



Amendment No. 1
of
Contract No. MA 5600 NS160000054
for
Accela Software and Support
between
Accela, Inc.
and the
City of Austin

1.0 The City hereby modifies the contract by adding one (1) additional twelve (12) month option for an additional contract amount of \$29,465.66 for a total contract amount of \$84,541.66, as detailed in Appendix A attached hereto. No options remain.

2.0 The total Contract authorization is recapped below:

Contract Term	Action Amount	Total Contract Amount
Initial Term: 7/20/16 – 7/19/17	\$27,538.00	\$27,538.00
Option 1: 7/20/17 – 7/19/18	\$27,538.00	\$55,076.00
Option 2: 7/20/18 – 7/19/19	\$29,465.66	\$84,541.66

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

4.0 The following Sections shall be omitted in their entirety:

- 4.1 Section "4.5 Termination Without Cause"
- 4.2 Section "5.3 Acceptance of Incomplete or Non-Conforming Deliverables"
- 4.3 Section "5.5 Ownership and Use of Deliverables"
- 4.4 Section "6.2.1"

5.0 Section 7.5 (Right to Audit) shall be preceded by the following language: "Only to the extent it is required by applicable law or charter"

6.0 Section 7.28 Order of Precedence, shall be omitted in its entirety and replaced with the following:

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

7.28.1 This Contract

7.28.2 Exhibit A Accela Subscription Terms and Conditions

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

7.0 Sections 11 and 12 of Exhibit A Accela Subscription Terms and Conditions shall be omitted in their entirety and replaced with Appendix B attached hereto.

8.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General

Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

9.0 All other terms and conditions remain the same.

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

Signature:

DocuSigned by:
Dustin Whisenhunt
2F595C38A97A4DA...

Date: 8/28/2018

Printed Name: Dustin Whisenhunt

Title: VP of Sales - East

Accela, Inc.
2633 Camino Ramon, Ste. 500
San Ramon, CA 94583

Signature:

Elisa Folco
8/28/2018

Date: 8/28/2018

Printed Name: Elisa Folco

Procurement Specialist IV
City of Austin
Purchasing Office
P.O. Box 1088
Austin, TX 78767

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Accela, Inc.
For
Software and Support**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Accela, Inc. ("Contractor"), having offices at 2633 Camino Ramon, Suite 500, San Ramon, CA 94583.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Eddie Tejada, Phone: (925) 659-3286, Email Address: eddie@civicindustries.com. The City's Contract Manager for the engagement shall be Kimberly Williams, Phone: (512) 974-6308, Email Address: Kimberly.Williams@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid in accordance with Exhibit A, attached hereto. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed \$27,538.00 for the initial term and \$27,538.00 for the first extension, for a total estimated contract amount not to exceed \$55,076.00 comprising the software subscription fees.

3.2 **Economic Price Adjustment.**

3.2.1 **Price Adjustments.** Prices shown in this Contract shall remain firm for the first 12-month period of the Contract. After that, pricing will be as described in Exhibit A, including Attachment I, thereto.

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

3.2.3 **Adjustments.** Price adjustments shall be established as indicated in Exhibit A.

3.2.4 (Reserved)

3.3 **Invoices.**

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

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

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

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

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

3.4 Payment.

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

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

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

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

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

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

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

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

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

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

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

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

3.5 **(reserved)**

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

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

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

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

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

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

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

3.8.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

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

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

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

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

4.4 **Termination For Cause.** Termination for cause will be as stated in Sec. 20 of Attachment I to Exhibit A.

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

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

SECTION 5. OTHER DELIVERABLES

5.1 Equal Opportunity.

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

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

5.2 **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 Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

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

5.4 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the

Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

5.5 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables, excluding any pre-existing intellectual property of Contractor or any derivative works thereof. Contractor's rights to the Subscription Services are as established in Attachment I to Exhibit A.

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

(Reserved)

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

6.1.1 (reserved)

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

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

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

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30)

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

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

- 6.3 **Warranty – Subscription Services.** The Subscription Services will perform in material conformance with their published specifications/documentation, and are further warranted as provided in Attachment I to Exhibit A.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

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

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

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

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

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

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

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might

reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 Right To Audit.

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

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

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

7.7 Indemnity.

7.7.1 Definitions:

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

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

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

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

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

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

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

To the City:

City of Austin, Purchasing Office

ATTN: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Accela, Inc.

ATTN: Contract Manager

2633 Camino Ramon, Suite 500

San Ramon, CA 94583

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

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

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

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

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

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

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

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

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

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

7.20 Dispute Resolution.

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the

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

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

7.21 Subcontractors.

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

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

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

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

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

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

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

7.21.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any

such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

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

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

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

7.24 **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.

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

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

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

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

7.28.1 This Contract;

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

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

Accela, Inc

By: 

Signature

Name: COLIN SAMUELS

Printed Name

Title: ASST. CORP. SECRETARY

Date: 27 JUNE 2016

CITY OF AUSTIN

By: 

Signature

Name: Gil Zilkha

Printed Name

Title: Contract Administrator

Date: 7/12/16

CIVIC INDUSTRIES

Name Heriberto Tgeda

By: 

Title: CEO

Date: 6/27/2016

List of Exhibits

Exhibit A	Pricing Agreement and Statement of Work
Exhibit B	Non-Suspension or Debarment Certification
Exhibit C	Non Discrimination Certification, Section 0800

EXHIBIT A
Pricing Agreement and Statement of Work

AMENDMENT

1. Parties
- | | |
|---|--|
| ACCELA
Accela, Inc.
2633 Camino Ramon, Suite 500
San Ramon, California 94583
Attention: Contracts Administration
T: 925.659.3200
F: 925.407.2722
e-Mail: contractsadmin@accela.com | CUSTOMER
City of Austin
1124 S. IH-35, Suite 300
Austin, TX 78704
Attention:
T: _____
F: _____
e-Mail: _____ |
|---|--|
- CIVIC INDUSTRIES, dba Civic Insight**
155 9th Street, San Francisco, CA 94103
Eddie A Tejeda
M: 415-754-9974

Effective as of the Effective Date provided below, the Parties agree that the product(s) provided to Customer by Civic Industries, identified in Section 4 below, will be provided by Accela, pursuant to the Accela Subscription Terms and Conditions, attached hereto as Exhibit A.

2. This Amendment to the Agreement is effective as of the date of Customer's signature ("Effective Date").
3. Term The term of the Agreement will commence on the Start Date listed in Section 4 below. Thereafter, the term will be established as provided in Exhibit A, Section 4.
4. Products and Fees:
- Products: Civic Insight
- Fees: Effective as of the end of the current term, the fees for Civic Insight shall be as provided in Exhibit A, unless otherwise established herein.

Fees for the initial renewal Term are as follows:

Payment Terms and Conditions

Service Start Date: May 1, 2016

Billing Frequency: Annual

Payment Method: Check

Payment Terms: Net 30

Billing Method: Email

PO Required (yes / no)

PO Number:

Products and Services

Yearly Subscription		Quote
Civic Insight (May 2016 – May 2017)		\$28,685
Civic Insight (May 2017 – May 2018)		\$28,685
Subtotal:		\$57,370
Discount:	4%	-\$2,294
Total:		\$55,076

Services Included

As part of the subscription, the following will be provided:

- Support for two data areas:
 - Code Enforcement (HouseFacts Lite)
 - Development Services / Neighborhood Planning/Zoning
 1. Plan Applications (HouseFacts Lite)
 2. Plan Reviews (HouseFacts Lite)
 3. Construction Permits, Building and Land Development Specification (BLDS)
 4. Construction Permit Inspections (BLDS)
- Implementation fees are waived when conforming to BLDS or HouseFacts data formats
- Civic Insight will consume data from the Socrata Data Portal via it's API
- Civic Insight offers unlimited user accounts and email notifications
- Civic Insight offers an interface to view and search data on a map.
- Civic Insight offers an analytics dashboard with up to five graphs for each data format.
- Civic Insight offers an analytics and reporting on site usage.
- Civic Insight's offer a reliable service built on top of Heroku (Amazon AWS), a secure and scalable service that automatically ensures security updates, system upgrades, load balancing and auto-scaling are managed.

- Civic Insight provides continuous updates to the Civic Insight platform. Improvements to the platform are transparent and can be tracked at changelog URL: <https://austin.civicinsight.com/changelog>.
- Additional features that are part of the product road map will be offered to the city at no additional cost. These improvements include:
 - Additional analytics site tools to measure users activity
 - Improvements to the search interface to provide additional advanced queries
 - Improvements to the user interface in the dashboard
 - New charts and visualizations that can be enabled by agency
 - New features to monitor and watch property and activity within a geographic boundary
- Civic Insight will offer up to 150 hours per year to the City, via phone and email, to answer questions or provide support necessary to keep the services operable.
- To use these hours, the City makes a request to the Civic Insight Team, which will provide and a time estimate and the City will need to sign off before any changes are made.
- The following types of requests are within the scope of these services:
 - Changes to the user interface that are not already supported
 - Support for additional data sources outside of the supported BIDS and HouseFacts formats.
 - Resolve issues caused by any breaking changes made to the data hosted on Socrata.
 - New or any additional custom reporting tools.
- Hours of support in addition to the 150 hours listed above will be billed separately at \$185 per hour, but will otherwise be provided on the same terms and conditions.

Other Terms and Conditions

- Travel time and expenses will be billed as incurred. Payment obligations hereunder are non-cancelable and any sums when paid shall be non-refundable.
- Agency will be responsible for payment or reimbursement to Accela, Inc. any and all federal, state, provincial and local taxes and duties that are applicable, except those based on Accela's net income.
- If the Agency requires additional on-site assistance, a separate estimate and Statement of Work will be provided.
- Annual Subscription fees do not include hardware or equipment. Please contact your selected hardware vendor for additional hardware or software costs.

5. Additional Terms and Conditions

- 5.1 ~~The parties expressly agree that all terms and conditions of the Agreement between Customer and Civic Industries are hereby replaced by the terms and conditions of this Amendment, including the Accela Subscription Terms and Conditions, attached hereto as Exhibit A. Where there is conflict with any terms and conditions included in this Amendment and the Accela Subscription Terms and Conditions, the terms and conditions of this Amendment will take precedence.~~
- 5.2 Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

~~5.3 The Parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.~~

5.4 If any particular provision of this document is determined to be invalid or unenforceable, that determination shall not affect the other provisions which shall be construed in all respects as if the invalid or unenforceable provision were omitted.

ACCELA

By: 
Signature

COLIN SAMUELS
Print Name

Its ASST. CORP. SECRETARY
Title

Dated: 27 JUNE 2016
Month, Day, Year

CUSTOMER

By: _____
Signature

Print Name

Its _____
Title

Dated: _____
Month, Day, Year

Civic Industries, LLC.

By: 
Signature

Heriberto Tejeda
Print Name

Its CEO
Title

Dated: June 27, 2016
Month, Day, Year

Amendment

Page 4 of 4

EXHIBIT A
ACCELA SUBSCRIPTION TERMS AND CONDITIONS
Version 52615a

1. As used herein, "Accela" refers to Accela, Inc. and "Customer" refers to the subscribing customer designated on the attached Order. Accela and Customer are collectively designated as the "Parties".
2. These Subscription Terms and Conditions ("Terms") are effective upon execution of the Order by Customer and are for the exclusive benefit of the Parties. Nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.
3. Customer's subscription term commences on the date Accela provides appropriate access credentials to Customer's designated technical contact, indicating that the application services identified in the Order ("Subscribed Services") are available for Customer's subscription use. Said date is Customer's "Service Date" for purposes of designating the start of any subscription term.
4. ~~Subscription terms are twelve (12) calendar months in duration. At the end of Customer's subscription term or, if a multi-term subscription is indicated on the Order, the last of Customer's subscription terms, Customer's subscription will renew for an additional term. The per-unit pricing during said additional term will be the same as the prior term's annual fees unless Accela notifies Customer otherwise not less than sixty (60) calendar days prior to the end of said prior term. Any price increase will be effective at the start of the renewal term. No such price increase will exceed seven percent (7%) of the prior term's annual pricing. Customer may opt-out from said automatic renewal by providing written notice to Accela not less than sixty (60) calendar days prior to the Service Date anniversary which begins the renewal term.~~
5. In exchange for its use of the Subscribed Services, Customer will pay to Accela the amounts indicated in the Order. Said amounts are based on services purchased and not actual usage; payment obligations are non-cancelable and fees paid are non-refundable, except as otherwise specifically provided herein. Unless otherwise stated, such fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction ("Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Accela has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer, unless Accela is provided with a valid tax exemption certificate authorized by the appropriate taxing authority. Accela is solely responsible for taxes assessable against it based on its income, property and employees.
6. The Subscribed Services are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Subscribed Services and grants to Customer a limited, nonexclusive, nontransferable right to use the Subscribed Services, subject to the following terms and conditions: a) The Subscribed Services are provided for use only by Customer employees and to the extent of their duties for Customer, Customer's agents, contractors and officials; b) Customer may not make any form of derivative work from the Subscribed Services, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques provided to Customer by Accela; c) Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices; d) Customer may use the Subscribed Services only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, lend, or share any of its rights hereunder; e) Customer is responsible for all activities conducted using its user credentials and for its users' compliance with the provisions of these Terms; and f) All rights not expressly granted to Customer are retained by Accela. Accela will make the Subscribed Services available to Customer pursuant to these Terms during a subscription term. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Accela regarding future functionality or features.
7. Accela warrants that it has full power and authority to agree to these Terms and that, as of the effective date hereof, the Subscribed Services do not infringe on any existing intellectual property rights of any third party. If a third party claims that the Subscribed Services do infringe, Accela may, at its sole option, secure for Customer the right to

continue using the Subscribed Services or modify the Subscribed Services so that these do not infringe. Accela will have the sole right to conduct the defense and will defend any legal action and conduct all negotiations for its settlement or compromise.

8. Accela has no obligation for any claim based upon a modified version of the Subscribed Services, where such modifications were not made or authorized by Accela, or the combination or operation of the Subscribed Services with any product, data, or apparatus not provided by Accela. Accela provides no warranty whatsoever for any third-party hardware or software products. If a third-party product is supplied by Accela, no support for any third party product is provided, unless an addendum is attached hereto, identifying the product and specifying the terms and conditions of any support. Except as expressly set forth herein, Accela disclaims any and all express and implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose.

9. The Subscribed Services will be hosted by Accela on Accela-owned equipment at a physically-secure commercial third-party hosting facility. Accela will perform system administration duties as required to maintain the service levels described below and to facilitate timely restoration of Customer's data and operations, if necessary, following unanticipated interruptions of the Subscribed Services. Accela will implement suitable network security measures to minimize the likelihood of unanticipated interruptions of the Subscribed Services.

10. Accela will endeavor to provide Customer with no less than twenty-four (24) hours' notice prior to Subscribed Services unavailability due to planned maintenance (other than during Accela's standard maintenance window between the hours of 9:00 PM [21:00] Thursday and 1:00 AM [1:00] Friday Pacific time); Accela will endeavor to provide as much notice as is practicable under the circumstances for updates and fixes which may be applied on a more urgent basis. Accela will provide five (5) business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature.

11. Excluding the foregoing events, Accela warrants that the Subscribed Services will be available no less than ninety-nine point nine percent (99.9%) of each calendar month. For each month during which the availability of the Subscribed Services does not achieve the established standard, Accela will provide a credit to Customer's account as calculated pursuant to Section 12 below, provided that the substandard availability is timely identified by Customer in writing, can be objectively verified, and the Subscribed Services are being used in live-production. Credits accumulated pursuant to this Section may be applied to additional Accela products and/or services, but will not be refunded to Customer.

12. The performance requirements for the Subscribed Services, excluding planned maintenance downtime, are below. Uptime is calculated on a calendar month basis as $U = O / (M - P) * 100$, where U is Uptime, O is the amount of operational uptime for the Subscribed Services during a given month, M is the number of minutes in the month, and P is the number of minutes of planned downtime during the month. Credits are calculated on pro-rated monthly fees.

Uptime	Credit
≥99.9%	None
<99.9% but ≥99.0%	15%
<99.0% but ≥95.0%	35%
<95.0%	100%

13. In support of the Subscribed Services, Accela will provide Customer with a) a telephone number to contact the Customer Resource Center (CRC), Accela's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays; b) one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which Accela will address during its regular business hours; and c) access to archived software updates and other technical information in Accela's online support databases, which are continuously available. Where support is needed to address non-functioning or

seriously impaired Services and there is no reasonable workaround available, Accela will promptly respond to the support request and use commercially reasonable efforts to provide updates toward resolution of the issue.

14. The following are not covered by these Terms, but may be separately available at rates and on terms which may vary from those described herein: a) Services required due to misuse of the Subscribed Services; b) Services required by Customer to be performed by Accela outside of Accela's usual working hours; c) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by Accela; or d) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment.

15. Customer warrants that it owns or has been authorized to provide the data to Accela. Customer retains full ownership of said data and grants to Accela a limited, nonexclusive, nontransferable license to use said data only to perform Accela's obligations in accordance with these Terms.

16. Throughout the term of the agreement, upon the request of Customer, Accela will provide Customer with:
(i) a copy of its data in a database dump file not more than once per calendar quarter, ;

Within thirty (30) calendar days following the end of its final Subscribed Services term ("End of Term"), Customer may request that Accela provide a complete copy of Customer's data and associated documents, as updated or modified by Customer's use of the Subscribed Services, in a database dump file format. Accela will comply in a timely manner with such request, provided that Customer a) pays all costs of and associated with such copying, as calculated at Accela's then-current time-and-materials rates; and b) pays any and all unpaid amounts due to Accela.

17. Subject to the limitations of Section 6, Customer may authorize access to the Subscribed Services by creating unique user names and passwords ("Logins") up to the number of users indicated in the Order.

18. (reserved)

19. Customer acknowledges that transmissions and processing of Customer's electronic communications are fundamental to Customer's use of the Subscribed Services. Customer further acknowledges that portions of such transmissions and processing may occur within various computer networks not owned or operated by Accela. Customer agrees that Accela is not responsible for any delays, losses, alterations, interceptions, or storage of its electronic communications which occur in computer networks not owned or operated by Accela.

20. Either party may end Customer's access to the Subscribed Services if the other materially breaches these Terms and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination for cause by Customer, Accela will refund any prepaid subscription fees covering the remainder of the subscription term after the effective date of termination.

21. "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats.

Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section: a) information which is in Recipient's possession prior to disclosure by Disclosing Party; b) information which is available to Recipient from a third party without violation of this Section or Disclosing Party's intellectual property rights; c) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party; d) information which is subpoenaed by governmental or judicial authority; and e) information subject to disclosure pursuant to a state's public records laws. Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

22. ACCELA WILL, AT ALL TIMES DURING THE AGREEMENT, MAINTAIN APPROPRIATE INSURANCE COVERAGE. TO THE EXTENT NOT OFFSET BY ITS INSURANCE COVERAGE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT WILL ACCELA'S CUMULATIVE LIABILITY FOR ANY GENERAL, INCIDENTAL, SPECIAL, COMPENSATORY, OR PUNITIVE DAMAGES WHATSOEVER SUFFERED BY CUSTOMER OR ANY OTHER PERSON OR ENTITY EXCEED THE FEES PAID TO ACCELA BY CUSTOMER DURING THE TWELVE (12) CALENDAR MONTHS IMMEDIATELY PRECEDING THE CIRCUMSTANCES WHICH GIVE RISE TO SUCH CLAIM(S) OF LIABILITY, EVEN IF ACCELA OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

23. If Accela is delayed in its performance of any obligation hereunder due to causes or effects beyond its control, Accela will give timely notice to Customer of such circumstances and will act in good faith to resume performance as soon as practicable.

24. Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

~~25. The Parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.~~

26. Section 5 will survive the End of Term for so long as is required to complete collection of unpaid amounts. The limitations and waivers described in Sections 8, 19, 22, and 27 will survive the End of Term. Section 12 will survive the End of Term for a period of thirty (30) calendar days. Section 16 will survive the End of Term for a period of thirty (30) calendar days or for so long as is required for Accela to complete its response to a Customer request made during said thirty-days period. Section 21 will survive the End of Term for a period of two (2) years. With the exceptions of the foregoing surviving sections, the remainder of these Terms will terminate at the End of Term.

27. If any particular provision of these Terms is determined to be invalid or unenforceable, that determination will not affect the other provisions, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of these Terms will be effective unless it is described in writing and signed by the Parties.

**EXHIBIT B
NON-SUSPENSION OR DEBARMENT CERTIFICATION**

**City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

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

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

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

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

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

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

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative.

No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

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

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

Sanctions:

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

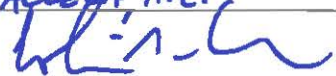
Term:

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

Dated this 27 JUNE 2016 day of _____

CONTRACTOR

Authorized
Signature

ACCEPTA INC.


Title

ASST. CORP. SECRETARY

**CITY OF AUSTIN
FSD - PURCHASING OFFICE**

CERTIFICATION OF EXEMPTION

DATE: <u>3/30/2016</u>	DEPT: <u>Austin Code Department</u>
TO: <u>Purchasing Officer or Designee</u>	FROM: <u>Kimberly Williams</u>
BUYER: <u>Stephen T. Aden, Sr.</u>	PHONE: <u>(512) 974-6308</u>

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

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

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

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

(Please check which exemption you are certifying)

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

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

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

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


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

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

The sole source designation is applicable to this purchase based on the active and unique integration of the vendor's services/product with the City of Austin's open data provider, Socrata. Said vendor's tracking/viewing service operates independently of any enterprise solution. Current contract renewal builds upon and continues development of prior work established in first contract year term. The expansion of this service and current contract includes another department, in addition to Austin Code: Development Services of Neighborhood Planning and Zoning Department.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with ACCELA, Inc. formerly known as Civic Insight, which will cost approximately \$55,076 total for two 1-year term options or \$28,685 per one-year term.

Recommended Certification

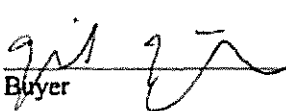
 3/30/16
Originator Date

Approved Certification

 4/1/16
Department Director or designee Date

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

Purchasing Review
(if applicable)

 7/12/16
Buyer Date


Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

11/14/12



2633 Camino Ramon #120, San Ramon, CA 94583

To Whom It May Concern:

This letter is to confirm that the **Civic Insight** is a sole source product, manufactured, sold and distributed exclusively by **Accela Inc.**, since Accela and Civic Industries entered into a Source Code License Agreement on October 19, 2015.

Civic Insight is proprietary and there are no other distributors of the product. Civic Insight is delivered as a software subscription, hosted on data-centers with exclusive access.

If you desire additional information, please do not hesitate to contact me at 925-659-3286

Sincerely,

A handwritten signature in purple ink, consisting of a series of loops and a long horizontal stroke.

Todd Foster
Corporate Attorney