change Factor**: The multiplier utilized to adjust the Base Price to the Adjusted Price.

3.2.4.1.5 **Weight %**: The percent of the Base Price subject to adjustment based on the index change.

3.2.4.2 **Adjustment-Request Review**. Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

3.2.4.2.1 Utilize final Compilation data instead of Preliminary data

3.2.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

3.2.4.3 **Index Identification**. Complete table as they may apply.

Weight % or \$ of Base Price: 100	
Database Name: Producer Price Index Data	
Series ID: WPU34	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area:	
Description of Series ID: Software Publishing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: ALL	

3.2.5 **Calculation**. Price adjustment will be calculated as follows:

3.2.5.1 **Single Index**. Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Price
Equals the Adjusted Price

3.2.6 If the requested adjustment is not supported by the referenced index, the City, as its sole discretion, may consider approving an adjustment on fully documented market increases.

### 3.3 **Invoices**.

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

3.3.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

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

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

#### 3.4 **Payment.**

3.4.1 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.

**3.4.2 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.**

3.4.3 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:

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

3.4.3.2 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;

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

3.4.3.4 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;

3.4.3.5 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;

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

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

3.4.4 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.

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

3.5 **Retainage.** This provision does not apply.

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

3.7 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.7.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

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

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

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

### 3.8 **Final Payment and Close-Out.**

3.8.1 The making and acceptance of final payment will constitute:

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

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

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 4 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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

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

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein,

(c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

**4.4 Termination For Cause.****Limitation of liability.** 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 thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) 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. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, CONTRACTOR'S TOTAL LIABILITY UNDER THIS CONTRACT, WHETHER UNDER CONTRACT, TORT, OR UNDER ANY OTHER LIABILITY THEORY, SHALL NOT EXCEED THE AMOUNT OF THE PRICE PAID BY THE CITY UNDER THIS AGREEMENT BY THE DATE OF OCCURRENCE OF THE EVENT GIVING RISE TO THE CLAIM. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

## **SECTION 5. OTHER DELIVERABLES**

**5.1 Insurance:** The following insurance requirements apply.

### **5.1.1 General Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

5.1.2.2 **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. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **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. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

## 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 Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the

City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. 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 employment practice against individuals with disabilities as defined in the ADA.

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

### **5.3 Delays.**

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

**5.3.2** Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**5.4 Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables, when such deliverables are sold to the City. For the sake of clarity this transfer of rights does not include the transfer to the City of any industrial or intellectual property rights relating to the deliverables, as such intellectual and industrial property rights shall at all-time remain with the Contractor or its own suppliers, as applicable.

5.5.1 **Patents.** N/A

5.4.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor shall retain all copyrights in and to such deliverables, and the City shall be granted a royalty free license to such copyright, for the duration of the use by the City of the concerned deliverables..

5.4.3 **Additional Assignments.** The Contractor shall retain for itself and its own suppliers all copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries pertaining to the Deliverables

5.5 **Rights to Proposal and Contractual Material.** N/A

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

## **SECTION 6. WARRANTIES**

6.1 **Warranty – Price.**

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

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

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

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

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be i) for Deliverables which consist of full units of hardware (excluding consumables), at least one year from the delivery date of the concerned deliverable and ii) for the performance of Services, 3 months from the date of performance, for the same defect with the same origin. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source. This obligation is subject to the limitation of liability set out in clause 4.4.

## **SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work.** When services are to be provided at the City Sites, which is not contemplated at the date of signature of this agreement, the City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

### **7.2 Workforce.**

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

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

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

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

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

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any significant litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **Right To Audit.**

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

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

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

## 7.7 **Indemnity.**

7.7.1 Definitions:

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

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

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

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

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

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

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

To the City:  
City of Austin, Purchasing Office  
ATTN: Contract Administrator  
P O Box 1088  
Austin, TX 78767

To the Contractor:  
IER Inc.  
ATTN: Contract Manager  
1000 Industrial Park Rd  
Belton, TX 76513

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

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

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

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

**7.14 Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this

section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

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

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

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

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

## 7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between

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

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

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

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

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

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to

contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

## 7.22 **Subcontractors.**

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

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

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

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

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

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

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

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

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

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

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

7.25 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
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
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If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

**7.28 Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

**7.29 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.

7.29.1 any exceptions to the Offer accepted in writing by the City;

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

**7.29.4** the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

~~7.29.4~~ **7.29.5** The Solicitation

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

IER Inc.

By: \_\_\_\_\_  
Signature

Name: Sharon L. Dolgener  
Printed Name

Title: Treasurer

Date: 12/15/2015

CITY OF AUSTIN

By: \_\_\_\_\_  
Signature

Name: Gil Zilkha  
Printed Name

Title: Contract Administrator

Date: 12/15/15

## **List of Exhibits**

Exhibit A	Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800

**EXHIBIT A**  
**Pricing Agreement**



November 8, 2015

Phillip Bays  
Information Systems Supervisor  
Austin Bergstrom International Airport  
City of Austin – Aviation Department

**CC:** Gil Zilkha, Contract Administrator, City of Austin Purchasing Office

**RE:** IER 919 CUSS Kiosk Maintenance Training, Parts and Annual Hardware Support Quotation-Quote Extension & IER General Terms & Conditions of Sale Update.

Dear Phillip,

This is a quote extension to May 20, 2015 offer. Also, we have updated the quote with our current terms and conditions.

This quotation addresses your request for hardware support, hardware maintenance training and hardware support your IER 919C kiosks.

Austin receives support from AirIT by separate agreement with AirIT for CUSS administration (software maintenance activities, airlines deployment activities, updates, Level III software support) and monitoring. It is our understanding Austin plans to contract directly with IER for kiosk hardware support.

The prices quoted here are valid purchase orders received by **December 31, 2015**.

Should you have any questions, please don't hesitate to give me a call.

Best Regards

Dan Joliet  
Director of Sales & Service  
IER Inc.

## CONTENTS

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## 2. Financial Offer Training, Parts and Hardware Support Pricing

Description	QTY		Frequency	Sale Price
Hardware Maintenance Training (Level 1 & Level II)	1	\$2,906.00	once time cost	\$2,906.00
Travel for Training	1	\$150.00	once time cost	\$150.00
Initial stock of highest failure parts spare parts	1	\$6,551.50	once time cost	\$6,551.50
Shipment	1	\$100.00	once time cost	\$100.00
Annual Part replacement/repair per kiosk	10	\$1,230	Annual recurring	\$12,300

### Annual Summary

Description	Year 1	Year 2	Year 3	Year 4	Year 5
Table 1	\$22,007.50	\$12,000.00	\$14,400.00	\$14,400.00	\$14,400.00
Additional 2 kiosks		\$1,200.00			
<b>Total</b>	<b>\$22,007.50</b>	<b>\$13,200.00</b>	<b>\$14,400.00</b>	<b>\$14,400.00</b>	<b>\$14,400.00</b>

- ❖ Pricing covers the first 12 kiosk delivered to Austin. 8 additional kiosks will need to be added after the warranty period
- ❖ Maintenance training (Level One and Level Two)
  - Travel for training
- ❖ Parts
  - A set of the most commonly used parts including:
    - 2 maintenance keyboards
    - 2 IER400 printer printheads
    - 1 IER400 spare printer
    - 1 spare boarding pass printer
    - 1 main electronics board
  - Shipment of parts to Austin
- ❖ Parts replace or repaired as needed
- ❖ Annual Summary is based upon the current number of kiosks delivered or on order with IER. As Austin adds more kiosks in the future, the costs will increase.

**Level I maintenance** activities are activities which do not require replacement of a part or subassembly. This include:

- Loading and replacement of paper consumables
  - Boarding pass and bag tag stock. IER does not provide paper!
- Basic troubleshooting
- Clearing paper jams
- Rebooting the system

**Level II Hardware Maintenance Training** enables technicians to diagnose a faulty module and swap put with a replacement part from IER.

**IER Level III Hardware support** is available Monday- Friday excluding holidays during normal business hours (8:00AM-5:00PM US Central time) via email. Level III support provides the site access to IER senior level hardware, troubleshoot and diagnose recurrent faults. **This support is provided via**

| phone or email. Additional cost is applicable for on-site support.

### 3. Warranty Conditions

IER provides a one (1) warranty on kiosk warranty hardware parts and labor from the date of shipment from IER. At the time of purchase customer can choose to extend the warranty up to 5 years for additional cost.

IER guarantees that its products conform to the manufacturer's specifications and will be free of material and workmanship defects. Should any defect occur, IER will correct the defect subject to the following conditions:

LABOR: IER will pay for labor services by an IER workshop (Belton TX).

PARTS: IER will supply new or rebuilt replacement parts (at its discretion).

IER parts purchase warranty is 30 days from shipment, and IER repair warranty is 90 days from shipment.

For kiosks, the warranty applies to return of the defective module, not whole kiosks.

#### **Hardware warranty**

The hardware warranty includes the following:

- Repair of the equipment within 5 working days in our workshop.
- Identification and diagnosis failures,
- Implementation of relevant evolutions according to IER Technical Bulletins,
- Labor,
- Spare parts including worn parts (except refurbishment & consumables),
- Complete adjustment of relevant modules,
- All QA controls and tests with customer's specific firmware and paper stock (Tickets, Boarding Passes & Bag Tags to be provided by customers).
- Return shipment within the Continental US.

#### **Warranty exclusion**

- Repair of equipment with no fault found. In that case, IER will charge a service fee based upon our then current labor rates. This includes Level One Maintenance activities. Level One Maintenance is a task, which can be performed without the replacement of a part or subassembly, and includes loading paper, clearing a jam, rebooting the device or routine cleaning. Standard Charge \$150 per incident.
- Repair of equipment considered dirty or being beyond economical repair in compliance with common practice including in terms of preventative maintenance. Equipment considered beyond economical repair is equipment presenting simultaneously several failures or equipment that has been repaired with used parts from other equipment (cannibalized equipment).
- Repair of Equipment returned with parts missing, equipment subject to attempted repairs by a third party or equipment not used according to IER specifications. Equipment used with non-IER parts or non-IER consumables.
- Damage (intentional, not intentional or act of God) & abuse
- For Equipment presenting any of the conditions described above, IER shall draw up a separate estimate based upon IER's then current price list and labor rate subject to the customer's approval. Should the estimate be rejected, IER will charge a flat USD \$150 excluding taxes.
- Any refurbishment or retrofit of the equipment.
- Technical Consumables (thermal heads, magnetic heads, ribbons...)
- Logistics from customer's site to the IER repair center.

- Customs Clearance and other administrative fees

#### 4. Specific Terms and Conditions

Delivery lead-time:

Parts: 4-6 weeks from order

Incoterm:

Part orders: Ex-works IER Belton, Texas, unless shipment costs appear on purchase order

Invoicing Conditions:

Training: At beginning of training service

Parts: at time of shipment

On-site support: After completion of service.

Annual Part replacement & repair: annually in advance

Payment Conditions:

30 days from invoice with IER Finance approval, otherwise payment in advance.

Offer valid until **December 31, 2015**

Taxes: Prices excludes sales tax.

#### 5. Order Processing and Follow-up

IER Inc.  
[IER-INC-PO@IER.AERO](mailto:IER-INC-PO@IER.AERO)

Please CC Dan Joliet on all orders

[djoliet@ier.aero](mailto:djoliet@ier.aero)

## 6 IER Standard Terms of Sale

### GENERAL TERMS AND CONDITIONS OF SALE

**1. GENERAL INFORMATION** These General Terms and Conditions of Sale ("Terms") shall govern relations between IER SAS and/or its subsidiaries ("IER") and the party placing the Order ("the Client").

The term "Supply(ies)" means all sales of hardware products ("Supply of Hardware"), (of which consumables, including RFID labels and spare parts), software licences ("Supply of Software") and any service provision ("Supply of Services") covered by the Order.

The Terms may be supplemented by the Special Terms and Conditions set out in detail in our Supply proposal and its annexes ("the Offer"), our Order receipt acknowledgement and our invoice. The Contract concluded between IER and the Client is composed, in descending order of prevalence, by the Special Terms and Conditions, the Terms and the Order or Orders. Placement of an Order implies outright acceptance of the Terms, which can only be changed by a written amendment signed by IER and the Client. Any terms and conditions appearing in any document of the Client's which are contrary to or not anticipated by the Terms shall not be enforceable against IER. The fact that IER does not invoke one of the clauses of the Terms does not constitute waiver by IER to invoke same at a later date.

**2. ORDERS** **2.1.** The Contract is formed on the date and under the terms and conditions of the Order receipt acknowledgement issued by IER or, failing that, when IER commences performance of the Supply. All Orders are firm and irrevocable. **2.2.** The Client may not cancel an Order, in whole or in part, without IER's prior written agreement and payment of compensation. The amount of compensation, deducted against payments already made, shall be at IER's discretion a) equal to the amount of the entire prejudice caused to IER by the cancellation or b) equal to a flat rate fixed at i) 20% of the amount of the Order excl. taxes should cancellation be requested within 15 calendar days of the Order placement date or ii) 70% of the amount of the Order excl. taxes should cancellation be requested more than 15 calendar days after the Order placement date. **2.3.** The Client may not modify an Order (especially with regard to the specifications, quantities and performance lead times of Supply) without IER's prior written agreement and renegotiation of the initial economic terms and conditions of the Contract in order to redress the entire prejudice caused to IER by such modification. Should the Client fail to agree to the new terms and conditions applicable, IER may deem the Order to be cancelled through fault of the Client and request payment of the compensation set out in Paragraph 2.2.

### **3. PRICE – PAYMENT TERMS**

Prices are stated and payable in the currency specified in the Special Terms and Conditions or, failing that, in USD. Prices are net, excluding taxes and Ex Works IER's premises (EXW, Incoterms ICG 2010), standard packing included. They include solely the Supplies specified in the Contract.

Prices are valid for the period specified in the Special Terms and Conditions or, failing that, for a period of 3 months from the date of the Offer. Prices of spare parts and consumables (excluding RFID labels) are changed once a year by IER. Prices of the maintenance services are revised once a year by applying the Syntec Index, relating to IT labour costs. Prices for Supply of Services or Supply of Hardware specific to the Client are defined with regard to the Client's needs as understood by IER at the date of the Offer and shall be modified ipso jure by IER in the event of amendment or further clarification of such needs.

The Supplies are payable in advance within 8 days following Order placement. Depending on the Contract's context (in particular, the Client's geographic location and financial status, past record, nature of the Supplies), the Special Terms and Conditions may stipulate different payment terms, in accordance with the following: a) deposit payment with Order: 35% of the total Order amount excluding taxes, plus VAT, b) interim payments proportional to performance of the Contract, c) invoicing of the balance upon Delivery of the Supply.

Maintenance and extended warranty services shall be invoiced in advance for the duration of the Contract. Subject to the above provisions, invoices shall be issued not later than the date of Delivery of the Supply. They are payable within 30 days from date of invoice, with no discount for early payment.

In the event of a delay or postponement not attributable to IER, or any event entitling invoicing of all or part of the price of the Supply, IER may invoice such price on the date originally agreed for completion of the event in question, for payment within the above time limit. The Client agrees to refrain from invoicing IER for any amount not expressly accepted as due by IER. Payment cannot be delayed, even in the event of a dispute. Any failure to effect full payment upon the due date shall result ipso jure in favour of IER: (i) immediate early payment without formal notice of any sums due, including bills of exchange for any reason whatsoever and (ii) immediate suspension without formal notice of the performance of all Orders and services in progress, especially pertaining to warranty and (iii) implementation of penalties by application of 1% over the prime interest rate.

All without prejudice to IER's right to exercise Article 11. Notwithstanding transfer of risk to the Client on the Delivery date, IER shall retain title of the Supplies sold until actual payment of the full price and any incidentals. The claim shall ipso jure cancel the sale, with IER keeping any deposit paid as initial damages. IER can claim any Supplies of the same kind and quality as the unpaid Supplies.

**4. DELIVERY AND TRANSFER OF RISK** Depending on the type of Supply, delivery includes i) making the Supply of Hardware available for the carrier on IER's premises, even if IER takes care of the transport or ii) sending the Client the 1<sup>st</sup> version of the Supply of Software or iii) performing the Supply of Services. In the event of damage, the Client must make any reservations to the carrier in the legal forms and time limits.

The Delivery Date is the date specified in the Order receipt acknowledgement or, failing that, in the Special Terms and Conditions. The delivery shall begin to run at whichever is the later between i) the Order receipt acknowledgement or ii) payment of the deposit or iii) performance by the Client of any task or obligation required for the Delivery. The Delivery lead time is in working days, excluding long public

holiday weekends and transportation times, and is in working hours if given in hours. The Delivery time is approximate and may be modified by IER in the event of circumstances beyond the reasonable control of IER. A delay in Delivery may give rise to neither Order nor Contract cancellation nor to damages or penalties.

**5. RECEIPT/ACCEPTANCE OF SUPPLY** The Client must notify IER of any apparent non-conformity of the Supply within 8 days of Delivery, which IER shall remedy under the terms of warranty in Article 6. The Client may not impose upon IER, in order to defer or be exonerated from performance of his contractual obligations, any receipt or acceptance procedure for Supplies that has not been covered in an acceptance specification approved in advance by IER. In all circumstances, factory acceptance by the Client or putting the Supply into operation or its alteration or processing by the Client constitutes unconditional acceptance of the Supply.

**6. WARRANTY. LIMITATION OF LIABILITY** IER guarantees that the Supply of Hardware (with the exception of consumables and spare parts) and the Supply of Software are compliant with the technical specification of the Supply as delivered by IER or expressly validated by IER if this originates from the Client and as such do not present any malfunction due to a Hardware, manufacturing or design fault. The warranty period is defined in the Special Terms and Conditions or, failing that, is i) 12 months from the Delivery date of the Supply of Hardware and ii) 3 months from Delivery of the 1<sup>st</sup> version of the Supply of Software. There is no IER warranty for software of the Operating System, anti-virus and firewall kind.

This warranty is limited, in accordance with IER's wishes, to i) replacement, reimbursement or free repair, in IER's workshops, of the Supplies of Hardware acknowledged as faulty, which become its property and ii) correction in the IER laboratories of reproducible defects in the Supply of Software.

There is a 3-month warranty on maintenance or repair services of the Supply of Hardware (same fault, same origin). Warranty returns to IER shall be carried out at the risk and expense of the Client, reshipment to the Customer being made at IER's risk and expense (excluding import duties). No returns are accepted without prior written agreement from IER. Any intervention under the warranty cannot extend the warranty period.

IER's warranty and liability are excluded if the Supply is unpaid at the due date, or if it is not stored, used or maintained in accordance with accepted practice or its specification, or if it has been modified or repaired by an unauthorized third party, or damaged by external causes (in particular vandalism and accident), or if its failure is due to the physical, electronic or computing environment of the Supply, or in the event of the parts or services required for performance of the warranty being unavailable in the marketplace. IER's warranty and liability for the hardware and software components of the Supply may not exceed the commitments that IER receives from its own suppliers. Due to the complexity of electronic and computer technologies, IER does not guarantee that the Supply will operate without the interruptions or errors that may occur for such products under normal conditions of use, and IER shall only be bound by a reasonable endeavours obligation. The Client must take all necessary precautions to minimize his damage in the event of malfunction of the Supply. Except for its indemnification obligations, IER's liability is limited to direct material damage caused to the Client and arising from misconduct by IER in performing the Contract. Under no circumstances shall IER be bound to compensate immaterial damage, incidental or consequential damage, or operating losses, lost profits, data loss, loss of image, lost business, or loss

of earnings. Except for gross negligence or personal injury, IER's civil liability, taking into account all causes, shall be limited to the price paid by the Client for the Supply in question.

**7. INTELLECTUAL PROPERTY** The performance of the Contract (and especially payment by the Client of study and development costs for Supply of Hardware or Supply of Software) shall not imply any transfer of the Suppliers' intellectual or industrial property rights, pre-existing or created at the time of the Contract; these shall remain the exclusive property of IER or that of its suppliers. IER grants the Client a personal and non-exclusive licence to use the Supply of Software for the duration of the Client's use of the Supply of Hardware associated with the Supply of Software. IER retains the right to sell and have sold to third parties any Supply identical to that supplied to the Client. The source program for the Supply of Software shall not be given to the Client. The Client agrees to refrain from decompiling or duplicating the software, except for his backup requirements, and giving same to third parties, in any manner whatsoever.

**8. CONFIDENTIALITY** All confidential information of a technical, financial, commercial or other nature communicated by IER visually, orally or in writing or by delivery of a mock-up, sample or prototype is done so at its sole discretion, remains the property of IER and is confidential, and may not be disclosed or used by the Client for purposes other than performance of the Contract without the express authorization of IER.

**9. HARDSHIP** Should an event occur which is beyond the control of IER and which compromises the contract's balance to the extent of making performance of IER's obligations impossible or substantially more costly, the parties agree to negotiate amendment of the Contract in good faith. In particular, this refers to variation in the prices of raw materials or exchange rates, or hardware or software resources being unavailable in the marketplace. Should the parties fail to reach agreement, IER may terminate the Contract ipso jure without compensation, giving 30 days' notice.

**10. TERMINATION** In the event of the Client failing to perform any of his obligations, IER may terminate the Contract ipso jure by registered letter with receipt acknowledgement and giving 30 days' notice.

**11. DISPUTES** The Contracts shall be governed by Texas law. The courts having jurisdiction over IER's registered office shall have exclusive jurisdiction, even in the event of the introduction of third parties or more than one defendant.

**EXHIBIT B**  
**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.

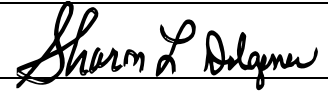
Dated this 15th day of December, 2015

CONTRACTOR

Authorized  
Signature

Title

IER Inc.



Treasurer



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 05/20/2015

DEPT: Aviation

TO: Purchasing Officer or Designee

FROM: Phillip Bays

BUYER:

PHONE: (512) 530-2638

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 for Austin Energy.

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)

- ☐ 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
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ 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 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
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ 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
- ☐ 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

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ 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 regional planning commission established under Chapter 391
  - ☐ services performed by blind or severely disabled persons
  - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
  - ☐ electricity
  - ☐ advertising, other than legal notices
  - ☐ 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.

Austin-Bergstrom International Airport purchased ten (10) IER 919C Common Use Self Service (CUSS) Kiosks. This allows passengers to check-in to many different airlines on one common kiosk.

IER is the designer, developer and manufacturer of the IER 919 CUSS kiosks and the Common Use Self-Service (CUSS) operating platform in use at Austin-Bergstrom International Airport. IER owns all intellectual property rights (including but not limited to patent, copyright, trademark and trade secret rights, anywhere in the world) pertaining to the IER 919 and the CUSS software

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 (Ex: evaluation of other firms, knowledge of market, etc).

Initial kiosks were purchased by Air-IT who was awarded the contract after a competitive bid process. Air-IT uses IER kiosks in over 75 other airports

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with IER Inc.  
which will cost approximately \$78,407.50 (Provide estimate and/or breakdown of cost).  
Year 1 = \$22,007.50 / Year 2 = \$13,200 / Year 3 = \$14,400 / Year 4 = \$14,400 / Year 5 = \$14,400

Recommended  
Certification

**Phillip Bays**

Digitally signed by Phillip Bays  
DN: cn=Phillip Bays, o=Department of Aviation, ou=Information  
Systems, email=Phillip.Bays@austintexas.gov, c=US  
Date: 2015.06.05 10:30:27 -0500

Originator

Date

Approved  
Certification

Department Director or designee

Date

Assistant City Manager / General Manager  
or designee (if applicable)

Date

Purchasing Review  
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized  
(if applicable)

Purchasing Officer or designee

Date

02/26/2013



May 16, 2015

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

Dear Phillip,

IER is the designer, developer and manufacturer of the IER 919 CUSS kiosks and the Common Use Self-Service (CUSS) operating platform in use at Austin-Bergstrom International Airport.

IER owns all intellectual property rights (including but not limited to patent, copyright, trademark and trade secret rights, anywhere in the world) pertaining to the IER 919 and the CUSS software platform. Parts used for support are only available to those parties which have been trained by IER on Level II hardware maintenance. Once trained, parts are available directly from IER as they interface directly to our CUSS platform. Substitutions will not work with the system.

Thank you for your use of our kiosks.

Best regards,

Dan Joliet

Digitally signed by Dan Joliet  
DN: cn=Dan Joliet, o=IER Inc. ou,  
email=djoliet@ier.aero c=US  
Date: 2015.05.16 14:48:07 -06:00

Dan Joliet  
Director of Sales and Service  
IER. Inc.



# PURCHASE ORDER

PO VENDOR SINGLE

PAGE NO: 1

REFERENCE NUMBER: DO 5600 15121705013

P.O DATE: 12/17/15

PRICE AGREEMENT #: MA 5600 15121700007

V Dan Joliet  
E V00000930272 A00000094731  
N IER Inc.  
D 1000 Industrial Park Road  
O  
R Belton TX 76513

S CTM Main Location  
H  
I City of Austin  
P 1124 S. IH-35, Suite 300  
Austin TX 78704-2614  
T  
O

B City Of Austin CTM  
I  
L Accounts Payable  
L PO BOX 1088  
Austin TX 78767  
T  
O

Requestor: Phillip Bays, 512-530-2638  
Buyer: See Solicitation, 512-974-2500

The City's standard purchase terms and conditions are hereby incorporated into this order by reference, with the same force and effect as if they were incorporated in full text. The full versions are available at [https://www.austintexas.gov/financeonline/vendor\\_connection/index.cfm#STANDARDBIDDOCUMENTS](https://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS) or call the Purchasing Office at (512) 974-2500. Please include above reference number on all packages, deliveries, and invoices.

Line	Quantity	Unit	Commodity Information / Description (s)	Unit Price	Extended Amount
1			Commodity: 93921 Computers, Data Processing Equipment, Maintenance and Repair 21633 - Kiosk Maintenance IER 919 CUSS Kiosk Maintenance Training, Parts and Annual Hardware Support Year 1	0.000000	\$ 22,007.50

## VENDOR INSTRUCTIONS:

1. SEND ORIGINAL INVOICE WITH DUPLICATE COPY TO THE CITY DEPARTMENT TO WHICH THE GOOD(S) WERE DELIVERED.
2. SHIPPING INSTRUCTIONS: F.O.B. DESTINATION UNLESS OTHERWISE SPECIFIED.
3. NO FEDERAL OR STATE SALES TAX SHALL BE INCLUDED IN PRICES BILLED. LIMITED SALES TAX #74-8000085.

Order Total: \$ 22,007.50

  
Authorized Agent for City Manager

By acceptance of this purchase order, you agree to comply with the terms and conditions incorporated herein by reference and made a part of this order.

12/17/15  
Date