



Amendment No. 2
to
Contract No. NA170000068
for
Applications Software for Microcomputer Systems
between
Sirius Computer Solutions, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 21, 2017, through June 20, 2019. No options will remain.
- 2.0 The total contract amount is increased by \$10,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/21/2017 – 06/20/2017	\$40,000.00	\$40,000.00
Amendment No. 1: Statement of Work Modification 03/09/2017	\$0.00	\$40,000.00
Amendment No. 2: Option 1 – Extension 06/21/2017 – 06/20/2019	\$10,000.00	\$50,000.00

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

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

DocuSigned by:
Sign/Date: Bonnie M. Cerrito 6/20/2017 | 14:38 CDT
7B515135665E4DE
Sign/Date: Cindy Reyes 6.20.17

Printed Name: Bonnie M. Cerrito
 Authorized Representative Sr. VP of Contracts

Cindy Reyes
 Contract Management Specialist III
 City of Austin
 Purchasing Office
 124 W. 8th Street, Ste. 310
 Austin, Texas 78701

Sirius Computer Solutions, Inc.
 10100 Reunion Place, Suite 500
 San Antonio, Texas 78216-5593
 (210) 369-0617
phyllis.byrd@siriuscom.com



Amendment No. 1
to
Contract No. MA 5500 NA17000068
for
Applications Software for Microcomputer Systems
between
Sirius Computer Solutions, Inc.
and the
City of Austin

1.0 The City hereby amends this Contract by modifying the Statement of Work, Exhibit B Effective date of this change is 03/07/2017.

2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/21/2017 – 06/20/2017	\$40,000.00	\$40,000.00
Amendment No. 1: Statement of Work Modification	\$0.00	\$40,000.00

3.0 MBE/WBE goals do not apply to this contract.

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

5.0 All other terms and conditions remain the same.

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

DocuSigned by:
Sign/Date: Bonnie M. Cerrito 3/8/2017 | 22:52 CST Sign/Date: [Signature] 3/7/17

Printed Name: Bonnie Cerrito
Or other Authorized Representative
Sirius Computer Solutions, Inc.
10100 Reunion Place
San Antonio, TX 78216

Sai Purcell
Senior Buyer Specialist
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

City of Austin, Economic Development Department Foreign Direct Investment Augmented Reality App

This Statement of Work ("SOW") is made by and between Sirius Computer Solutions, Inc., ("Sirius") and City of Austin ("Customer") for the provision of certain professional services as more fully described herein, ("Services"). Customer and Sirius expressly acknowledge and agree that this SOW is incorporated by reference into, and made a part of, *CONTRACT BETWEEN THE CITY OF AUSTIN ("City") AND SIRIUS COMPUTER SOLUTIONS, INC. ("Contractor") for Applications Software for Microcomputer Systems: B-Augmented Reality, Multimedia, Virtual Reality Design and Installation MA 5500 NA170000068 (the "Agreement")*. In the event of conflict, the terms of the Agreement shall control unless otherwise expressly provided herein.

SCOPE OF SERVICES

The City of Austin seeks developers qualified and experienced in developing a public mobile augmented reality (AR) app that showcases a specific portfolio of up to seven (7) City-affiliated Economic Development Department (EDD) initial projects for which the City seeks to attract investment.

The City seeks to become actively engaged in the attraction of foreign direct investment by capitalizing on inbound international events like SXSW, Formula One, and others to use this app for site visits, prospecting partners, and businesses considering expansion to Austin.

The purpose of this SOW is to assist Customer with the development of an AR mobile app which will help drive foreign investment into Austin. This effort will consist of Solution Outline Services, Solution Implementation Services, Solution Delivery Services, and Project Management Services. Specific responsibilities are outlined below.

ACCEPTANCE CRITERIA

Sirius and Customer will work together to establish acceptance criteria before the start of the project.

RESPONSIBILITIES

Sirius Responsibilities and Deliverables

- A. Solution Outline Services
1. Conduct pre-visit conference call.
 2. Conduct onsite kick-off and vision meeting.
 3. Create Project Schedule

4. Create Mobile App UI Specification and Wireframe guide
5. Review above documents with Customer.

Outline Deliverables Produced:

- D-1. Mobile App UI Specification and Wireframe guide
- D-2. Project Schedule

B. Solution Implementation Services

Software Services

1. Develop Foreign Direct Investment (FDI) AR Mobile App
2. Conduct basic functionality testing
3. Fix identified software defects.

Software Deliverables Produced:

- D-3. Code base

C. Solution Delivery Services

1. Deployment of mobile app (non-AR version) to app stores
2. Deployment of AR mobile app to Tango enabled devices

- D-4. Mobile App deployed to Apple App and Google Play stores

- D-5. AR version of Mobile App deployed to Tango enabled mobile devices (3)

D. Project Management Services

1. Staff this effort with appropriately skilled individuals to perform the Services.
2. Assign a Project Manager to serve as the primary contact for Customer.
3. Plan, execute, control, and close project.
4. Chair Kick-off, Status, and Closure Meetings.
5. Periodic status reviews with Customer.
6. Promptly notify Customer of any unsafe condition about which Sirius has knowledge.

Project Management Deliverables Produced:

- D-6. Project Schedule

SCOPE

There will be two versions of the app developed. A public app store (Android and iOS) non-AR version, and a non-publicly released AR version of the app.


Public App Store version

Features:

1. Home page showing map of Austin EDD locations with pins
2. Detail page of each EDD location with City of Austin provided text, image and 2D video promotional material

Exhibit A

This is a SAMPLE version only, not to be signed

Completion Document	
Customer Name	Date
Project Name	SOW #
Customer's Authorized Representative	Sirius Project Manager
Sirius Project Manager Phone #	Sirius Project Manager Email

Activities/Tasks	Status
	Completed
	Completed
	Completed

Deliverables Provided	Status
	Completed
	Completed
	Completed

Customer will return this Completion Document in accordance with its instructions on the original SOW from the date of receipt hereof. If Customer reasonably believes that Sirius failed to substantially complete the services in accordance with the referenced SOW, Customer will notify Sirius in writing of its reasons for rejection of the services or any portion thereof within the time frame set forth in the SOW. If Sirius does not receive the signed Completion Document or written notification of the reasons for rejection within the time frame note on original SOW of Customer's receipt hereof, the absence of Customer's response will constitute Customer's acceptance of the services and a waiver of any right of rejection.

Authorization: Services described above have been rendered to Customer's satisfaction and will be charged against the referenced Statement of Work.

CUSTOMER NAME

Signature

Date

Name (Print)

Title

RETURN INSTRUCTIONS: Please return to the Sirius Services Operations Team via email at services@siriuscom.com or via fax to: **(866) 206-2816**. If you have any questions or concerns, please contact the Sirius Project Manager listed above.



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

02/21/2017

Responsible Department:	EDD
Department Contact Person:	Casey Smith
Department Contact Email:	Casey.Smith@austintexas.gov
Department Contact Telephone:	(512) 974-6416
Contractor Name:	SIRIUS COMPUTER SOLUTIONS INC
Contract Period:	4 months/ 1 24-month extension options
Dollar Amount	Contract Term \$ 40,000 Option 1 \$ 10,000
Contract No.	NA170000068

Sincerely,

Sai Xoomsai Purcell
Senior Buyer Specialist
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
SIRIUS COMPUTER SOLUTIONS, INC. ("Contractor")
for**

**Applications Software for Microcomputer Systems: B-Augmented Reality, Multimedia, Virtual
Reality Design and Installation
MA 5500 NA170000068**

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

This Contract is between Sirius Computer Solutions, Inc. having offices at San Antonio, TX 78216 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number CHS5500-16100300005.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Request for Quotation (RFQ), CHS5500-16100300005 including all documents incorporated by reference
- 1.1.3 Sirius Computer Solutions, Inc.'s Offer, dated 11/23/2016, including subsequent clarifications

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

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

1.3 Term of Contract. The Contract will be in effect for an initial term of four (4) months and may be extended thereafter for up to one (1) twenty-four (24) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$40,000 for the initial Contract term and \$10,000 amount for the extension option. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

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

- 1.5.1 Exhibit A – Section 0300 - Standard Purchase Terms & Conditions

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

SIRIUS COMPUTER SOLUTIONS, INC.

CITY OF AUSTIN

Bonnie M. Cerrito

Printed Name of Authorized Person

Sai Xoomsai Purcell

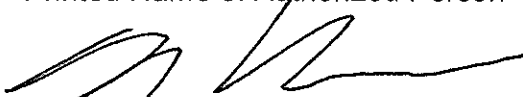
Printed Name of Authorized Person

DocuSigned by:

Bonnie M. Cerrito

7B515133005E+DE..

Signature



Signature

SVP - Contracts & Financial Services

Senior Buyer Specialist

Title:

Title:

2/17/2017 | 12:42 CST

Date:

2/20/17

Date:

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

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

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: N/A
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: N/A
5. **TITLE & RISK OF LOSS**: N/A
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: N/A
7. **RIGHT OF INSPECTION AND REJECTION**: N/A
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: N/A
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.
10. **WORKFORCE**
 - A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
 - B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
 - C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.
12. **INVOICES:**
- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
 - B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
 - C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
 - D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
 - E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.
13. **PAYMENT:**
- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
 - B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
 - C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

**EXHIBIT A
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- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
- i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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

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

**EXHIBIT A
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15. FINAL PAYMENT AND CLOSE-OUT:

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

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

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all 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.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

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

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20. **WARRANTY – TITLE:** N/A
21. **WARRANTY – DELIVERABLES:** N/A
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

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

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31. INDEMNITY: LIMITATION OF LIABILITY:

A. Definitions:

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

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS, AS THAT TERM IS DEFINED AND LIMITED ABOVE, TO THE EXTENT DIRECTLY ARISING OUT OF 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.

C. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR FUTURE REVENUES, LOSS OR CORRUPTION OF OR DAMAGE TO DATA, COST OF CAPITAL, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY, HOWEVER CAUSED, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SAID PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT FOR THE CONTRACTOR'S INDEMNIFICATION OBLIGATIONS AS PROVIDED IN SECTION B ABOVE, CONTRACTOR'S LIABILITY UNDER THIS AGREEMENT OR OTHERWISE ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO TWO TIME THE TOTAL AMOUNT PAID OR PAYABLE BY THE CITY TO CONTRACTOR AS SHOWN ON THE APPLICABLE STATEMENT OF WORK WITH RESPECT TO WHICH SUCH CLAIM RELATES. THESE LIMITATIONS SHALL APPLY TO THE FULLEST EXTENT ALLOWED BY LAW, AND EACH PARTY AGREES TO RELEASE THE OTHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, REPRESENTATIVES AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY EXCEEDING THE LIMITS STATED IN THIS PROVISION, REGARDLESS OF THE THEORY OF LIABILITY OR REMEDY UNDER WHICH DAMAGES ARE SOUGHT.

In no event shall the City be entitled to Damages arising from damage to intangible personal property. The term "Damages" shall mean any loss, liability, claim or damage or expense (including costs of investigation and defense and reasonable attorneys' fees).

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

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period. Notwithstanding the foregoing and

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anything included in the applicable Section 400, Contractor shall not be required to carry the Professional Liability Insurance Coverage for any period of time following the completion of the Contract.

- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID. PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** N/A
37. **CONFIDENTIALITY:** In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any

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amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt

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in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

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

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

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

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

54. **EQUAL OPPORTUNITY**

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

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

55. **INTERESTED PARTIES DISCLOSURE**

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

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

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

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus

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allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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Section 0400: Supplemental Purchase Provisions

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:**

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by no later than November 18, 2016 via email at casey.smith@austintexas.gov.

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

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

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

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

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

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

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- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability:** The Contractor shall provide coverage, at a minimum limit of \$ 1 million per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

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3. TERM OF CONTRACT:

- A. The Contract shall be in effect for an initial term of 4 months and may be extended thereafter for up to 24 additional month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.

4. INVOICES and PAYMENT: (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

	City of Austin		
Department	Economic Development Department		
Attn:	Casey Smith, International Program Manager		
Address	2006 E. 4 th Street		
City, State Zip Code	EDD, Austin, TX 78702		

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
5. **DATA LOCATION:** The Service Provider shall provide its Services to the City and its end users solely from data centers in the U.S. Storage of City Data at rest shall be located solely in data centers in the U.S. The Service Provider shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider shall provide technical user support on a 24/7 basis unless otherwise prohibited in this contract.
6. **IMPORT AND EXPORT OF DATA:** The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.

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7. **WARRANTY - PERFORMANCE**: Provider represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provided under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any deliverables provided by Provider shall operate in conformance with the terms of this Master Software as a Service Agreement and the applicable SaaS Subscription Schedules and Statements of Work.
8. **WARRANTY – AUTHORITY**: Provider warrants that it has all authority necessary to provide for Client's access and use of the Subscription Services and the Non-subscription Services for the purposes set forth in this Master Software as a Service Agreement, in any SaaS Subscription Schedule and in any Statement of Work. Provider further represents and warrants that sale, licensing or use of any of the Subscription Services and of the Non-subscription Services furnished under this Agreement does not and shall not infringe, misappropriate or otherwise violate any Third Party's intellectual property rights.
9. **WARRANTY – SOFTWARE**: Unless otherwise expressly provided in this Master Software as a Service Agreement, a SaaS Subscription Schedule or Statement of Work, Provider for itself and for and on behalf of its service providers, licensors, employees and agents warrants that: (a) the functions contained in the Subscription Services and in any Non-subscription Services provided under this Agreement shall meet Client's requirements, (b) the operation of the Subscription Services and any Non-subscription Services shall be uninterrupted and error free, (c) the Subscription Services and any Non-subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services and (d) the Subscription Services shall work with future Desktop Specifications, as well as future releases of web browsers, and shall have both forward and backward functionality. Provider shall be liable for any damages that Client may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Agreement. Without limitation, Provider's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any act by an agent, contractor, subcontractor, consultant, or employee of Provider that results in, or is intended by such agent, contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of Client's systems, data, Client's Confidential Information, or Client's technology.
10. **WARRANTY – AGAINST UNDISCLOSED ILIICIT CODE**: Provider warrants that, unless authorized in writing by Client, any software program or any other part or portion of the Subscription Services or Non-subscription Services developed by Provider, passed through to Client from Third Parties under this Agreement or provided to Client by Provider for use by Provider or Client shall:
- A. Not contain any hidden file;
 - B. Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;
 - C. Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
 - D. Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Agreement, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;

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- E. Not contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Provider; and
- F. Not use electronic self-help, including but not limited to preventing electronically Client's further or continued use of and/or access to the subscription Services, No-subscription Services or any software or other portion thereof.
- G. Notwithstanding any provision in this Agreement to the contrary, if any Subscription Service or Non-subscription Service has any of the foregoing attributes (collectively "Illicit Code"), Provider shall be in default of this Agreement, and no cure period shall apply unless approved by the City. At the request of and at no cost to Client, Provider shall remove any such Illicit Code from the licensed software as promptly as possible.
- H. To protect Client from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into Client's computer systems, no software may be installed, executed or copied onto Client's equipment without an express warranty to Client that Illicit Code does not exist. Such warranty shall be set forth on an exhibit attached to and made a part of this Agreement.
- I. Provider agrees that in the event of any dispute with Client regarding an alleged breach of this Agreement, Provider shall not use any type of electronic means to prevent or interfere with Client's use of any portion of the Subscription Services and Non-subscription Services. Provider understands that a breach of this provision could foreseeably cause substantial harm to Client and to numerous Third Parties having business relationships with Client.

11. DATA:

- A. "Personal Data" means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.
- B. Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv), and employment records held by a covered entity in its role as employer.¹
- C. Data Ownership: The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.
- D. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

¹ U.S. Department of Health and Human Services, National Institute of Health, HIPAA Privacy Rule, Definitions

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- i. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
 - ii. All data obtained by the service provider in the performance of this contract shall become and remain property of the City.
 - iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
 - iv. Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
 - v. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.
 - vi. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- E. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- F. Security: The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.
- G. Security in Compliance with Chapter 521 of the Texas Business and Commerce Code: Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.
- H. Security Incident or Data Breach Notification: The service provider shall inform the City of any security incident or data breach.
 - i. Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider

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communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

- ii. Security Incident Reporting Requirements: The service provider shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
- iii. Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

I. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of service provider.

- i. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- ii. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- iii. Unless otherwise stipulated, if a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute² at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

12. **BUSINESS CONTINUITY AND DISASTER RECOVERY:** The service provider shall provide a business continuity and disaster recovery plan upon request and ensure that the City's recovery time objective (RTO) of is met.

13. **TERMINATION AND SUSPENSION OF SERVICE:**

² "2013 Cost of Data Breach Study: Global Analysis," Ponemon Institute, May 2013.

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- A. In the event of a termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
 - 10 days after the effective date of termination, if the termination is in accordance with the contract period
 - 30 days after the effective date of termination, if the termination is for convenience
 - 60 days after the effective date of termination, if the termination is for cause

After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.

- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
- E. The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

14. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Contractors who work on-site or with court or justice system data will be required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- B. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - i. Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - ii. The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - iii. A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- C. Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.

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- D. Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
 - E. Upon receipt by the City of Contractor's affidavit described in (D) above and the list of the Contractor's personnel, the City will provide each of Contractor's personnel a contractor ID badge that is required for access to City property that shall be worn at all times by Contractor's personnel during the execution of the work.
 - F. The City reserves the right to deny an ID badge to any Contractor personnel for reasonable cause, including failure of a Criminal History background check. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's reports. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) calendar days of the receipt of notification of denial.
 - G. Contractor's personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Contractor's schedule. Lost ID badges shall be reported to the City's Contract Manager. Contractor shall reimburse the City for all costs incurred in providing additional ID badges to Contractor Personnel.
 - H. ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.
 - I. Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
 - J. The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).
 - K. Each member of the Contractor's team must sign a non-disclosure agreement.
17. **OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.
- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

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- B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law, such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.
- C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.
18. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Casey Smith

Casey.smith@austintexas.gov

(512)974-6416

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Section 0500: Scope of Work

1.0 PURPOSE

The City of Austin (“the City”) seeks Game Developers qualified and experienced in developing a public mobile augmented reality app that showcases a specific portfolio of seven (7) City-affiliated Economic Development Department (EDD) projects for which the City seeks to attract investment.

The City seeks to become actively engaged in the attraction of foreign direct investment by capitalizing on inbound international events like SXSW, Formula One, and others to use this app for site visits, prospecting partners, and businesses considering expansion to Austin.

1.1 Background

1.1.1 About the City of Austin

The City of Austin, Texas, population 885,400 is the 11th largest city in the country. This vibrant and dynamic city tops numerous “Best” lists for business, entertainment, cost of living and quality of life. Austin was selected as the “Best City for the Next Decade” (Kiplinger), the “Top Creative Center” in the US (Entrepreneur.com), and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community Forum. Austin continues to lead the country with its vision of being the “Most Livable City in the Country”, emerging as a player on the international scene with such events as SXSW, Formula 1 and being home to companies such as Apple, Samsung, Dell, The Seton Healthcare Family and St. David's HealthCare systems. Home the University of Texas, state government, the “Live Music Capital of the World” and its growth as a film center, Austin has gained worldwide attention as a hub for education, business, health, and sustainability. Since 1900, Austin's population has doubled every 20 years with continued projected record-breaking growth into the next decade and beyond.

Due to this accelerated growth and increasing international traction as a “Gateway” city for foreign direct investment (FDI) EDD is intentionally developing FDI activities. Funneling through the International Program of the Global Business Expansion Division, EDD intends to cultivate investment opportunities to promote to foreign and domestic investors, companies and individuals seeking ways to invest their monies in targeted development projects that can benefit the Austin residents.

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1.1.2 Project Background

With over 135 gaming companies, 5 publishing firms, and over 3,500 Austinites employed in the gaming sector, Austin is teeming with talent and opportunity for impending growth. In 2015, Austin was named by Fortune as the #2 city in the United States for Successful Video Game Development activity. Additionally, Austin was recognized on the international market in by United Nations Education and Cultural Organization Creative City (UNESCO). UNESCO awarded the City of Austin as a “Creative City of Media Arts” industries which includes gaming, virtual reality and augmented reality (VR/AR).

In an interest to promote Austin’s success and continued leadership in these industries, the Economic Development Department is pursuing a solicitation for a partnership to develop a multimedia AR App that features investment opportunities for foreign and domestic investors.

1.2 Objectives

- Mobile app will be launched at SXSW Interactive 2017.
- Produce augmented reality and multimedia app with 3-5 specific installations.
- Since multiple parties will utilize this app, the entire app must have easy functionality.
- Encapsulate and deliver specific measurable data like: viewer contact information, repeat visitors, financial investment interest, and click-thru to points of contact on specific locations.
- Ensure the app is iOS and Android compatible as well as listed on the applicable App Stores.
- Commit to a 24 month contract renewal for updates to the app.

2.0 SCOPE OF WORK

- 2.1 City of Austin will make selection by Friday, December 2, 2016. Within ten (10) days after selected Game Developer is identified, the first meeting will occur to determine a project schedule.
- 2.2 Game Developer and City will meet weekly to review progress and determine next steps.

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- 2.3 Within thirty (30) days of the initial meeting, the Gamer Developer will participate in location specific meetings to participate in the content cultivation with the location specific real estate and industry developers to fully capture the investment opportunity.
- 2.4 Game Developer will create or subcontract all content the City cannot provide, for example, 3D video or development support.
- 2.5 Within forty-five (45) days the Game Developer will notify the City in writing the needed content the City can provide.
 - 2.5.1 Including: written, photography, 2D video, music and architecture renderings.
 - 2.5.2 The City of Austin will deliver the content required according to the project schedule determined in the initial meeting.
- 2.6 No later than February 27, 2017, in one hundred fifteen (115) days the Game Developer will deliver the contracted augmented reality application to the City.
- 2.7 No later than March, 9, 2017 the app will be available to the public on iTunes and Android app stores.

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Section 0600: Proposal Instructions & Quote Sheet

1.0 The proposal shall be organized in the following format and informational sequence:

- 1.1 Business Organization: State the full name and address of your organization and identify the parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein.
- 1.2 Authorized Negotiator: Include the name, address, email, and telephone number of the person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
- 1.3 Concept and Solution: State your understanding of the requirement presented in the Scope of Work of this RFQ and describe in detail your proposed solution. This section should be essentially an outline of the vision you would propose for *the Foreign Direct Investment Augmented Reality App*. Provide all details as required in the Objectives and any additional information you deem necessary to evaluate your proposal.
- 1.4 Work Plan: Describe your Work Plan for achieving the RFQ's Scope of Work. Include a schedule for fully developing the app and for performing each major task. Include any time-related charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Objectives and your plan for accomplishment.
- 1.5 Project Management Structure: Submit a description of how you will organize your staff and resources to ensure deadlines are met in the event of staff absences, equipment failures, etc.
- 1.6 Demonstrated Applicable Experience: List, describe, and provide links (both hyper-linked and written) for at least two (2) multimedia apps you have created. At least one (1) must include an augmented reality app.
 - 1.6.1 Prove capacity to complete the project. Identify number of staff, their work experience, and current project work-load between December 1, 2016-March 9, 2017.
- 1.7 Proposals submission:
 - 1.7.1 Proposals are due by Friday, November 23, 2016 @ 2:00 p.m. Please submit proposals to:

Casey Smith
City of Austin, Economic Development Department
Global Business Expansion Division, International Program Manager
Email: casey.smith@austintexas.gov
Phone: 512-974-6416

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- 1.7.2 Proposals should be submitted as PDF documents.
- 1.7.3 Total file size for attachments should not exceed 3 MB
- 1.7.4 Proposers should verify with Casey Smith that their submission was received because no submissions can be accepted after the deadline

2.0 Cost Proposal

- 2.1 The City has allocated \$40,000 to be paid in mutually agreeable installments, determined at first meeting.
- 2.2 \$10,000 for 24 months (\$5,000 annually) to update app with latest market data.
- 2.3 Additional app enhancements/versions requested by the City will be renegotiated through a new scope of work.
- 2.4 Fill out Quote Sheet 0600 on Page 9, sign and date, and return with your submittal. A firm fixed price or not-to-exceed contract is contemplated, with progress payments as mutually determined to be appropriate. The cost should include all expenses necessary to perform the scope of work, including overhead and mileage.

3.0 Evaluation Factors

- 3.1 Proposals will be evaluated on a 100-point scale according to the following factors:
 - 3.1.1 Strength of Concept and Proposed Solution – 40 points
 - 3.1.2 Demonstrated Applicable Experience – 30 points
 - 3.1.3 Strength of Work Plan – 10 points
 - 3.1.4 Management Structure – 10 points
 - 3.1.5 Total Cost – 10 points



www.siriuscom.com
800-460-1237

FOREIGN DIRECT INVESTMENT AUGMENTED REALITY MOBILE APP

RFQ No. CHS5500-16100300005

Prepared for:

Casey Smith, International Program Manager
City of Austin, Texas

Prepared by:

Mike Herzog, Senior Client Executive
mike.hertzog@siriuscom.com
512-840-7445

Andrew Bell, Mobile & VR Architect
andrew.bell@siriuscom.com
512-521-9579

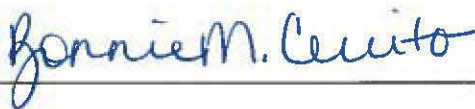
November 23, 2016

Solicitation CH55500-16100300005

Section 0600
REQUEST FOR QUOTATION—QUOTE SHEET
RFQ No.:

DESCRIPTION: Foreign Direct Investment Augmented Reality App.**Quote Due Date and Time:** before Wednesday, November 23, 2016 @ 2:00 pm**Submit Responses via email to:** casey.smith@austintexas.gov**Awarded vendor will be required to provide a Certificate of Insurance-see attached guidelines.**

Description	Hours/Units	Cost per Hour/Unit	Total Cost
Mobile Architect	60	189	\$ 11,340.00
Mobile Senior Developer	220	171	\$ 37,620.00
Creative	40	189	\$ 7,520.00
		Subtotal	\$56,520.00
		Discount (41.3%)	-\$16,520.00
Total Proposal Cost			\$ 40,000.00

SIGNATURE:

PRINT NAME & TITLE:

Bonnie M. Cerrito, Senior Vice President of Contracts

COMPANY NAME:

Sirius Computer Solutions, Inc.

COMPANY EMAIL:

bonnie.cerrito@siriuscom.com

Solicitation CHS5500-16100300005

Section 0700: Reference Sheet

Please include the following information if required in solicitation:

Responding Company Name Sirius Computer Solutions, Inc.

1. Company's Name IBM
Name and Title of Contact Tom Thacher
Present Address _____
City, State, Zip Code _____
Telephone Number (443) 822-1025 Fax Number () _____
Email Address thacher@us.ibm.com

2. Company's Name See Section 1.6, page 13, in our proposal for further information.
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () _____ Fax Number () _____
Email Address _____

3. Company's Name See Section 1.6, page 13, in our proposal for further information.
Name and Title of Contact _____
Present Address _____
City, State, Zip Code _____
Telephone Number () _____ Fax Number () _____
Email Address _____

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Section 0835: Non-Resident Bidder Provisions

Company Name Sirius Computer Solutions, Inc.

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

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

Answer: Texas Resident Bidder

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

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


Answer: N/A Which State:

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

Answer: N/A

Exhibit A

This is a **SAMPLE** version only, not to be signed

Completion Document	
Customer Name	Date
Project Name	SOW #
Customer's Authorized Representative	Sirius Project Manager
Sirius Project Manager Phone #	Sirius Project Manager Email

Activities/Tasks	Status
	Completed
	Completed
	Completed

Deliverables Provided	Status
	Completed
	Completed
	Completed

Customer will return this Completion Document in accordance with its instructions on the original SOW from the date of receipt hereof. If Customer reasonably believes that Sirius failed to substantially complete the services in accordance with the referenced SOW, Customer will notify Sirius in writing of its reasons for rejection of the services or any portion thereof within the time frame set forth in the SOW. If Sirius does not receive the signed Completion Document or written notification of the reasons for rejection within the time frame note on original SOW of Customer's receipt hereof, the absence of Customer's response will constitute Customer's acceptance of the services and a waiver of any right of rejection.

Authorization: Services described above have been rendered to Customer's satisfaction and will be charged against the referenced Statement of Work.

CUSTOMER NAME

Signature

Date

Name (Print)

Title

RETURN INSTRUCTIONS: Please return to the Sirius Services Operations Team via email at services@siriuscom.com or via fax to: (866) 206-2816. If you have any questions or concerns, please contact the Sirius Project Manager listed above.