

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Wayne Enterprises, Inc.
For
Revolution Events Management Software
Contract Number: MA 8700 NS190000029**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Wayne Enterprises, Inc. ("Contractor"), having offices at PO Box 1238, Linden, California 95236.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Brian Germann, Phone: (209) 887-2008, Email Address: Brian@revolution911.com. The City's Contract Manager for the engagement shall be Diana Lara, Phone: (512) 974-5057, Email Address: Diana.Lara@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$34,000 for the initial 12-months term with four extension options in the amount of \$34,000 for a total contract amount not-to-exceed \$170,000 for all fees and expenses.

3.2 **Invoices.**

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



	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, Texas 78767
Email	APDaccounts payable@austintexas.gov

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

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

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

3.3 **Payment.**

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

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

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

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

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

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

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

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

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

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

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

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

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate

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Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

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

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

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

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

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

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

3.6.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence on October 1st, 2019 unless otherwise specified and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to four additional 12-month periods at the City's sole option.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

4.1.2 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).

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

SECTION 5. OTHER DELIVERABLES

5.1 Equal Opportunity.

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

5.1.2 **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.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on

any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

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

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

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

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

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

SECTION 7. MISCELLANEOUS

7.1 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:

7.1.1 disposal of major assets;

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



7.1.3 any significant termination or addition of provider contracts;

7.1.4 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;

7.1.5 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;

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

7.1.7 known or anticipated sale, merger, or acquisition;

7.1.8 known, planned or anticipated stock sales;

7.1.9 any litigation against the Contractor; or

7.1.10 significant change in market share or product focus.

7.2 **Audits and Records.**

7.2.1 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.

7.2.2 Records Retention:

7.2.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.2.2.2 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.

7.2.3 The Contractor shall include sections 7.2.1 and 7.2.2 above in all subcontractor agreements entered into in connection with this Contract.

7.3 **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.

7.4 **Indemnity.**

7.4.1 Definitions:

7.4.1.1 "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:

7.4.1.1.1 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;

7.4.1.1.2 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),

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

7.4.2 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.

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

7.6 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: Daniel Dellemonache, Procurement
Specialist III

P O Box 1088

Austin, TX 78767

To the Contractor:

Wayne Enterprises, Inc

ATTN: Brian Germann, Chief Executive Officer

PO Box 1238

Linden, CA 95236

7.7 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.

7.8 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.



7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

7.13 **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.

7.14 **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.

7.15 **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.

7.16 **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.

7.17 **Dispute Resolution.**

7.17.1 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.

7.17.2 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.

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

7.18.1 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.

7.18.2 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.**

7.18.3 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.

7.19 **Subcontractors.**

7.19.1 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.

7.19.2 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:

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



7.19.2.2 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;

7.19.2.3 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;

7.19.2.4 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

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

7.19.3 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.

7.19.4 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.

7.20 **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.

7.21 **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.

7.22 **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.

7.23 **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.

7.24 **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.

7.25 **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

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

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

7.26.2 the Supplemental Purchase Terms and Conditions;

7.26.3 the Standard Purchase Terms and Conditions;

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

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

WAYNE ENTERPRISES

By: Brian Germain
Signature

Name: Brian Germain
Printed Name

Title: CEO

Date: 4/23/19

CITY OF AUSTIN

By: Daniel Dellemonache
Signature

Name: Daniel Dellemonache
Printed Name

Title: Procurement Specialist III

Date: 5/1/19

List of Exhibits

Exhibit A – Pricing Agreement
Exhibit B – Software License Agreement
Exhibit C – Non-Discrimination Certification
Exhibit D – Non-Suspension or Debarment Certification

**EXHIBIT A
City of Austin, Texas
PRICING AGREEMENT**



Wayne Enterprises Inc.

PO Box 1238, Linden CA 95236-1238

209-887-2008

◆◆◆ **QUOTE/INVOICE**

Sold To: City of Austin
P.O. Box 1629
Austin, TX 78767

Ship To: Austin Police Department
715 E. 8th Street
Austin, TX 78701

*** Invoice # 19-13348	*** Invoice Date: 03 01 19	*** Customer L.N.	*** Customer P.O. #	*** Shipped Via
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Item#	Qty	Description	Unit Price	Total
1	1	YEAR 1. REVOLUTION EVENTS MANAGEMENT LICENSE FEE PROJECTED EVENTS FOR 10-01-19 TO 09-30-20	34000.00	34000.00
2	1	YEAR 2. REVOLUTION EVENTS MANAGEMENT LICENSE FEE PROJECTED EVENTS FOR 10-01-20 TO 09-30-21	34000.00	34000.00
3	1	YEAR 3. REVOLUTION EVENTS MANAGEMENT LICENSE FEE PROJECTED EVENTS FOR 10-01-21 TO 09-30-22	34000.00	34000.00
4	1	YEAR 4. REVOLUTION EVENTS MANAGEMENT LICENSE FEE PROJECTED EVENTS FOR 10-01-22 TO 09-30-23	34000.00	34000.00
5	1	YEAR 5. REVOLUTION EVENTS MANAGEMENT LICENSE FEE	34000.00	34000.00

Wayne Enterprises Inc. P.O. Box 1238 Linden, CA 95236 Federal L.N. #: 28-8158888	Subtotal	170000.00
	Sales Tax	0.09000 0.00
	Shipping & Handling	
	AMOUNT YOU PAID	170000.00
	Payment Due Upon Receipt	

EXHIBIT B
Wayne Enterprises Incorporated
LICENSE AGREEMENT

This License Agreement (this "Agreement") is a legal contract between you, as either an individual or a single entity, and Wayne Enterprises Incorporated.

READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING WAYNE ENTERPRISES' "REVOLUTION™" PROPRIETARY SOFTWARE (the "Software") OR OBTAINING A LICENSE KEY TO THE SOFTWARE OR USING THE SOFTWARE.

THE SOFTWARE IS COPYRIGHTED AND IT IS LICENSED TO YOU UNDER THIS AGREEMENT, NOT SOLD TO YOU. BY DOWNLOADING THE SOFTWARE OR OBTAINING A LICENSE KEY TO THE SOFTWARE OR USING THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU ACCEPT AND AGREE TO BE BOUND BY ITS TERMS. IF YOU ARE NOT WILLING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, YOU SHOULD REFRAIN FROM ACCESSING OR USING THE SOFTWARE. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN YOU AND WAYNE ENTERPRISES INCORPORATED CONCERNING THE SOFTWARE, AND THIS AGREEMENT SUPERSEDES AND REPLACES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING YOU MAY HAVE HAD WITH CONCERNING RELATING TO THE SOFTWARE.

1. License

1.1. Grant of License. Wayne Enterprises Inc. hereby grants to you, and you accept, a limited, nonexclusive license to use the Software in machine-readable, object code form only, and the user manuals accompanying the Software (the "Documentation"), only as authorized in this Agreement. For purposes of this Agreement, the "Software" includes any updates, enhancements, modifications, revisions, or additions to the Software made by Wayne Enterprises Inc. Notwithstanding the foregoing, Wayne Enterprises Inc.

1.2. Scope of Use. You may use one copy of the Software per license key (i) on a single server (virtual or physical) owned, leased, or otherwise controlled by you, at a single time, and (ii) only on the type of data base server licensed by you. If you have multiple license keys for the Software, you may make and use as many copies of the Software as you have license keys. For purposes of this Agreement, "use" of the software means loading the Software into the temporary or permanent memory of a computer. Installation of the Software on a network server solely for distribution to other computers is not "use" of the Software, and is permitted, as long as you have a license key for each server (virtual or physical) to which the Software is distributed and for each data base server being accessed by the Software. The Software may not be used on or distributed to a greater number of computers than you have license keys.

1.3. Operating Environments. You acknowledge that Wayne Enterprises Inc. licenses the Software for use with (1) operating environments (web browsers, cloud services, servers, peripherals, database management systems and operating systems) supported by Wayne Enterprises Inc., or (2) operating environments compatible with those supported by Wayne Enterprises Inc. Wayne Enterprises Inc. makes NO representation as to what environments are compatible with supported operating environments.

1.4. Copies and Modifications. You may not reverse engineer, decompile, disassemble, or otherwise translate the Software or any license keys you have obtained. You may not modify or adapt the Software or any license keys that you have obtained in any way. You may make one copy of the Software, the Documentation, and any license keys that you have obtained, solely for backup or archival purposes. Any such copies of the Software, Documentation, or license keys shall include any copyright or other proprietary notices that were included on such materials when you first received them. Except as authorized in this Section, no copies of the Software, Documentation, or license keys, or any portions thereof, may be made by you or any person under your authority or control without permission from Wayne Enterprises Inc.

1.5. Assignment of Rights. You may not sublicense, lease, rent, or lend your rights in the Software, Documentation, or license keys, as granted by this Agreement, with any third party without prior written consent of Wayne Enterprises Inc.

2. Intellectual Property and Confidentiality

EXHIBIT B
Wayne Enterprises Incorporated
LICENSE AGREEMENT



2.1. Use Reporting, License Violations and Remedies. Wayne Enterprises Inc. reserves the right to gather data on key usage including license key numbers, server IP addresses, domain counts and other information deemed relevant, to ensure that our products are being used in accordance with the terms of this Agreement. Wayne Enterprises Inc. expressly prohibits simultaneous, multiple installations of our licensed products and domain count overrides without prior written approval. Any unauthorized use shall be considered by Wayne Enterprises Inc. to be a violation of this Agreement. You agree not to block, electronically or otherwise, the transmission of data required for compliance with this agreement. Any blocking of data required for compliance under this agreement is considered to be violation of this Agreement and will result in immediate termination of this Agreement pursuant to Section 4.

2.2. License Automatic Update and Expiration. Your license may include an expiration date that can result in the termination of the license. For permanent (non-lease) license keys, the license updates automatically except if Wayne Enterprises Inc. determines that a license is used in violation of the terms of this Agreement. If your license key is stolen, or if you suspect any improper or illegal usage of your license outside of your control you should promptly notify Wayne Enterprises Inc. of such occurrence. A replacement license will be issued to you and the suspect license will be allowed to expire. For lease licenses, your monthly payment for each month must be processed prior to the expiration date in order for the license updates to be performed. For your convenience, Wayne Enterprises Inc. provides license expiration warnings in the product interface should there be any issues that would cause the product license to expire. It is your responsibility to contact regarding any potential expiration that you deem inappropriate. Wayne Enterprises Inc. is not liable for any damages or costs incurred in connection with the expiring licenses.

2.3. Proprietary Rights to Software and Trademarks. You acknowledge that the Software and the Documentation are proprietary to Wayne Enterprises Inc., and the Software and Documentation are protected under United States copyright law and international treaties. You further acknowledge and agree that, as between you and Wayne Enterprises Inc., Wayne Enterprises Inc. owns and shall continue to own all right, title, and interest in and to the Software and Documentation, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. This Agreement does not grant you any ownership interest in or to the Software or the Documentation, but only a limited right of use that is revocable in accordance with the terms of this Agreement. Any and all trademarks or service marks that Wayne Enterprises Inc. uses in connection with the Software or with services rendered by Wayne Enterprises Inc. are marks owned by Wayne Enterprises Inc.. This Agreement does not grant you any right, license, or interest in such marks, and you shall not assert any right, license, or interest in such marks or any words or designs that are confusingly similar to such marks.

2.4. Confidentiality. You shall permit only authorized users, who possess rightfully, obtained license keys, to use the Software or to view the Documentation. Except as expressly authorized by this Agreement, you shall not make available the Software, Documentation, or any license key to any third party. You will use your best efforts to cooperate with and assist Wayne Enterprises Inc. in identifying and preventing any unauthorized use, copying, or disclosure of the Software, Documentation, or any portion thereof.

3. License Fees

The Software will be available to you for use upon your receipt of one or more license keys. Upon acceptance of this Agreement, you may obtain one or more license keys by paying the requisite license fees, using the procedure set forth on Wayne Enterprises Inc. (www.revolution911.com) web site. The license fees paid by you are paid in consideration of the license granted under this Agreement. Wayne Enterprises Inc. does not refund license fees. By accepting this Agreement you fully understand that once license fee payment is made to Wayne Enterprises Inc. you will have no recourse for receiving a refund of any part of the fees.

4. Term and Termination

See Section 4 of the City of Austin and Wayne Enterprises Inc. contract.



EXHIBIT B
Wayne Enterprises Incorporated
LICENSE AGREEMENT



5. Remedies, Indemnification

5.1. If you learn of any actual or threatened infringement or piracy of the Software, or if any infringement or piracy claim is made against you by a party other than Wayne Enterprises Inc. in connection with your use of the Software, you shall notify Wayne Enterprises Inc., in writing, of the infringement, piracy or claim as soon as is reasonably possible. Wayne Enterprises Inc. shall, in its sole discretion, determine what action if any to take with respect to the foregoing and shall assume the defense of, and bear the expenses of, any such action (except to the extent, if any, to which such dispute or costs arise from your negligence, willful misconduct or modification of the Software). In the event that the use of the Software in accordance with the provisions of this Agreement is declared by a court of competent jurisdiction to infringe the rights of any third party, as your sole remedy, Wayne Enterprises Inc. at its option shall (i) procure for you the right to use the Software, or (ii) modify the Software to render it non-infringing.

6. Disclaimer

THE SOFTWARE AND DOCUMENTATION ARE LICENSED "AS IS". WAYNE ENTERPRISES INC. DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT AUTHORIZED BY LAW. WITHOUT LIMITING THE FOREGOING, WAYNE ENTERPRISES INC. EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM YOUR USE OF THE SOFTWARE. YOU SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SOFTWARE.

7. Liability

7.1 WAYNE ENTERPRISES INC. CUMULATIVE LIABILITY TO YOU OR ANY PARTY RELATED TO YOU FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WAYNE ENTERPRISES INC. INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS, SHALL BE LIMITED TO THE AMOUNT OF LICENSE FEES PAID TO WAYNE ENTERPRISES INC. BY YOU UNDER THIS AGREEMENT, BUT IN NO EVENT SUCH LIABILITY SHALL EXCEED US \$2,000 IN THE AGGREGATE FOR ALL OCCURANCES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. IN NO EVENT SHALL WAYNE ENTERPRISES INC. BE LIABLE TO YOU OR ANY PARTY RELATED TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS, EVEN IF WAYNE ENTERPRISES INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 The City of Austin, to the extent authorized by the Constitution and laws of the State of Texas, will accept all liability arising out of any use of the Software or Hardware by you, any party related to you, or any party acting upon your authorization in a manner that is not expressly authorized by this agreement.

8. Payment

Wayne Enterprises Inc. will invoice the City for the amounts due on delivery of the Product. Subsequent charges will be invoiced at the beginning of the period to which they apply. Invoices shall be emailed to a designated City employee. Credit card transactions are accepted.

A. Payment for the initial setup of the Product shall be as follows:

- a. 100% of Web Software and server Setup fee of \$5,000.00 upon the date of the City's acceptance of this agreement.



EXHIBIT B
Wayne Enterprises Incorporated
LICENSE AGREEMENT



- B. 100% of the Per Event Fee of \$45.00 for every event scheduled (except City events with no sponsor and generally using one or two officers) on the Revolution system will be invoiced to the City and is due every calendar quarter as follows:
- a. January 10
 - b. April 10
 - c. July 10
 - d. October 10
- C. Subsequent Per Event Fees will follow the same quarterly schedule as outlined above in section B.

9. Upgrades

All upgrades and patches for software and hardware deemed necessary by Wayne Enterprises Inc. will be provided by Wayne Enterprises Inc.

10. General Terms

10.1. Governing Law and Choice of Forum. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this Agreement shall be resolved in the federal or state courts situated in Texas. To the maximum extent permitted by law, you hereby consent to the jurisdiction and venue of such courts and waive any objections to the jurisdiction or venue of such courts.

10.2. Severability. If any term or provision of this Agreement is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity of enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

10.3. Survival. Articles 2, 5, 6, 7, and 8 of this Agreement and all Sections thereof, shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding indefinitely.

10.4. Headings. The Article and Section headings contained in this Agreement are incorporated for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

10.5. No Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

10.6. Amendment. See Section 7.15 of the City of Austin and Wayne Enterprises Inc. contract

11. United States Government Restricted Rights

The Software and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(f)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. S:52.227-19, as applicable.

12. Licensee's Specific Rights

12.1 24/7 Service. The Licensee's server and Revolution Event Management Software shall be running and accessible 24 hours, seven days a week given there are no mechanical or software issues that are not the fault of Wayne Enterprises Inc. Under no conditions, shall the service be down for more than four (4) hours.

12.2 Ownership of Data. The Licensee maintains ownership of all data pertaining to their data file. Data will be returned to Licensee if services between the Licensee and Wayne Enterprises Inc. are terminated. Wayne Enterprises Inc. will not sell, borrow, give away, or allow others to access Licensee's owned data. Any backups or copies of Licensee's data will be destroyed within 10 days of termination to this agreement.



EXHIBIT C
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.





City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: 04/08/2019

DEPT: AUSTIN POLICE DEPT

TO: Purchasing Officer or Designee

FROM: DIANA LARA

PURCHASING POC:

PHONE: (512) 974-5057

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ 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.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
 - **This request is Wayne Enterprises Inc, Revolution Events Management Software was designed and customized for APD and has been in use by the department since 2013 for Special Events Unit.**
- What is the municipal purpose that this procurement addresses or furthers?
 - **The Wayne Enterprises Inc, Revolution Events Management Software is a web-based program that works within Windows Internet Explorer or Firefox used by the APD Special Events office to schedule and manage events, create and email invoices to event organizers, and track personnel assignments for each event.**
- Why is the procurement a sole source?
 - **This request is for Wayne Enterprises Inc, Revolution Events Management Software a custom made software for APD to track events, positions of events, Task codes, Origination code, Activity code creating an upload interface with the City's employee download file, adding the skills and ranks of all employees to the personnel file and adding statistical reports.**
- Has this procurement or a similar procurement been competitively solicited in the past?
 - **No**
- Why is the vendor the only viable solution?
 - **Wayne Enterprises Inc, Revolution Events Management Software is the sole creator, provider and servicer of the Revolution Events Management software and hardware solution. All copyrights to the software are owned by Wayne Enterprises, Inc. and we are the only distributor to any licensee.**
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
 - **No Wayne Enterprises Inc, Revolution Events Management Software is customized to APD Special Events Unit**
- Is there a concern regarding warranty, compatibility, and/or routine safety?
 - **No**
- Are there territorial or geographic restrictions for the product distribution and sale?
 - **There are no territorial or geographic restrictions.**
- Are there other resellers, distributors, or dealers in the market?
 - **Wayne Enterprises Inc, Revolution Events Management Software does not sell their proprietary hosting data. All copyrights to the software are owned by Wayne Enterprises, Inc. and we are the only distributor to any licensee.**
- What other suppliers or products/services were considered?
 - **No other suppliers or products were considered.**
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
 - **N/A**
- Is there a way to retrofit another brand? What is this estimated associated cost?
 - **There is not a way to retrofit another brand.**
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
 - **The proposed vendor maintains all copyrights to the software.**
- **Prices were determined to be reasonable based on the following (select all that apply):**
 - ☒ **Prices are the same or similar to current City contract.**
Notes: Pricing is similar to MA 8700 NS160000037
 - ☐ **Prices are the same or similar to current contract with another government.**
Notes: At a minimum, note the contract number, title and government that created the contract.

- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- ☐ Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- ☐ Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

This request is to establish a one year contract for ongoing maintenance for Wayne Enterprise Inc, Revolution Events Management. The MA will begin with an initial 12 month term (9/1/2019 - 09/31/20) in the amount of \$34,000 and (4) 12-month extension options. Revolution Events Management Software is developed by, licensed by, supported by and proprietary to Wayne Enterprise, Inc. Revolution Events Management Software is web-based program that works within Windows Internet Explorer or Firefox used by the APD Special Events office to schedule and manage events, create and email invoices to event organizers, and track personnel assignments for each event. This software was purchased in 2013 with forfeited funds via a GAX exception.

APD has been utilizing the Revolution Events Management Software since 2013 when CTM and the Legal Department assisted APD in the setup and execution of a license agreement with Wayne Enterprises for use of the software.

This master agreement will replace MA 8700 NS160000037

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- ☐ Scope of Work or Statement of Work or Vendor Proposal
 - ☒ Vendor's Quote
 - ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
 - ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) 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 explain why
4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:
- (Vendor Name): Wayne Enterprises Inc for
- (Description of Procurement): Revolution Events Management software
5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:
- ☐ This is a one-time request for \$ _____
 - ☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$ 34,000.00 with 4 (# of renewal options) for \$ 34,000.00, 34,000.00, 34,000.00, and 34,000.00 each for a total contract amount of \$ 170,000.00.

Recommended
Certification

Diana Ren 04/08/2019
Originator Date

Approved
Certification

Alicia Roman 4/10/19
Department Director or designee Date

Purchasing Office
Review

Assistant City Manager / General Manager Date
(procurements requiring Council approval)
D. D. [Signature] 5/1/19
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review

Purchasing Officer or designee Date
(procurements requiring Council approval)



Wayne Enterprises Inc

P.O. Box 1238
Linden, CA, 95236
Phone 209-887-2008
www.revolution911.com

March 01, 2019

To whom this may concern:

This letter is to confirm that Wayne Enterprises Inc. is the sole creator, provider and servicer of the Revolution Events Management software and hardware solution. All copyrights to the software are owned by Wayne Enterprises Inc. and we are the only distributor to any licensee.

We have made many custom changes to our solution for the Austin Police Department which include adding the skill require and officer type to every position working the event, adding a numeration field for every position on an event, adding a Task code, adding Origination code, adding Activity code, adding the ability to copy an event to create another, adding mobile pages and access from any mobile device, adding a Primary and Secondary post to every position on an event, creating a non-permanent list of employees that sign up for events until they are permanently placed into the event, creating an upload interface with the City's employee download file, adding the skills and ranks of all employees to the personnel file, and adding statistical reports.

If you have any questions, please call me at 209-887-2008.

Sincerely,

Brian Germann
Chief Executive Officer