

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
American Association of Airport Executives, alias AAAE
For
Interactive Training System Software Upgrade, Maintenance and Support
MA 5600 NS180000019**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and American Association of Airport Executives, alias AAAE ("Contractor"), having offices at 601 Madison Street, Alexandria VA 22314.

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 providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. 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.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Kyle Herbig, Phone: 703-797-2536, Email Address: kyle.herbig@aaae.org. The City's Contract Manager for the engagement shall be Gary Carper, (512) 530-7538, Email Address: gary.carper@austintexas.gov. The City's 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 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 following tasks:

2.2.1 See attached IETLS Product Overview and Deliverables

SECTION 3. COMPENSATION

3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$88,500.00 (\$29,500.00 per year) for all fees and expenses, as described herein.

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 itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Aviation Department
Attn:	Accounts Payable
Address	3600 Presidential Blvd., Suite 411
City, State, Zip Code	Austin, TX 78719

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

3.2.3 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 set off 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 **Travel Expenses.** There are no travel expenses authorized for this Contract.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 36 months.

4.1.1 Upon expiration of the initial term or any 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 for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.1.2 This is a 36-month Contract.

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, or in any official 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 or in any official report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Equal Opportunity.**

5.1.1 **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.

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

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

5.3 **Delays.**

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

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

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

5.4.1 **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.

5.4.2 **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.

5.4.3 **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.

5.5 **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.

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

SECTION 6. WARRANTIES

6.1 **Warranty – 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 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.

7.2 Workforce.

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

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

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

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

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

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

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

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:
American Association of Airport Executives
ATTN: Kyle Herbig, Contract Manager
601 Madison St. Ste. 400
Alexandria, VA 22314-1756

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-Solicitation.**

7.27.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.27.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) _____ percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.27.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's written consent.

7.27.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) _____ percent of the employee's annual compensation while employed by the Contractor

7.28 **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.

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

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.30 **Order of Precedence.** The Contract includes, without limitation, 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.

7.30.1 the Standard Purchase Terms and Conditions (this contract);

7.30.2 Exhibit C - IETLS Proposal dated November 13, 2017 to include Addendum A IET-LS Platform and Course Conversion;

7.30.3 Exhibit D – Service Renewal dated December 19, 2017

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

American Association of Airport Executives

By:

Signature

Name:

Printed Name

Title:

Date:

CITY OF AUSTIN

By:

Signature

Name:

Printed Name

Title:

Date:

List of Exhibits

Exhibit A	Pricing Agreement
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	American Association of Airport Executives Proposal dated 11/13/17 (“Contractor’s Proposal”)
Exhibit D	Service Renewal Document dated 12/19/17

EXHIBIT B
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 _____ day of _____, _____

CONTRACTOR
Authorized
Signature

Title

Amer. Assn of Airport Execs.
Cate Mon.
EVP

EXHIBIT C



PROPOSAL

Austin-Bergstrom International Airport
November 13, 2017



November 13, 2017

Gary Carper
Airport Security Coordinator
Austin-Bergstrom International Airport
3600 Presidential Blvd.
Suite 411
Austin, TX 78719
512-530-7538
gary.carper@austintexas.gov

Dear Mr. Carper,

The American Association of Airport Executives (AAAE) is pleased to provide Austin-Bergstrom International Airport with our proposal for IET-LS. Founded in 1928, AAAE is the world's largest professional organization for airport executives, representing thousands of airport management personnel at public-use commercial and general aviation airports. AAAE's members represent some 850 airports and hundreds of companies and organizations that support airports. AAAE serves its membership through results-oriented representation in Washington, D.C. and delivers a wide range of industry services and professional development opportunities including training, meetings and conferences, and a highly respected accreditation program.

Training within the airport environment is highly specialized, regulated and complex. AAAE leads our industry in providing innovative products and services to meet the dynamic needs of your operation and is able to customize solutions for AUS.

Please find below additional information regarding our IET-LS training platform, our project team and our price proposal. Pricing is valid for 90 days.

We look forward to supporting Austin-Bergstrom International Airport.

Sincerely,

Kyle Herbig
Director, Customer Solutions and Technology Services
AAAE
601 Madison Street, Suite 400
Alexandria, VA 22314
Email: kyle.herbig@aaae.org
Telephone: (703) 797.2536



TERMS AND CONDITIONS

This agreement, effective as of _____, is made and entered into between the American Association of Airport Executives, a non-for-profit entity with a principle place of business in Alexandria, Va., (AAAE) and Austin-Bergstrom International Airport (AIRPORT).

RECITALS

AAAE holds a proprietary Interactive Employee Training Learning System (IET-LS) program and system and Airport desires a license to use the program and AAAE desires to make the program available in accordance with the terms and conditions set forth in this Agreement.

SECTION 1: GRANT OF LICENSE AND SALE OF HARDWARE

AAAE grants AIRPORT a nontransferable, nonexclusive, limited license to use the software, which is described in Addendum A, attached hereto. Legal title to the software and software documentation provided under this agreement shall remain in AAAE as its sole property, subject to AIRPORT's rights specified in this agreement. Each workstation includes one AAAE software license for a single user. After delivery and acceptance of the completed system, AIRPORT shall acquire legal title in and to the installed hardware components.

SECTION 2: USE OF SYSTEM

The parties agree that the software is proprietary to AAAE. AAAE retains all intellectual property rights, including copyright, patent and trade secret rights and AIRPORT agrees that the software and all related data whether oral or written, and furnished under this agreement are provided for AIRPORT's exclusive use for the purposes of this agreement and will be held in confidence. AIRPORT agrees not to duplicate or disclose any information provided relative to the software in whole or in part, for the use of others.

AIRPORT will use the software and program only for its own internal training purposes and will not use the software in any manner for or by a third party.

SECTION 3: TERMS OF PAYMENT

The core IET-LS system has a standard price as noted in Addendum A. The price includes system design and production, hardware, Learning Suite (LS), full installation of training programs. The core system comes complete with a service/maintenance program.

AIRPORT agrees to payment schedule as follows:

- Upon Delivery of Final System: Total price as noted in Addendum A

SECTION 4: WARRANTY

AAAE warrants that the software, hardware and training program at the time of installation shall materially conform to the specifications agreed-upon. In case of a nonconformance, AIRPORT shall promptly notify AAAE. AAAE shall correct any nonconformance after notification within a reasonable time by the means it determines to be the most appropriate, whether by telephone instructions, the issuance of updating documentation, corrective code, hardware replacement or modification, or other methods.

Notwithstanding the warranties outlined above, AAAE makes no other warranties, express or implied, oral or written, and makes no representation or guarantees to Airport whatsoever and specifically disclaims all other warranties.

SECTION 5: PROJECT ROLES AND RESPONSIBILITIES

AAAE:

Will be directly involved in all aspects of the project and is responsible for planning and execution. The team consists of a Project Manager who will be the Airport's primary point of contact, and a number of team members who are assigned to deliver their tasks according to the project schedule or timeline. On large projects, some team members may serve as Team Leads, providing task and technical leadership. The Project Manager will be responsible for overseeing the day-to-day activity and coordinate all functions and work flows.



At initiation of the project, the Project Manager will schedule a kick off meeting to review development phases and approval cycles. The courses and their contents will be provided to the airport for review, and the airport will have time to review course material as detailed in the following page. A delay in reviewing and approving courses and content may result in significant delays in delivery of a completed training system. The Project Manager will provide the airport with a project timeline and scope of work. Once the scope of work and timeline has been approved and the work has started, any further changes will require a change order and additional costs may apply.

AIRPORT:

Course Script Approval. Those authorized to review and approve course scripts will have **10 business days** to make editing comments upon delivery from a producer. If no comments or edits are received after **10 business days** from delivery, AAAE will assume AIRPORT has accepted and approved the script as delivered and proceed to the next phase of production. If AIRPORT makes changes to the approved script after the commenting period is complete, then a change order will be initiated at a rate of \$150 per hour charged to AIRPORT.

Course Video Production Approval. Those authorized to review and approve course video production will have **7 business days** to make editing comments upon notification from a producer. If no comments or edits are received after **7 business days** from delivery, AAAE will assume AIRPORT has accepted and approved the production as delivered and proceed to the next phase of the project. If AIRPORT makes changes to the approved video production after the commenting period is complete, then a change order will be initiated at a rate of \$150 per hour charged to AIRPORT.

User Acceptance Testing. Those authorized to conduct user acceptance testing will have **7 business days** to make comments upon delivery. If no comments are received after **7 business days** from delivery, AAAE will assume AIRPORT has accepted and approved the delivered courses and complete the project. If AIRPORT makes changes to the courses after the user acceptance period is complete, then a change order will be initiated at a rate of \$150 per hour charged to AIRPORT.

AUTHORIZED AIRPORT CONTACTS

Please detail those required and/or authorized to review and approve the final script, review and approve the final video production and conduct user acceptance testing:

Name	_____	Name	_____
Title	_____	Time	_____
Email	_____	Email	_____
Phone	_____	Phone	_____

SECTION SEVEN: MISCELLANEOUS

1. **Relationship.** This Agreement does not create any partnership, joint venture, franchisor-franchisee or employer-employee relationship between the parties hereto. Neither party hereto is granted any express or implied right or authority to bind the other party hereto in any manner whatsoever.
2. **No Third Party Beneficiaries.** There are no third-party beneficiaries entitled to enforce any provisions of this Agreement.
3. **Entire Agreement.** This Agreement, together with the Addendums attached hereto, contains the entire agreement and understanding of the parties hereto with respect to the matters herein set forth, and all prior agreements, negotiations and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement.
4. **Amendment.** This Agreement may not be modified except in writing, signed by both of the parties hereto.
5. **Waiver.** Any party may waive compliance by the other party with any of the provisions of this Agreement. No waiver of any provision shall be construed as a waiver of any other provision or the same provision in a subsequent instance. Any waiver must be in writing.



6. **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. No assignment of this Agreement or of any contractual rights or obligations hereunder may be made by either party (by operation of law or otherwise) without the prior written consent of the other party hereto, which shall not be unreasonably withheld, and any attempted assignment without the required consent shall be null and void.
7. **Cooperation.** Each party hereto shall take all such steps and measures as may be requested by the other party hereto in order to effectuate the purposes of this Agreement.
8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
9. **Headings.** The section headings and other descriptions contained in this Agreement are for reference purposes only and shall not affect any way the meaning or interpretation of this Agreement.
10. **Further Assurances.** Each party hereto shall do and perform or cause to be done and performed all further acts and things and shall execute and deliver all such other certificates, instruments and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

In witness thereof, this Agreement has been duly executed by or on behalf of each of the parties hereto as of the date first above written.

AAAE

By _____
Name _____
Title _____
Date _____

AIRPORT

By _____
Name _____
Title _____
Date _____



ADDENDUM A

IET-LS Platform and Course Conversion

AAAE will produce and provide courses for AIRPORT on the IET-LS platform at the following rates:

COURSE	DESCRIPTION	PRICE
Conversion of current curriculum to play on IET-LS platform.	Conversion of the existing AIRPORT course library to play on the IET-LS platform	\$8,000
Non-Custom Authorized Signatory 2016 Version	This course covers the basic requirements and responsibilities of company employees who are designated according to the SD 1542-04-08 Series as signatory authorities.	Included
Optional Conversion of Legacy, Non-Custom Courses	ASIP BSA PVI	No Charge
Training Records and Reporting System	Learning Suite (LMS) for Training Records and Reporting web-based application	\$10,000
Per device player app fee	\$1,000 per computer @ 8 systems	\$8,000
Onsite support for “Day One” go live with IET-LS platform	AAAE technician provides on-site installation support in coordination with local IT department	\$1,485
Total: IET-LS Software	All fees are a one-time charge	\$27,485.00

ALLOWANCE FUNDS	DESCRIPTION	PRICE
Use of Level 3 Allowance Funds - 2017	Deduction of allowance funds from AUS account	(\$15,485.00)
Use of Level 3 Allowance Funds – 2018	Deduction of allowance funds from AUS account	(\$12,000.00)*

**Upon execution of 2018 service agreement*

TOTAL Project Costs for IET-LS Platform

AUS Conversion to IET-LS	\$27,485.00
Deduction of 2017 and 2018 Allowance Funds	(\$27,485.00)*
Total Owed AAAE	\$0.00
Annual Maintenance / Service Plan – Level 3	No Change

**Upon execution of 2018 service agreement*



EXHIBIT D

SERVICE RENEWAL

Austin Bergstrom International Airport
December 19, 2017



December 19, 2017

Gary Carper
Airport Security Coordinator
Austin Bergstrom International Airport
512-530-7538
gary.carper@austintexas.gov

Re: Interactive Employee Training - Learning Suite (IET-LS) – Service Descriptions, Terms, and Conditions

The American Association of Airport Executives (AAAE) is the largest professional organization for airport executives in the world, serving thousands of airport personnel at public-use airports across the country. Incorporated in 1928, AAAE is now one of the largest and most influential associations in Washington and is recognized as the training and technology resource expert for the airport industry. Airport training is a unique market niche and AAAE leads the way in providing innovative solutions and ever-improving products and services.

This service renewal provides information regarding our IET-LS service level offerings for the IET-LS system.

The airport may address questions or an issue regarding this proposal to Trina Hadden, AAAE, at trina.hadden@aaae.org or 703.575.2470

We look forward to continuing our partnership with you.

Sincerely,

Trina Hadden
Staff Vice President - Operations
Training & Technology Services
AAAE
601 Madison Street
Alexandria, VA 22314
Email: trina.hadden@aaae.org
Telephone: 703575.2470



SERVICE LEVELS

[AUS] Current Service Level: [3]

Service Period: [02/01/2018 – 01/31/2021]

IET SERVICE PLAN	LEVEL 1	LEVEL 2	LEVEL 3
8AM - 8PM ET M-F Phone Support	✓	✓	✓
Database Support	✓	✓	✓
Help Desk Ticketing System	✓	✓	✓
Automated Hardware Monitoring	✓	✓	✓
Live Online Tech Diagnostic Session	✓	✓	✓
System Updates and Patches	✓	✓	✓
Live Online Remote Tech Support		✓	✓
Interactive Course Changes (Excludes Video)		✓	✓
Onsite System Service (Annually)		✓	✓
Train the Trainer (Annually)		✓	✓
Regulatory Requirements		✓	✓
Custom Content/ Video Changes		✓	✓
Service Allowance* (\$1,500 per workstation)			✓
Per Workstation	\$1,300	\$2,200	\$3,700
Number of Workstations	8	8	8
Total Cost	\$10,400	\$17,600	\$29,600

**Service Allowance – A monetary allowance that can be used for such services as hardware repair/replacement that is not covered under the manufacturer's warranty, video or interactive course changes, new course production, etc. See the pricing chart for the amount that is included in your package. The contracted allowance expires 24 months after the contract inception, if not used. (\$15,000 Max)*



SERVICE DESCRIPTIONS

IET SERVICE PLAN	LEVEL 1	LEVEL 2	LEVEL 3
8AM - 8PM ET M-F Phone Support	Includes technical telephone support between the hours of 8AM & 8PM EST Monday – Friday (except Federal holidays).		
Database Support	Includes complete maintenance of the database and 24/7 availability of all user data. AAAE ensures data integrity by using overlapping Internet service providers (ISPs), firewall protection for the on-site and remote servers and the daily back up of all data.		
Help Desk Ticketing System	AAAE implements a help desk ticketing system to improve the quality of service, accountability, and customer satisfaction.		
Automated Hardware Monitoring	AAAE will provide daily, automated hardware monitoring of the hardware systems to verify basic system function and connectivity. Any irregularities will be reported to the designated IET training coordinator.		
Live Online Tech Diagnostic Session	This service allows an in-house technician to remotely take control of a system, following physical authorization on the user end (for security purposes). The tech remotely can diagnose issues.		
System Updates and Patches	Includes all operating and video-quality system updates and patches developed by AAAE with telephone support for installation.	Includes all operating and video-quality system updates and patches developed by AAAE with onsite installation (included as part of the Level 2/Level 3 maintenance visits).	
Live Online Remote Tech Support	N/A	This service allows an in-house technician to remotely take control of a system, following physical authorization on the user end (for security purposes). The tech remotely can diagnose issues, download and replace files, and in many cases have the system operational again without having to dispatch an onsite technician.	
Interactive Course Changes (Excludes Video)	Includes periodic editing of test questions and other interactive modifications that can be accomplished in the AAAE studio/edit facilities. This package comes with a standard allowance of 1 hour of free labor per each contracted system (up to a maximum of 10 systems/10 hrs of labor). Each additional hour of labor over the maximum amount will be billed at a rate of \$150/hour.	Same as Level 1 except the standard labor allowance included is 2 hours of free labor per contracted system (up to a maximum of 10 systems/20 hrs of labor).	Same as LEVEL 2 except any labor charges over the maximum amount will be billed against the remaining balance in the Level 3 maintenance allowance.

IET SERVICE PLAN	LEVEL 1	LEVEL 2	LEVEL 3
Onsite System Service (Annually)	N/A	Includes an annual on-site visit for preventive maintenance services, plus on-site maintenance or technical meetings, as required.	
Train the Trainer (Annually)	N/A	Includes a web-based session for the purpose of introducing our IET training system to new staff, discussing common issues you might experience, or to hold a Q&A session for staff that are familiar with IET. Our hands on approach will also be an opportunity for us to demonstrate any new tools or features of IET.	
Regulatory Requirements	N/A	Package includes updates to course material and videos to remain compliant with regulatory changes.	
Custom Content/ Video Changes	Available at an hourly rate of \$150.	Allows for periodic changes/additions to a custom or Value-Added video course that can be accomplished in the AAAE studio/edit facilities. This package comes standard with 2 hours of free labor per each contracted system (up to a maximum of 10 systems/20 hrs of labor). Each additional hour of labor over the maximum amount will be billed at a rate of \$150/hour.	Same as LEVEL 2 except any labor charges over the maximum amount will be billed against the remaining balance in the Level 3 maintenance allowance.
Service Allowance* (\$1,500 per workstation)	N/A	N/A	Includes a monetary allowance that can be used for such services as hardware repair/replacement that is not covered under the manufacturer's warranty, video or interactive course changes, new course production, etc. See the pricing chart for the amount that is included in your package. The contracted allowance expires 24 months after the contract inception if not used.



SERVICE AGREEMENT

The service descriptions, terms and conditions will depend on the service package selected using the Service Level Comparison Chart on page 3. The service package coverage is for all licensed IET training systems.

Service Package	Start Date	End Date	Service Level Annual Cost	Allowance Amount
Level 3	02/01/2018	01/31/2019	\$29,600	\$12,000

*There are two options included in this agreement to renew for years 2019 and 2020. See the bottom of page 6 for the breakdown in pricing for two additional years (2019 and 2020).

CONTRACT TERM

Upon the expiration of the Initial Term, this Agreement shall be renewed automatically for successive Renewal Terms equivalent in duration of one (1) month or one (1) year unless terminated by either Party by providing one (1) month written notice of its intention not to renew this Agreement prior to the end of the Initial Term or any current Renewal Term.

Approved and accepted:

Austin Bergstrom International Airport

Signature: _____

Print Name: _____

Title: _____

Date: _____

American Association of Airport Executives

Signature: _____

Print Name: _____

Title: _____

Date: _____

Please sign above and return executed copy to:

American Association of Airport Executives
attn. Trina Hadden
Barclay Building
601 Madison Street
Alexandria VA 22314

or email this signed form to: trina.hadden@aaae.org



AAAE DELIVERS SERVICE. INNOVATION. RESULTS.

Name of Customer:

November 13, 2017

Austin-Bergstrom International Airport (AUS)

Name of project:

IET Legacy System Upgrade

Project scope:

This phased Interactive Employee Training (IET) upgrade includes converting four existing custom courses: SIDA, SIDA Spanish, Driver Training Non-Movement and Driver Training Non-Movement Spanish as well as updating these courses to capture enhanced training features and content. The software upgrade includes 8 player Apps and a Training Records and Reporting Database.

Exception to Use of Subcontractors:

The American Association of Airport Executives (AAAE), based in Alexandria, VA, has the sole protected distributorship of Interactive Employee Training in the United States. There are no other authorized distributors.

Austin-Bergstrom International Airport purchased 4 IET workstations from the American Association of Airport Executives (AAAE) in 2006 and has added 4 additional workstations since this time to accommodate growth. The IET system was acquired through a sole-source purchase agreement for software, licenses, hardware and support. This request is to upgrade the IET Legacy systems currently in use at AUS to the new, web-based version of the platform, named IET-LS. AAAE's Interactive Employee Training and Learning Suite (IET-LS) is a proprietary system used to meet training requirements to abide with Federal Aviation Administration (FAA) mandated training and record keeping regulations found in FAR Part 139 and delivers the up-to-date training content needed to ensure safe and secure operations. Due to the proprietary nature of the system, upgrades and course conversions can only be performed by AAAE.

As it is necessary for all training and records to be consistent, and results reported to the same central database, it is necessary to purchase updated courses and hardware through AAAE as it is the only provider of the IET and the most recent version, IET-LS system.

Video updates are not available from alternative sources as AAAE is the only manufacturer and installer of this software and interactive training. Maintenance, training and video updates of the proprietary system can only be performed by AAAE.

The IET training system is not available from a competitive source and the AAAE IET training system is patented and customized. Each IET workstation is connected to a central database maintained and managed by AAAE. The secure database stores training records for the individuals and these records are made available to authorized personnel. This allows the airport to comply with FAA mandated training and record keeping requirements found in FAR Part 139. The AAAE IET-LS system is the only training system available that is fully compatible with the existing proprietary IET Legacy system.

Sincerely,

Kyle Herbig
Director, Customer Solutions and Technology Services
American Association of Airport Executives



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 11/17/2017

DEPT: Aviation

TO: Purchasing Officer or Designee

FROM: Denise Hatch

BUYER: Sai Xoomsai

PHONE: (512) 530-2685

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.

The existing Interactive Employee Training (IET) System used at Austin-Bergstrom International Airport (ABIA), is a customized, interactive computer-based training system used for training airport employees and contractors on mandated security procedures. The system utilizes a customized digital video that is filmed on location at the airport which allows users to be trained on the use of ABIA-specific security system, programs and procedures. The system also stores and tracks employee and contractor training status which is reported to the TSA.

This certificate of exemption request is for the replacement of the existing annual service agreement contract providing hardware, software system, and service maintenance set to expire on January 31, 2018. Additionally, this procurement request includes the upgrade of the current ABIA IET legacy system.

The American Association of Airport Executives (AAAE), based in Alexandria, VA, has sole protected distributorship of IET in the United States. There are no other authorized distributors.

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 IET training system is not available from a competitive source and the AAAE IET training system is patented and customized. Therefore, AAAE is the only certified provider capable of providing service for the ABIA videos and training platform.

Service/Maintenance Program: \$29,600.00 annual cost per year.

ABIA IET Legacy System Upgrade: \$27,485.00 (one-time cost) includes a discount on the first year due if the new contract is submitted in November 2017 (see Proposal-Addendum A for more details).

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with American Association of Airport Executives - IET which will cost approximately \$ 27,485.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Originator

11/27/2017

Date

Approved
Certification

Department Director or designee

11/29/17

Date

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

Date

Purchasing Review
(if applicable)

Buyer

12/11/17

Date

Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee

Date

02/26/2013

Certificate of Exemption (COE) Guidelines & Helpful Questions:

Required Documentation to be submitted in Magic: Scope of Work, Vendor's propose SOW and quote, Vendor's sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and why.

Sole Source Exemptions

1. What is being purchase? What are you buying?

Renewal of Level 3 IET Service contract

2. Why is it a sole source? Why is this vendor the only vendor that can provide this product?

The American Association of Airport Executives (AAAE), based in Alexandria, VA, has sole protected distributorship of IET in the United States. There are no other authorized distributors.

3. Why is this solution the only viable solution?

The existing Interactive Employee Training (IET) System used at Austin-Bergstrom International Airport (ABIA), is a customized, interactive computer-based training system used for training airport employees and contractors on mandated security procedures. The system utilizes a customized digital video that is filmed on location at the airport, which allows users to be trained on the use of ABIA-specific security system, programs and procedures. The system also stores and tracks employee and contractor training status which is reported to the TSA.

4. Has this procurement been competitively bid in the past? How have we been procuring previously?

No, it has been a sole source contract in the past

5. Are there any other acceptable solutions? If not what makes them unacceptable?

The IET training system is not available from a competitive source and the AAAE IET training system is patented and customized. Therefore, AAAE is the only certified provider capable of providing service for the ABIA videos and training platform.

6. Is there a concern regarding warranty, compatibility, health and public safety, and/or routine safety if this solution cannot move forward?

This system consists of the training computers and software used to fulfill the federally mandated training requirements of persons possessing unescorted access and identification media for Austin-Bergstrom International Airport. Custom videos were created under an earlier contract with provider; the provider certifies that they are the only provider capable of servicing these videos and the training platform.

7. If the product is designed to be compatible with existing equipment/item, describe the age, value, and useful life remaining of the current equipment/item. What is the estimated cost to replace the existing equipment/item?

No, this system is software based does not require proprietary equipment.

8. Was price analysis (comparing this vendor to other vendor and/or open market pricing) completed? If yes, provide in detail the method and finding including list of firms that you reach out to. If no, explain why.

No, this is for ongoing maintenance agreement for a software system supported by a single vendor.

Required Documentation: Scope of Work, Vendor's proposal/quote, Vendor's sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and why. This is attached as requested.