



Amendment No. 1  
to  
Contract No. NS180000011  
for  
ABRM Upgrade, Maintenance, and Support Services  
between  
GCR, Inc.  
and the  
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to increase available funding to include additional services per attached Exhibit A in an amount not to exceed \$39,410.00 effective January 13, 2019.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Initial Term: 05/01 /2014 - 04/30/2016	\$468,543.00	\$468,543.00
Amendment No. 1: Administrative Increase \$39,410.00	\$39,410.00	\$507,953.00

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

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

5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

Handwritten signature of Timothy A. Walsh in blue ink.

January 16, 2019

Printed Name: Timothy A. Walsh  
Authorized Representative

Signature & Date:

Handwritten signature of Sai Purcell in blue ink.

Sai Purcell, Procurement Specialist IV  
City of Austin Purchasing Office

GCR, Inc.  
2021 Lakeshore Drive, Suite 500  
New Orleans, LA 70122

**GCR Inc.**

2021 Lakeshore Drive, Suite 500  
New Orleans, Louisiana 70122

UNO Research & Technology Park  
Advanced Technology Center

TEL 504 304 2500 / 800 259 6192  
FAX 504 304 2525  
www.GCRincorporated.com

December 3, 2018

Ms. Diana Heath  
Austin-Bergstrom International Airport  
City of Austin, Department of Aviation  
3600 Presidential Blvd  
Austin, TX 78719

Dear Diana:

Following up on our conversations regarding the work GCR currently has underway to implement the ABRM Space Management module, the Airport expressed interest in contracting with GCR to develop the space polygons and update the space inventory for the ABIA terminal building. As part of this task, we would also work with your staff to update the current space configuration settings to reflect the airport's current business requirements and update the agreement/provision associations. The data loaded into the ABRM Space Inventory and will then be accessible using the ABRM GIS Viewer.

For this project, the GCR Team will provide all services necessary to create an estimated 1,400 space polygons and the space inventory table. Should the number of space polygons significantly exceed the estimated 1,400, we will inform you and request a change order for the additional polygons. Tod Yankee will serve as the project manager for this work.

**Project Objectives**

GCR will provide the Airport the personnel and expertise to convert the existing as-built AutoCAD drawings for the terminal building into ESRI GIS Geodatabase files. GCR will create a space inventory data table based on the current ABM space inventory. Using the space inventory table, the updated spaces can be associated with agreements and then loaded into the ABRM Space Management system. GCR will provide the geodatabase files to the Airport so these can be accessed by the ABRM Graphics Viewer.

**Project Deliverables**

- a. Data packaged in ESRI Geodatabase format
- b. Projection: Texas State Plan (TBD)
- c. Space polygons (closed polygons representing rooms) by floor level
- d. Recommended attributes:
  - i. GIS ID (unique database identifier)
  - ii. Space ID (unique ID assigned to each space)
  - iii. Calculated square footage (geometric calculations from GIS) for each space polygon



## **Services**

### Task A – AutoCAD File Inventory and Preparation

1. Using the latest version of AutoCAD Map 3D, GCR will open each of the provided DWG files and proceed to displace the objects needed to depict the floor plan of each of the buildings. (16 hours)
2. The DWG files will be checked for correct projection information, likely using the Texas State Plan (to be confirmed). The files will be assigned a projection or re-projected as necessary. The selected objects from the files inventory will be exported to staging geodatabases to prepare them for use in ESRI ArcGIS. (18 hours)

### Task B – Create Feature Classes

1. Feature classes will be created in target geodatabases according to the schema described in “Project Deliverables”. (16 hours)
2. Space polygons will be digitized using the Airport’s lease line standards. Discernable rooms such as hallways will be digitized as polygons and closed where they meet another room or open space. This will create approximately 300 spaces covering the terminal building. There will be overlaps created and all space inside the building footprint will be contained within an individual space polygon. (185 hours)

### Task C – Create Space Inventory Table

A space inventory table spreadsheet will be created identifying each space polygon by space ID and area (s.f.) which the Airport can assign to agreements and provisions for inclusion in the ABRM Space Management module. (22 hours)

### Task D – Project Testing and Quality Control

The resulting datasets will be assembled into one geodatabase for packaging and delivery. (25 hours)

### Task E – Update ABRM Space Inventory

GCR will work with the Airport’s staff to update the attributes associated with the spaces and resolve discrepancies between the ABM data and the new space inventory data. The updated space inventory data will then be loaded into the ABRM space inventory tables. GCR will complete a QA test to validate the data load was successful and accessible in the ABRM Graphics Viewer. (40 hours)



The cost to develop the space polygons and load the space inventory table will be \$39,410 on a fixed price basis. We do anticipate one on-site visit will be required. Direct travel expenses will be in addition to the fee.

We are prepared to begin work on this project upon your acceptance of this engagement letter. We anticipate that the implementation will be completed in 6 to 8 weeks from the notice-to-proceed (NTP).

If you agree with the terms of this engagement letter, please indicate your approval below. We are looking forward to working with you to develop inventory of spaces in the terminal and on the implementation and having the Airport realize the many benefits of using the Space Management module.

Sincerely,

A handwritten signature in black ink, appearing to read "Tod R. Yankee", is written over a horizontal line.

Tod R. Yankee  
Project Manager

Accepted by:

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Signature

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Printed Name

---

Date

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
GCR, Inc.  
For  
ABRM Upgrade, Maintenance, and Support Services**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and GCR, Inc. ("Contractor"), having offices at 2021 Lakeshore Drive, Suite 500, New Orleans, LA 70122.

**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 Patrick Brady, Phone: P. 985.327.0881 | P. 800.259.6192 | C. 504.715.0936, Email Address: pbrady@gcrincorporated.com. The City's Contract Manager for the engagement shall be Diana Heath, Phone: (512) 530-6341, Email Address: [diana.heath@austintexas.gov](mailto:diana.heath@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.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the tasks set forth in Exhibit B.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$468,543 for all fees and expenses.

	Upgrade Cost	Implementation	Maintenance/ Supports	Consultant Services	Total
1st year*	\$ 96,322.50	\$ 116,350.00	\$ 39,700.00	\$ 8,500.00	\$ 260,872.50
2nd year			\$ 40,900.00	\$ 8,750.00	\$ 49,650.00
3rd year			\$ 42,100.00	\$ 9,000.00	\$ 51,100.00
4th year			\$ 43,400.00	\$ 9,270.00	\$ 52,670.00
5th year			\$ 44,700.00	\$ 9,550.00	\$ 54,250.00

\*all years are contract years running from the effective date of this Contract or applicable anniversary of the effective date of this Contract.

### 3.2 **Invoices.**

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

	City of Austin
Department	Aviation Department
Attn:	Aviation Department
Address	Account Payable
City, State, Zip Code	3600 Presidential Blvd.

3.2.2 Invoices for labor shall include a 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.

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

3.2.4 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.

### 3.3 **Payment.**

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

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

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

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

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

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

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

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

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

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

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

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

3.4 **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.

3.5 **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.

3.5.1 **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.

3.5.2 **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.

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

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 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

3.6.1.2 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 five (5) years s, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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

4.1.2 This is a five-year Contract. Prices are firm for the five years.

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.** 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.

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

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

## **SECTION 5. OTHER DELIVERABLES**

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

### **5.1.1 General Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

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

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

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

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

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

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

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

5.1.2.5 **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.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. 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.

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

5.3 **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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

5.4 **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.

5.5 **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.

5.5.2 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.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.6.1 **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.

5.6.2 **Copyrights.** As to any deliverables containing copyrightable 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 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 works 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) 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-made-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.

5.6.3 **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.

5.6.4 **Software Exclusion.** The City acknowledges that the Contractor is in the business of developing and licensing software. The City further agrees and acknowledges that (a) the obligations of Sections 5.6.1 through 5.6.3 will not apply to any software developed by or for the Contractor and provided to the City pursuant to this Contract ("Contractor Software"), (b) that Contractor Software will be excluded from deliverables, (c) that the Contractor is the sole and exclusive owner of the Contractor Software, and (d) that the City will have only the license right to use the Contractor Software for the City's internal purposes. The City further agrees that it shall not do, shall not permit any third party to do, and shall use commercially reasonable efforts to prohibit any third parties from doing any of the following: (1) using any Contractor Software in a manner that violates this Contract or any applicable laws and regulations, or to send unsolicited bulk email or "spam", (2) reverse engineering, translating, decompiling or disassembling the object code of the Contractor Software, or (3) copying (other than for backup purposes, which are permitted), modifying, creating derivative works of, sublicensing, selling, leasing, loaning, renting, distributing, conveying, pledging as security, or otherwise encumbering the Contractor Software.

5.7 **Rights to 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.

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

6.1.1 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.

6.1.2 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.

6.1.3 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.

## **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.

7.3 **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 Audits and Records.**

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 Records Retention:

7.5.2.1 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.

7.5.2.2 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.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

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

7.7 **Indemnity.**

7.7.1 Definitions:

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

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

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

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

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

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse 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 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

GCR, Inc.

ATTN: Contract Manager

2021 Lakeshore Drive, Suite 500

New Orleans, LA 70122

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

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

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

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

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

guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

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

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

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

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

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

**7.20 Dispute Resolution.**

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

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

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

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

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

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

## 7.22 **Subcontractors.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.28 **Incorporation of Documents.** **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

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

7.29.1 This contract;

7.29.2 Exhibit A - GCR, Inc.'s contract for software maintenance

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

GCR, INC.

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

Name: Timothy A. Walsh  
Printed Name: Director, Aviation Services

Title: November 7, 2017

Date: \_\_\_\_\_

CITY OF AUSTIN

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

Name: Sai Russell  
Printed Name

Title: Procurement Specialist IV

Date: 11/9/17

## List of Exhibits

Exhibit A	GCR, Inc.'s contract for software maintenance
Exhibit B	Coverage of Maintenance Agreement
Exhibit C	Price Agreement and Scope of Work
Exhibit D	Non Discrimination Certification, Section 0800

**EXHIBIT A**  
**GCR, INC.'S CONTRACT FOR SOFTWARE MAINTENANCE**

This agreement (“**Agreement**”) is made and entered into on \_\_\_\_\_, 20\_\_, (“**Effective Date**”) by and between [LICENSEE NAME] located at [LICENSEE ADDRESS] (“**Licensee**”) and GCR Inc., located at 2021 Lakeshore Drive, Suite 500, New Orleans, Louisiana (“**GCR**”) (Licensee and GCR each a “**Party**” and collectively the “**Parties**”).

WHEREAS, Licensee has obtained a license from GCR to certain software modules identified on **Attachment A (Software)** as licensed to Licensee (“**Software**”) and wishes to obtain associated, maintenance services in connection with the Software;

In consideration of the mutual promises and agreements of the Parties herein, the Parties agree as follows:

**ARTICLE 1 – MAINTENANCE**

1.1 **Maintenance Services.** Throughout the term of the Agreement, GCR shall provide maintenance services as set forth in **Attachment B (Maintenance)** (“**Maintenance**”). In general, the maintenance services consist of (a) prompt customer support on-site or by telephone, fax or email; and (b) Software updates, new releases, and enhancements reflecting on-going development at GCR and as made generally available to GCR’s customers of the Software.

1.2 **Licensee Cooperation.** Licensee acknowledges that GCR’s ability to provide Maintenance is dependent on the cooperation of Licensee and the quantity of information that Licensee can provide. Licensee will use commercially reasonable efforts to reproduce all reported problems and gather troubleshooting information as requested by GCR. If Licensee cannot reproduce such problems or gather requested information, Licensee will provide GCR temporary login access on Licensee’s system to identify and address reported problems. GCR will have no responsibility for failure to provide Maintenance as a result of Licensee’s failure to cooperate with GCR.

**ARTICLE 2 – COMPENSATION**

**2.1 Maintenance Fees.**

2.1.1 **One-Time.** Licensee will make the payments for the Maintenance identified on **Attachment B (Maintenance)** as “One-Time” on the Effective Date.

2.1.2 **Annually.** Licensee will make the payments for the Maintenance identified on **Attachment B (Maintenance)** as “Annual” on the Effective Date and each anniversary thereafter.

2.1.3 **Monthly.** Licensee will make the payments for the Maintenance identified on **Attachment B (Maintenance)** as “Monthly” on the Effective Date and each month thereafter.

2.2 **Payment Terms.** GCR will invoice Licensee for fees as they become payable pursuant to this **ARTICLE 2 (COMPENSATION)**. on the schedules shown above. All payments by Licensee to GCR shall be made within 30 days of Licensee’s receipt of GCR’s invoice. GCR assumes all responsibility for payment of taxes from the funds received under this Agreement.

**ARTICLE 3 – LIABILITY**

3.1 **Consequential Damages Waiver.** Neither Party shall, under any circumstances or in any event, be liable to the other Party for any special, punitive, indirect, incidental, or consequential damages of any nature, including, without limitation, loss of actual or anticipated profits or revenues; loss of production, by reason of shutdown, non-operation, or otherwise; increased expense of manufacturing or operation; loss of use; increased financing costs; or cost of capital.

3.2 **Limit of Liability.** Notwithstanding anything set forth in this Agreement, GCR's maximum liability in the aggregate for any claim arising under or otherwise related to this Agreement shall in no event exceed the amount of monies received by GCR under this Agreement in the 12 months prior to such claim.

#### **ARTICLE 4 – TERM AND TERMINATION**

4.1 **Term.** The Agreement is effective as of the Effective Date and continue for a period of 1 year (the “**Initial Term**”) from the Effective Date. Thereafter, this Agreement will automatically renew for successive 1 year periods (each a “**Renewal Term**”), unless either Party gives the other Party written notice of its intention not to renew this Agreement not less than 90 days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.

4.2 **Termination/Suspension for Default.** In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement by giving 30 days' prior written notice to the breaching Party; provided, however, that this Agreement shall not terminate if the breaching Party has cured the breach prior to the expiration of such 30-day period. In lieu of termination, the non-breaching Party may suspend performance under this Agreement by such written notice until the breaching Party has cured the breach.

4.3 **Termination for Insolvency.** If (a) insolvency, receivership or bankruptcy proceedings are instituted by or against a Party and are not terminated within 30 days, (b) a Party makes an assignment for the benefit of creditors or (c) a Party admits an inability to pay its debts as they come due, then in any such event the other Party may in its sole discretion terminate this Agreement without notice.

4.4 **Survival.** Except as set forth to the contrary herein, the Parties understand and agree that all terms and conditions of this Agreement, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement (by expiration of the term or otherwise) shall survive such termination and shall continue to be enforceable as provided herein), including **ARTICLE 2 (COMPENSATION)** (to the extent any payments are due but not yet paid as of expiration or termination), **ARTICLE 3 (LIABILITY)**, this **Section 4.4 (Survival)**, and **ARTICLE 5 (MISCELLANEOUS)**.

#### **ARTICLE 5 – MISCELLANEOUS**

5.1 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Louisiana, excluding any choice of law provisions that may direct the application of any laws of any other jurisdiction. Subject to **Section 5.2 (Mediation)**, the exclusive venue for any dispute or controversy between the Parties will be the state and federal courts located in Orleans Parish, Louisiana, United States. The Parties hereby irrevocably consent to jurisdiction and venue in such courts for this purpose, and the Parties waive objection to the jurisdiction and venue being in such courts

**5.2 Mediation.** If during the course of this Agreement the Parties are unable to resolve any dispute or controversy arising out of or relating to the Agreement, such claims shall first be subject to non-binding mediation as a condition precedent to the initiation of any legal action (either court action or arbitration). Unless the Parties mutually agree otherwise in writing, the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association in effect at the time of the demand for mediation shall be applied at the mediation. Any such mediation will be located in New Orleans, Louisiana, United States. Demand for mediation shall be made in writing. The Parties agree to share equally the mediator's fee and any filing fees. Any agreement reached in mediation shall be enforceable and binding upon both Parties. Each Party agrees to bear its own attorneys' fees associated with the mediation.

**5.3 Assignment.** Neither Party shall assign any interest in this Agreement by assignment, transfer, or novation, without prior written consent of the other Party; provided, however, that GCR may assign this Agreement (a) to any affiliate of GCR or (b) in connection with an assignment of all or substantially all of GCR's assets to which this Agreement relates. This provision shall not be construed to prohibit a Party from assigning to any banking, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished to the other Party.

**5.4 Force Majeure.** Neither Licensee nor GCR shall be considered in default in the performance of the obligations hereunder, except with respect to payment of monies hereunder, if such performance is prevented or delayed because of unavailability of labor, war, hostilities, revolution, civil commotion, acts of terrorism, strike, epidemic, accident, fire, wind, flood; or because of any act of God; or for any cause, whether similar or dissimilar, now or hereafter existing, beyond the reasonable control of the Party affected. The Party suffering a delay in its performance caused by an above described occurrence shall give notice thereof to the other Party as soon as reasonably possible thereafter, and shall use reasonable efforts to overcome such delay. In the event of such an occurrence, the Parties shall consult to determine how to overcome the effect on the Project and shall mutually agree to any equitable adjustment to the compensation due GCR hereunder.

**5.5 Export.** Licensee agrees to abide by any restrictions or conditions respecting the export, re-export, or other transfer of the Licensed Material disclosed and/or licensed to Licensee in accordance with this Agreement that are in effect now or are hereafter imposed by the United States Government, and will not export, re-export, or otherwise transfer the Licensed Material, except in full compliance with all relevant U.S. laws and regulations.

**5.6 Miscellaneous.** This Agreement is the entire agreement of the Parties on the subject matter hereof. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Licensee and GCR with respect to the subject matter hereof. In addition, this Agreement may not be modified or amended unless agreed by the Parties, reduced to writing, and signed by both the Licensee and GCR. Further, if any part of this Agreement is adjudged invalid, illegal or unenforceable, the remaining parts shall not be affected and shall remain in full force and effect. Headings in this Agreement are for convenience only and shall not affect the interpretation thereof.

## EXHIBIT B

### Coverage of Maintenance Agreement

The SOFTWARE covered by this Maintenance Agreement is as follows:

AirportIQ Business Manager (ABM) and any future incremental upgrade versions offered by GCR. Future expansion of the system that requires modifications outside the maintenance of the base system is not covered under this Maintenance Agreement.

The manuals, handbooks, and other written materials furnished by GCR for use with the SOFTWARE (the "Documentation") are:

- ABM User's Manual and related On-line Help

### Support Policy Descriptions

In accordance with the terms of this Maintenance Agreement, GCR will perform the following services:

#### Installation and Basic Operation

GCR will ensure the proper installation of the current release of the SOFTWARE, and any subsequent patches or updates to the SOFTWARE, on a pool of workstations on the Licensee's network. With this support level, GCR will ensure that the Licensee's ABM installation passes all set-up and configurations tests, and can communicate with the database effectively.

#### "Hotline" Support for contacting GCR

GCR will provide the following communication mechanisms for the Licensee to use when requesting support:

- a) Telephone Support. GCR shall maintain a support telephone hotline during regular business hours (7:30 a.m. to 5:00 p.m. Monday-Friday CST) to assist the Licensee in reporting errors and in providing first-line support in the use and operation of the SOFTWARE.
- b) Internet Email. GCR shall maintain an email address for the express purpose of providing support, and GCR shall provide that email to the Licensee.

### AirportIQ Data Center Subscription

GCR shall be responsible for providing to the Licensee one (1) username and password free of charge for GCR's AirportIQ Data Center website. AirportIQ Data Center is a *subscription-based, monthly service* which delivers real-time aviation data reporting for over 18,000 airports in the U.S. The service delivers the power of a desktop application via a web browser with no special plug-ins or modifications required. This subscription is provided pursuant to the Maintenance Agreement and at no extra charge to the Licensee.

### Time & Material (T&M) Rates

Should the Licensee decide to maintain services under T&M then the following rates will apply outside reasonable travel expenses.

ROLE	2017 HOURLY RATES
GCR Project Manager	\$190.00
GCR Technical Developer	\$140.00
GCR Implementation Specialist	\$170.00

The prices shown above will increase by 3% annually.

**EXHIBIT C**  
**PRICE AGREEMENT AND SCOPE OF WORK**

	Upgrade Cost	Implementation	Maintenance/ Supports	Consultant Services	Total
1st year	\$ 96,322.50	\$ 116,350.00	\$ 39,700.00	\$ 8,500.00	\$ 260,872.50
2nd year			\$ 40,900.00	\$ 8,750.00	\$ 49,650.00
3rd year			\$ 42,100.00	\$ 9,000.00	\$ 51,100.00
4th year			\$ 43,400.00	\$ 9,270.00	\$ 52,670.00
5th year			\$ 44,700.00	\$ 9,550.00	\$ 54,250.00

**ABRM Migration Pricing for Current ABM Airport**

**Austin-Bergstrom International**

Airport Size Category

Medium Hub



**Modules / Standard Commercial Module Pricing**

1: Agreements / Companies (\$44,000)

2: Statistics (\$15,000)

3: Billing (\$15,000)

4: Accounts Receivables (\$15,000)

5: Tenant Portal (\$20,000)

6: Property & Space Management (\$20,000)

7: Utilities Management (\$15,000)

8: Aircraft Registration (\$15,000)

9: Itinerant Billing (\$15,000)

10: Business Intelligence (\$35,525)

Current ABM	ABRM	Commercial	ABM User
X	x	44,000	22,000
X	x	15,000	7,500
X	x	15,000	7,500
X	x	15,000	7,500
	x	20,000	17,000
X	x	20,000	10,000
		0	0
		0	0
		0	0
	x	35,525	35,525

License Sub-total

Available

Applied

164,525 107,025

License Bundle Discount \*

10%

10%

-10,703

ABRM Implementation & Training

116,350

<b>Total One-Time Migration Pricing</b>	<b>212,672</b>
1st Year Maintenance (adjusted annually, includes Tenant Portal and BI support)	39,700
Annual Consulting Allowance (40 hours, travel expenses invoiced at actual, estimated expenses of \$1,700 for 4 days on-site)	8,500
<b>Total Maintenance with Consulting Allowance</b>	<b>48,200</b>

**GCR Inc.**

Implementation of Airport Business &amp; Revenue Manager (ABRM)

Austin-Bergstrom International Airport

Medium Hub		
	Hours	Fee
<b>Implementation Services - Technical</b>		
Technical Installation	14	1,610.00
Initial Environment Configuration & Setups	16	1,840.00
Core / Base Data Migration	40	5,200.00
	-----	-----
<b>Implementation Services - Technical - Sub-Total</b>	70	8,650.00
<b>Implementation Services - Functional</b>		
Business User Training - Level 1	24	2,760.00
Business User Training - Level 2	40	7,200.00
Data Validation	24	4,320.00
Security Set-up	16	2,880.00
Landing Page Set-up	16	2,880.00
Workflow Set-up	24	4,320.00
Parallel Testing & UAT	32	5,760.00
Go-Live Transition	32	5,760.00
BI Training	80	14,400.00
Project / Account Management	104	18,720.00
	-----	-----
<b>Implementation Services - Functional - Sub-Total</b>	392	69,000.00
<b>Integration and Custom Development *</b>		
Invoices & A/R Statements	16	2,240.00
Export to General Ledger	24	3,360.00
Import Activity Data (imports for phone system and Passur, 2 additional imports to be budgeted)	200	28,000.00
	-----	-----
<b>Integration &amp; Custom Development - Sub-Total *</b>	240	33,600.00
<b>Travel Expenses</b>	<b>Trips</b>	<b>Expense</b>
Airfare	3	1,800.00
Lodging (3 nights)	3	1,800.00
Per Diem (4 days)	3	1,500.00
		-----
		5,100.00
		-----
	<b>Hours</b>	<b>Fee &amp; Exp</b>
	-----	-----
<b>Total Estimated Fees &amp; Expenses</b>	702	116,350.00
	=====	=====



**GCR Inc.**  
2021 Lakeshore Drive, Suite 500  
New Orleans, Louisiana 70122  
UNO Research & Technology Park  
Advanced Technology Center  
  
TEL 504 304 2500 / 800 259 6192  
FAX 504 304 2525  
www.GCRIncorporated.com

September 15, 2017

Ms. Diana Heath  
IT Project Manager  
City of Austin Aviation Department  
3011 Employee Avenue  
Building 1101  
Austin, TX 78719

Subject: 5-Year Maintenance Agreement Term for AirportIQ Business & Revenue Manager Software

Dear Ms. Heath:

As you requested, we are providing pricing for a 5-year term for maintenance and support of the AirportIQ Business & Revenue Manager System. In the original pricing for the ABRM application, we had the price for Year 1 of maintenance and support as \$39,700, plus an additional \$8,500 for 40 hours of on-site consulting. The \$8,500 includes estimated expenses of \$1,700.

The following is pricing for the Years 2 through 5 for ABRM maintenance and support:

Year 2 - \$40,900  
Year 3 - \$42,100  
Year 4 - \$43,400  
Year 5 - \$44,700

These prices reflect a price increase of approximately 3% per year.

For the 40 hours of on-site consulting to be included in the maintenance and support contract, the pricing for Years 2 through 5 is:

Year 2 - \$8,750  
Year 3 - \$9,000  
Year 4 - \$9,270  
Year 5 - 9,550



These prices also reflect an increase of 3% per year. This pricing includes an estimate for out-of-pocket expenses starting at Year 1 of \$1,700. We will provide the Aviation Department with an updated estimate of the out-of-pocket of expenses for each year as the on-site work is planned for that year.

Please let us know if you have any questions on the 5 year pricing for the maintenance and support items. We appreciate the opportunity to continue to serve the City of Austin Aviation Department.

Sincerely,

A handwritten signature in black ink that reads "PABrady". The signature is written in a cursive, flowing style.

Patrick A. Brady  
ABRM Product Manager

**EXHIBIT D**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, 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 payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 7th day of October, 2017

CONTRACTOR  
Authorized  
Signature

Title

GCR Inc.



Timothy A. Walsh

Director, Aviation Services



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 08/21/2017 DEPT: Aviation  
TO: Purchasing Officer or Designee FROM: Diana Heath  
BUYER: PHONE: (512) 530-6341

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

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

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

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☐ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

- equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

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

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


ABRM contains proprietary software developed by GCR Inc. including: 1) custom application programming logic, 2) custom database implementation and design, 3) proprietary communication software components, 4) custom software interfaces to the Airport's third party flight tracking system, and 5) proprietary software libraries developed by GCR Inc. to which GCR possesses the intellectual property rights. GCR Inc. is the only entity authorized to convert the existing ABM system to the next generation ABRM system, and provide ongoing maintenance and support services for the ABRM system.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The Department of Aviation selected GCR to install their property and revenue information management system at the airport through competitive bid in 1999. At that time the 3 major software products for airport specific property management and finance systems were evaluated. GCR's ABM (Airport Business Manager) software provided the highest level of functionality at the lowest cost. The ABM software has remained reliable and continues to meet the needs of the airport. Additionally, the vendor, GCR, Inc, has remained responsive, customer centric, and dependable. The airport's Finance and Property Divisions have spent the past 18 months reviewing the system and updating rules and standards to align the software with current airport business practices. There is currently only one other product on the market that provides the specific functionality provided by the GCR product. The airport has done an evaluation of that product, and vendor, and determined it not to be a good fit for the airport at this time.


6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with GCR, Inc.  
which will cost approximately \$260,872.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

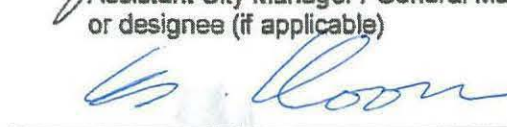
 8/21/17  
Originator Date

Approved  
Certification

 8/22/17  
Department Director or designee Date

 8/22/17  
Assistant City Manager / General Manager Date  
or designee (if applicable)

Purchasing Review  
(if applicable)

 9/19/17 JTH  
Buyer Date Manager Initials

Exemption Authorized  
(if applicable)

 9/19/17  
Purchasing Officer or designee Date

02/26/2013



**GCR Inc.**

2021 Lakeshore Drive, Suite 500  
New Orleans, Louisiana 70122

UNO Research & Technology Park  
Advanced Technology Center

TEL 504 304 2500 / 800 259 6192  
FAX 504 304 2525  
www.GCRincorporated.com

August 21, 2017, 2017

Ms. Diana Heath  
IT Project Manager  
City of Austin Aviation Department  
3011 Employee Avenue  
Building 1101  
Austin, TX 78719

Subject: Sole Source Statement for AirportIQ Business and Revenue Manager  
Software License and Implementation Services

Dear Ms. Heath:

GCR, Inc. implemented the **Airport Business Manager (ABM) System** for the City of Austin Aviation Department, Austin-Bergstrom International Airport, in December, 2000. ABM provides the enterprise-wide revenue management application for the Airport.

GCR is proposing updating the ABM system with the next generation of this system, the AirportIQ Business and Revenue Management System (ABRM). ABRM will provide a path to continue using the data that has been created in ABM over the past 17 years. ABRM will also be built on a technology that will assure the viability of the property and revenue management system for the foreseeable future.

ABRM, as the next generation of the ABM system, contains proprietary software and components for integration with other Aviation Department computer applications. ABRM, as is the case with ABM, contains:

- Custom application programming logic developed by GCR Inc.
- Proprietary software libraries developed by GCR Inc., which possesses the intellectual property rights to this software.
- Proprietary communication software components developed by GCR Inc.
- Proprietary software interfaces developed by GCR Inc. to the Airport telecommunications system and flight tracking system.
- Custom graphical user interface software developed by GCR Inc.
- Custom database implementation by GCR Inc.



All of these features and functions will utilize the data from ABM after proprietary processes are employed to convert the ABM data schema and content to the ABRM data schema and format.

GCR Inc. is the only entity which can effectively convert the Airport from the ABM system to the ABRM system, and then provide ongoing maintenance and support services for the ABRM system.

GCR Inc. is also the only vendor authorized to sell, install, upgrade and maintain the ABM and ABRM software. GCR Inc. does not utilize system integrators or reseller to sell the ABM and ABRM software.

Sincerely,

A handwritten signature in black ink, appearing to read "PABrady", written in a cursive style.

Patrick Brady  
AirportIQ Business Manager Product Manager

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 2

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

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-279984

Date Filed:  
11/03/2017

Date Acknowledged:

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

GCR Inc.  
New Orleans, LA United States

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

City of Austin

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

MA 5600 NS180000011

Provide software and services for implementation and support of the Austin-Bergstrom International Airport

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	GCR Acquisition Company LLC	New Orleans, LA United States	X	
	Andersen, James	Wilton, CT United States	X	
	Caliento, Paul	Ramsey, NJ United States	X	
	Rumilly, Paul	Wilton, CT United States	X	
	Posewick, Joseph	New Lenox, IL United States	X	
	Rigamer, Gregory	New Orleans, LA United States	X	
	Flores, Michael	Santa Rosa Beach, FL United	X	
	Cox, Daniel	New Orleans, LA United States	X	
	Bastin, John	Avon, CT United States	X	
	Balasubramanian, Anand	Windsor, CT United States	X	
	Bouillion, Tod	Mandeville, LA United States	X	

**CERTIFICATE OF INTERESTED PARTIES****FORM 1295**

2 of 2

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

**OFFICE USE ONLY  
CERTIFICATION OF FILING**

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

GCR Inc.  
New Orleans, LA United States

**Certificate Number:**  
2017-279984

**Date Filed:**  
11/03/2017

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

City of Austin

**Date Acknowledged:**

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

MA 5600 NS180000011

Provide software and services for implementation and support of the Austin-Bergstrom International Airport

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

**5 Check only if there is NO Interested Party.** ☐

**6 AFFIDAVIT**

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

**RICHARD U. CAMPBELL**

**NOTARY PUBLIC**

**BAR NO. 32833**

**STATE OF LOUISIANA**

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said ANGIE ROMERO, this the 3<sup>rd</sup> day of November, 20 17, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

## GOAL DETERMINATION REQUEST FORM

<b>Buyer Name/Phone</b>	Sai Purcell/4-3098	<b>PM Name/Phone</b>	Diana Heath/(512) 530-6341
<b>Sponsor/User Dept.</b>	Aviation	<b>Sponsor Name/Phone</b>	Name/Phone
<b>Solicitation No</b>	26597 - Sole Source	<b>Project Name</b>	AirportIQ Business Manager property and revenue management system
<b>Contract Amount</b>	\$405,473	<b>Ad Date (if applicable)</b>	N/A
<b>Procurement Type</b>			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
<b>Provide Project Description**</b>			
The contract will provide maintenance, support and system upgrades for the AirportIQ Business Manager (ABM) property and revenue management system used by the Aviation Department			
<b>Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.</b>			
The original system was purchase in 1999 when the airport first open			
<b>List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)</b>			
92046 - 100% System upgrade that can only be perform by one vendor.			
Sai Xoomsai Purcell		09/13/2017	
<b>Buyer Confirmation</b>		<b>Date</b>	

\* Sole Source must include Certificate of Exemption

\*\*Project Description not required for Sole Source

<b>FOR SMBR USE ONLY</b>		
<b>Date Received</b>	9/13/2017	<b>Date Assigned to BDC</b>
9/13/2017		
<b>In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:</b>		
<input type="checkbox"/> Goals	% MBE	% WBE
<input type="checkbox"/> Subgoals	% African American	% Hispanic
	% Asian/Native American	% WBE

## GOAL DETERMINATION REQUEST FORM

<input checked="checked" type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input type="checkbox"/> No Goals
--	-----------------------------------

## GOAL DETERMINATION REQUEST FORM

**This determination is based upon the following:**

- |  |  |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs       | <input type="checkbox"/> No availability of M/WBEs               |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities         |
| <input type="checkbox"/> Sufficient availability of M/WBEs         | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source                    | <input type="checkbox"/> Other                                   |

*If Other was selected, provide reasoning:*

**MBE/WBE/DBE Availability**

N/A

**Subcontracting Opportunities Identified**

N/A

Tracy Burkhalter

**SMBR Staff**

**Signature/ Date**

*Tracy Burkhalter*

9-14-17

**SMBR Director or Designee**

**Date**

9-14-17

**Returned to/ Date:**