



Amendment No. 1  
To  
Contract No. NS200000001  
For  
Building Automation System Maintenance and Repairs  
Between  
Way Service, LTD  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 19, 2021 through November 18, 2022. Two options will remain.
- 2.0 The total contract amount is increased by \$60,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/19/2019 – 11/18/2021	\$120,000.00	\$120,000.00
Amendment No. 1: Option 1 – Extension 11/19/2021 – 11/18/2022	\$60,000.00	\$180,000.00

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

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

Sign/Date: Ryan Shaer / 10-29-21

Printed Name: Ryan Shaer - GM, Way Service. Ltd  
Authorized Representative

Way Services, LTD  
2320-B Donley Drive  
Austin, Texas 78758  
(512) 419-0909  
[kmceuen@performancecontrolsusa.com](mailto:kmceuen@performancecontrolsusa.com)

**Sandy**  
Sign/Date: Wirtanen

Sandy Wirtanen  
Procurement Specialist IV  
City of Austin  
Purchasing Office  
124 W. 8th Street, Ste. 310  
Austin, Texas 78701

Digitally signed by Sandy  
Wirtanen  
Date: 2021.11.15  
12:31:15 -06'00'

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
WAY SERVICE, LTD  
For  
BUILDING AUTOMATION SYSTEM MAINTENANCE AND REPAIRS  
MA 8200 NS200000001**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Way Service, LTD ("Contractor"), having offices at 2320-B Donley Dr. Austin, TX 78758.

**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 Ron Dombrowski, Phone: 512-621-9948, Email Address: [rdombrowski@wayservice.com](mailto:rdombrowski@wayservice.com). The City's Contract Manager for the engagement shall be Bryan Helford, (512) 404-4311, Email Address: [Bryan.Helford@austintexas.gov](mailto:Bryan.Helford@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**

The City of Austin, on behalf of the Austin Convention Center Department (ACCD), is engaging with the Contractor for the provision of preventive maintenance, technical support, repairs, and related service for Way Service, LTD in the use of equipment and software related to KMC Control Systems and its related systems. These services shall be provided at 900 Barton Springs Rd., Austin, Texas, 78704, and at such other ACCD sites as City may designate.

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

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the tasks detailed in the attached Exhibit B – Scope of Work.

**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 for the initial Contract term an amount not-to-exceed \$120,000 for all fees and expenses, and three, 12-month extension options not to exceed \$60,000 per option.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **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	Austin Convention Center Department
Attn:	Accounts Payable
Email:	<a href="mailto:ACCD.AcctsPayable@austintexas.gov">ACCD.AcctsPayable@austintexas.gov</a>

3.2.3 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.

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

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

3.5.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.5.2 The making and acceptance of final payment will constitute:

3.5.2.1 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

3.5.2.2 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 become effective on the date signed by the City and shall remain in effect for an initial term of twenty-four (24) months. The Contract may be extended thereafter for up to three additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1 Upon expiration of the contract, 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 60-month Contract. Prices are firm for the first twelve (12) months.

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

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

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages,



costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

## **SECTION 5. OTHER DELIVERABLES**

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

### 5.1.1 **General Requirements.**

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

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

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

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

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

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

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

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

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

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

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

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

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

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

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

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

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

5.1.2.4 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 **Equal Opportunity.**

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

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

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

<https://www.ethics.state.tx.us/File/>

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

## 5.5 **Delays.**

5.5.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract,

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

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

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

5.6.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.6.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

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

5.7 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

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

## **SECTION 6. WARRANTIES**

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

### **7.2 Workforce.**

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

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

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

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

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

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

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

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **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 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Jo Gutierrez, Procurement Specialist III

To the Contractor:

Contractor's Name

ATTN: Ron Dombrowski, Contract Manager



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 **Prevailing Wage.** Contractor shall comply with the requirements of Section 0830 Prevailing Wage Rates and Payroll Reporting including the wage rates listed in Section 00830BC Wage Rates for Building Construction or Section 00830HH Wage Rates for Heavy and Highway Construction per Exhibit B.

7.24 **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.

7.25 **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.

7.26 **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.

7.27 **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.

7.28 **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](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

7.30 **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.

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

7.30.2 the Supplemental Purchase Terms and Conditions;

7.30.3 the Standard Purchase Terms and Conditions;

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

7.31 **Interlocal Purchasing Agreements.**

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

**7.31 Interlocal Purchasing Agreements.**

7.31.1 The City has entered into Interlocal Purchasing Agreements with other governmental agencies pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible agencies that have an interlocal agreement with the City.

7.31.2 The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

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

**WAY SERVICE, LTD**

By: Ronald A. Dombrowski  
Signature

Name: Ronald A. Dombrowski  
Printed Name

Title: BAS Sales Manager

Date: 11/18/2019

**CITY OF AUSTIN**

By: Jo Gutierrez  
Signature

Name: Jo Gutierrez  
Printed Name

Title: Procurement Spec. III

Date: 11/19/19

## List of Exhibits

Exhibit A	Way Service, LTD Pricing Agreement dated 2019.10.29
Exhibit B	Scope of Work
Exhibit C	Non Discrimination Certification, Section 0800
Exhibit D	Non-Suspension or Debarment Certification
Exhibit E	Prevailing Wage, Section 0830 with pay rate schedules 00830BC and 00830HH



## KMC Building Automation Rates & Fees

Rev. 2019.10.29

The following rates & fees apply to the delivery & invoicing of KMC BUILDING AUTOMATION technical services AS OF October 29, 2019; and are subject to change at the time of annual Agreement renewal date.

### SERVICE:

Professional / Technical Service	\$140/hr (1-hour min)
-- Controls Agreement Customers	\$125/hr (over 10% discount)
<b>Scheduled</b> Service falling outside of std business hours (outside of 7 a.m. – 5 p.m., Mon – Fri)	Above Rates x 1.5
<b>Emergency</b> Service falling outside of std business hours (outside of 7 a.m. – 5 p.m., Mon – Fri)	\$125/hr (over 10% discount)

### MATERIAL:

Material	Cost x 2.0
Agreement Customers	10% discount





September 18, 2019

Mark Mason – Contract Management Specialist 3  
Austin Convention Center  
500 East Caesar Chavez  
Austin, Texas 78701

Dear Mr. Mason:

This letter is to confirm Way Service LTD is our only factory trained company with access to the full line of KMC products in Texas. Please feel free to contact me if you have any questions or concerns about this letter.

Best regards

*Scott N House*

Scott House  
KMC Controls  
Area Vice President  
(810) 577-2944

**Exhibit B**  
**SCOPE OF WORK**  
**FOR**  
**PREVENTATIVE MAINTENANCE, TECHNICAL SUPPORT, REPAIR AND RELATED**  
**SERVICES FOR KMC CONTROL SYSTEMS**

**1. PURPOSE**

- 1.1. Way Service LTD. (the "Contractor") shall be responsible for performing preventative maintenance, technical support, repairs and related services associated with the KMC Control System and its related products at the Palmer Event Center Department (PEC). 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.
- 1.2. In the event that other services are not detailed in the Scope of Work but directly related to the tasks shown above may be added subject to mutual agreement of the parties in a Statement of Work, and subject to the provisions in this Scope of Work.
- 1.3. Services shall be provided at the Palmer Event Center (PEC), located at 900 Barton Springs Road, Austin, Texas, 78701. The City reserves the right to add or remove City departments and facilities at the City's discretion.
- 1.4. In the event of conflict between this Scope of Work, manufacturer's literature or any applicable codes, the more stringent terms/revisions shall apply, unless otherwise notified by the City. The City will notify the Contractor of the City's determination in writing.

**2. CONTRACTOR'S GENERAL REQUIREMENTS**

- 2.1. The Contractor shall provide services which include, but which are not limited to, preventative maintenance and repairs; software and software upgrades; technical support; equipment, equipment upgrades, installation of equipment; associated parts and labor; and training in the use of equipment and software related to KMC Control products and its related systems. Some of the services shall be performed on a quarterly basis, and others shall be performed on an as-needed basis.
- 2.2. The Contractor shall maintain and operate a full time, permanent business address, email address, and telephone. The Contractor shall also have adequate equipment and materials, and sufficient employees trained to perform the services specified herein.
- 2.3. The Contractor shall comply with all applicable City of Austin, State of Texas, and any Federal guidelines or regulations as they relate to building automation system installation, maintenance, and repair.
- 2.4. The Contractor shall provide all labor, supervision, diagnostics, parts, materials, tools, equipment, instruments, incidentals, expendable items, personnel protective equipment, and training needed in the execution of services under this Contract. Any costs associated with meeting this requirement shall be included in the cost of the material bid and not charged separately.
- 2.5. Provide a Single Point of Contact (SPOC), who is English-speaking, skilled, knowledgeable, and experienced in providing the types of services listed in this Scope of Work. The SPOC shall have the authority to dispatch Contractor personnel; and shall have full decision-making authority on behalf of the Contractor for all services provided under this Contract.
- 2.6. The SPOC shall inspect, monitor, and supervise the Contractor's employees; ensuring adherence to the work schedule, safety requirements, and quality of work. The SPOC shall not be removed from the project without prior written consent by the Contract Manager or designee.
- 2.7. The SPOC shall be available and on-call twenty-four (24) hours daily including weekends and holidays. Contractor shall provide the office number, email address, and cell phone number for the SPOC. During times the SPOC is unavailable (due to vacation, travel, etc., for example), the

**SCOPE OF WORK  
FOR  
PREVENTATIVE MAINTENANCE, TECHNICAL SUPPORT, REPAIR AND RELATED  
SERVICES FOR KMC CONTROL SYSTEMS**

Contractor may provide a designee for the SPOC. The designee shall meet the same requirements as specified for the SPOC within this SOW and shall have the same authority as the SPOC.

- 2.8. All services shall be scheduled as directed by the Contract Manager. All services will be approved by the Contract Manager, in writing, prior to Contractor's start of work.
- 2.9. All services provided to City under this contract shall be invoiced upon completion of service(s), as requested by the Contract Manager or designee.
- 2.10. The Contractor's invoice shall include labor hours with the date and time services were performed, hourly labor rate and (if applicable) an itemized list of parts used with the associated catalog price.
- 2.11. The Contractor shall perform all steps reasonably necessary to protect City property and persons from harm. Failure to perform installation in a prompt and professional manner may result in termination of the Contract.
- 2.12. The Contractor shall be responsible for any and all damage to City equipment or property as a direct result of Contractor's employees or Contractor's Subcontractor's actions.
  - 2.12.1. Damages to City equipment or property by Contractor's employees or its Subcontractor shall be replaced or repaired to the satisfaction of the City of Austin by the Contractor, at no cost to the City. The City may, however, at its sole discretion, elect to make repairs or replacements of damaged equipment or property and deduct the cost from any payments owed to Contractor or to recover costs if no payments are owed.
- 2.13. The Contractor shall understand all work is subject to inspection and acceptance by the Contract Manager or designee.
- 2.14. Upon completion of services, the Contractor shall be responsible for the immediate clean-up of the work area and removal of debris.
- 2.15. The Contractor understands and agrees that the scheduling of City events take precedence over any other schedule(s) agreed to by the City and the Contractor. The Contractor shall not hold the City liable, financially or otherwise, if an alteration in the City schedule requires the City to reschedule services with the Contractor. The City will make every reasonable effort to immediately notify the Contractor of changes in the City schedule of events which may have an impact on any other schedule agreed to by the City and the Contractor.
- 2.16. The Contractor shall dispose of all worn/defective parts, oils, solvents, waste, or hazardous materials in accordance with all applicable laws, rules and regulations. The Contractor shall handle, transport, and dispose of worn/defective parts, oils, solvents, waste, or hazardous materials in such a manner as to ensure the highest level of safety to the environment and public health at no additional cost to the City. The Contractor shall not store worn or defective parts on City premises. The Contractor shall remove worn/defective parts, materials, oils, solvents from City premises as soon as each job is completed.

**3. HOURS OF SERVICE**

- 3.1. The City will require the Contractor to perform general services (non-Expedited) during regular and/or non-regular business hours as outlined below.
  - 3.1.1. If the Contractor is unable to provide these services during the designated Regular Hours, the Contractor shall obtain written approval from the Contract Manager or designee to perform the services during Non-Regular Hours. Work performed during Non-Regular Hours

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which are covered under this provision, shall be billed at the Regular Hourly Labor Rate.

- 3.2. Hourly labor rates for each job title shall be billed in accordance with the time designations below, based on when services are provided.

3.2.1. REGULAR HOURS shall be 7:00 a.m. through 5:00 p.m. Monday through Friday.

3.2.2. NON-REGULAR HOURS shall be 5:01 p.m. through 6:59 a.m. Monday through Friday or 5:01 p.m. Friday through 6:59 a.m. Monday and hourly rates for these non-regular hours may be charged to the City up to 150% (time and a half) of the regular hours.

- 3.3. Official City of Austin holidays approved by Austin City Council beginning 12:00 a.m. through 11:59 p.m. the day of the Holiday and hourly rates for these non-regular hours may be charged to the City up to 150% (time and a half) of the regular hours.

- 3.4. The Contractor shall not charge an overtime rate for services performed during non-regular hours that were requested to be performed, or could reasonably be completed, during regular business hours.

- 3.5. The Contractor may be required to perform services during Non-Regular Hours As defined in this Scope of Work. The Contractor shall not invoice at the Non-Regular Hour rate for services unless requested and approved in writing by the City Contract Manager or designee prior to starting the work.

**4. SCOPE OF WORK**

**4.1. Preventative Maintenance (PM)**

4.1.1. The Contractor shall provide preventative maintenance services quarterly or as otherwise requested by the Contract Manager or designee.

4.1.2. Within ten (10) business days after Contract award, the Contractor and Contract Manager or designee will develop a detailed preventative maintenance service schedule. The preventative maintenance services shall be per manufacturer's documentation/process, or current industry standards.

4.1.3. The Contractor and City shall mutually agree to the preventative maintenance services schedule. The City reserves the right to add or remove equipment from this list without prior notification to the Contractor.

4.1.4. The preventative maintenance service schedule, including the frequency or number of hours for onsite preventative maintenance, may be revised on an as-needed basis, as required by the City, at the Contractor's recommendation, by individual/specific equipment, or to account for events and activities taking place at City locations. Any changes to the preventative maintenance schedule shall be agreed to in writing by the Contract Manager or designee. Under no circumstances shall the Contractor adjust or modify the preventative maintenance service schedule, the frequency, or number of hours for onsite preventative maintenance without prior written approval from the Contract Manager or designee.

**4.2. General Services**

4.2.1. The Contractor shall perform General Services on an as-needed basis ("General Services" or "Non-Expedited"). General Services shall be considered "Non-Urgent", unless otherwise indicated by the Contract Manager or designee. The Contractor shall coordinate services

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with the Contract Manager (or designee).

4.2.2. The following General Services shall be performed on an as-needed basis:

- 4.2.2.1. On-site troubleshooting as required.
- 4.2.2.2. Corrective maintenance and component replacement with discounted rates
- 4.2.2.3. Programming
- 4.2.2.4. Equipment upgrades, replacement and/or repairs
- 4.2.2.5. System upgrades
- 4.2.2.6. Installation of new equipment or system features
- 4.2.2.7. Provide written reports for each site visits or service calls, and recommend changes, if any, to the equipment listed herein which shall be considered to reduce operating and maintenance costs and/or improve equipment performance and efficiency.
- 4.2.2.8. Documentation revisions/updates as they occur
- 4.2.2.9. Upgrade existing Power monitoring software as revisions occur

4.2.3. The Contractor may be required to provide other related work or services that are not covered above. These related services shall be performed in accordance with all provisions of this agreement.

**4.3. Expedited Services**

- 4.3.1. The City may require the Contractor to respond to expedited service requests. Expedited services shall be defined as services which are needed immediately due to an unforeseen event(s) or a situation which threatens to interfere with the business operations of the City. The City shall have the sole and final authority in determining when services will be designated as Expedited.
- 4.3.2. Expedited services shall be available 24 hours a day, 365 days a year and shall be billed in accordance with the hourly rates of either Regular Hours or Non-Regular Hours, based on the time of day Expedited services are provided.
- 4.3.3. In the event of an Expedited condition, the Contractor shall provide sufficient personnel and materials to protect City property and ensure uninterrupted service. The City will prioritize the work and notify the Contractor.
- 4.3.4. For each request of Expedited service, the City will request services (each instance, a "Notification") and Contractor shall respond/acknowledge to an Expedited request within one (1) hour of Notification, and must be onsite within four (4) hours of Notification by the City.
- 4.3.5. The Contractor shall provide a complete cost estimate with an estimated completion time to the City within two (2) hours of Notification.
- 4.3.6. The Contractor shall remain on-site for the period of time necessary to complete repairs with available materials or to secure any damaged areas while materials are being ordered.
- 4.3.7. If additional services are required after the Expedited services are completed, those services shall be provided in accordance with the terms and conditions of this Contract and as outlined in this Scope of Work.
- 4.3.8. Under no circumstances shall the Contractor proceed with the repair or services without the Contract Manager's, or designee's authorization.

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**4.4. Parts, Equipment, and Materials**

- 4.4.1. The repair parts and materials used to perform services under this Contract shall be factory-new, free of defects in materials and workmanship, and meet or exceed the Original Equipment Manufacturer (OEM) specifications as approved by the City's Contract Manager or designee.
- 4.4.2. Materials furnished shall be the latest product in production to commercial trade and shall be of the highest quality. Within five (5) business days of the City's request, the Contractor shall provide evidence which clearly demonstrates the Manufacturer's and/or the Contractor's experience in the production and the successful use of such items. Evidence can be in the form of a letter/written.
- 4.4.3. The Contractor shall provide repair parts and materials at a **percentage discount** from the published price list or materials catalog. The percentage discount shall be in accordance with the contract pricing. All line item charges for parts and materials will be verified by the City.
- 4.4.4. The Contractor shall provide an electronic (USB port, CD, or an online catalog) published price list or materials catalog for repair parts and materials used by the Contractor within five (5) business days of request by the City or at a time mutually agreed to between the Contractor and the Contract Manager or designee.
- 4.4.5. The City will reimburse the Contractor for the repair parts and materials used per job. The City shall not reimburse the Contractor for repair parts and materials purchased and held in Contractor's inventory.
- 4.4.6. All equipment shall be in good operating condition and shall meet or exceed OSHA industry standards.
- 4.4.7. Any motorized or mechanical equipment such as lifts, booms or scaffolds will be inspected and approved by the Contract Manager before use. Non-marking tires shall be cleaned before entry into the facility. In addition, the City may require a covering be laid on the floor to protect it from the equipment. The Contractor is responsible for any damage resulting from tire burns, battery leaks, oil or hydraulic leaks, scrapes or scratches.
- 4.4.8. The City may stop work at any time if inferior equipment is in use by the Contractor.
- 4.4.9. No gasoline, natural gas, diesel, or propane-powered equipment shall be allowed inside a facility without the written permission of the Contract Manager.
- 4.4.10. The City may stop work at any time if inferior equipment (such as leaking solvents, safety risk, creating hazardous conditions, damaging City property, etc.) is in use by the Contractor. The City shall have the sole and final authority in determining if Contractor's equipment is inferior.
- 4.4.11. Prior to renting any equipment, the Contractor shall obtain written approval from the Contract Manager or designee. Under no circumstances shall the Contractor rent equipment without such prior approval.
  - 4.4.11.1. If the Contract Manager or designee does not provide prior written approval for the equipment rental, the Contractor shall either rent or purchase the necessary equipment at its own expense. The Contractor shall not be reimbursed for rental

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costs which do not have the Contract Manager's or designee's prior written approval.

4.4.12. The Contractor may charge the City for the cost of renting equipment.

4.4.12.1. Under no circumstances shall the Contractor charge the City if the Contractor elects to purchase tools and equipment (rather than rent) used to perform services under this Contract.

4.4.12.2. Charges for the rental equipment shall be a markup to the Contractor's cost in accordance with the Contract pricing. All line item charges for rentals will be verified by the City.

4.4.12.3. The Contractor shall submit copies of the rental agreement and receipts which clearly indicate the full cost paid by the Contractor, to be reimbursed for the cost of rental equipment with the invoice.

**5. PROJECT ESTIMATE PROCESS**

5.1. The City will request services (each instance, a "Notification") and if applicable, the Contractor shall arrange a site visit with the Contract Manager or designee.

5.2. The Contractor shall respond to a services request or meet with the Contract Manager or designee at the job site within three (3) business days of notification to discuss the project.

5.3. It shall be the full responsibility of the Contractor to visit and inspect the job locations prior to the submission of each job estimate. Submission of the job estimate is evidence that the Contractor has familiarized himself/herself with the nature and extent of the work and any local conditions that may, in any manner, affect the scope of the work to be done, and the equipment, materials and labor required. Each job estimate shall be in accordance with the prices and markups established in this Contract.

5.3.1. The Contractor shall provide a written estimate of the total cost of work, including the target date for starting and estimated time of completion for such project, will be submitted to the Contract Manager not more than an additional three (3) business days of the City's request, and at no cost to the City.

5.3.2. The Contractor's estimate for General Services shall be in writing and shall include:

5.3.2.1. the location of the of the services,

5.3.2.2. type and description of services to be performed,

5.3.2.3. an itemized cost estimate (based on prices established in the Contract),

5.3.2.4. list of proposed equipment rental(s) needed to complete the service (if applicable),

5.3.2.5. recommended schedule with a proposed start and finish date/timeframe.

5.3.3. The Contract Manager or designee will review the estimate and if in agreement, will issue a written notice to proceed ("Notice to Proceed"). A Notice to Proceed will be in the form of a Delivery Order (DO) issued by the City.

5.3.3.1. Upon receipt of the Notice to Proceed, the Contractor shall acknowledge receipt of the Notice by sending an email or fax to the Contract Manager. The Contractor and Contract Manager will schedule a date and time for services to begin.

5.3.4. If the Contract Manager does not agree with the estimate, the Contract Manager will contact



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the Contractor to discuss and resolve. Once in verbal agreement, the Contractor shall re-submit the cost estimate for review and approval by the Contract Manager.

- 5.3.5. The Contractor shall complete the work within the time stated in the cost estimate and shall notify the Contract Manager upon completion of the services.
- 5.3.6. Request additional time if the Contractor determines that the services being performed cannot be completed as specified in the Estimate. The Contractor and the Contract Manager or designee shall mutually agree to a new date for completion of work. Under no circumstances shall the Contractor leave services unfinished without prior approval/arrangement of the Contract Manager or designee.

**6. PERSONNEL UNIFORMS**

- 6.1. While performing work on City property, Contractor's personnel shall wear uniforms with the Contractor's name clearly displayed on the shirt, company issued photo identification badges, and personal protective equipment.

**7. TRANSPORTATION AND PARKING**

- 7.1. The Contractor shall provide all transportation required to perform the work. Contractor shall park its vehicles in areas designated by the City at the Contractor's expense, if any. All vehicles shall be clearly marked with the Contractor's or subcontractor's name on both sides of each vehicle. Magnetic signs are acceptable.
- 7.2. There shall be no separate charge for administrative, overhead, per diem and transportation (i.e. mileage and fuel) costs. These expenses shall be included in the hourly rates.

**8. SAFETY REQUIREMENTS**

The Contractor shall:

- 9.1 Not require any person to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to their health or safety. Contractor shall comply with all provisions of the Occupational Health and Safety Act (OSHA).
- 9.2 Be familiar with and shall enforce all Federal, State, Local and City regulations and requirements as applicable, including but not limited to, the following:
  - 9.2.1 The Contractor personnel shall wear appropriate personal protection equipment at all times.
  - 9.2.2 The Contractor personnel operating equipment or handling materials shall be fully trained in the safe operation of the equipment or materials.
  - 9.2.3 The Contractor personnel shall follow and apply safety practices prevailing in their applicable industry.
  - 9.2.4 The Contractor shall block off and mark all work areas with appropriate safety signs and safety barricades/bollards to protect the public from injury.
  - 9.2.5 The Contractor shall post safety warnings as necessary to ensure safe operations.
- 9.3 Coordinate the timing and transportation of equipment or potentially hazardous materials to the work area. If transportation through the interior of a facility is required, the Contractor shall take

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every precaution to ensure public safety. Under no circumstances shall the Contractor transport equipment or materials through the interior of a facility without prior coordination with the Contract Manager or designee.

- 9.4 Immediately notify the Contract Manager or designee upon detection of an existing or potentially hazardous conditions while performing services under this Contract.
- 9.5 Comply with the latest 29 CFR 1910, Occupational Safety and Health Standards as revised or amended from time to time to protect the life and health of employees and other persons; to prevent damage to property, materials, supplies, and equipment; and to avoid work interruptions. (General Industry Standards, [https://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=1&p\\_keyvalue=1910](https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1910))
- 9.6 Compliance with OSHA and other applicable laws and regulations for the protection of employees is exclusively the obligation of Contractor, and the City assumes no liability or responsibility for Contractor's compliance or noncompliance with such responsibilities.
- 9.7 Comply with all OSHA reporting requirements for record keeping and reporting of all accidents resulting in death, injury, occupational disease, or adverse environmental impact. The Contractor shall provide a verbal report to the City immediately, and no more than one (1) business day, of the occurrence. The Contractor shall cooperate with the City, providing written documentation and any information required for their records.
- 9.8 Comply with all applicable federal, state, and local environmental protection laws, regulations, and standards. The Contractor shall comply with any other statutory requirements for clean air, clean water, toxic substances control, pollution control, resource conservation and recovery. All environmental protection matters or questions shall be coordinated with the City.
- 9.9 Be responsible for the enforcement of all safety requirements for any work performed under the Agreement. If the Contractor fails or refuses to promptly comply with safety requirements, the Contract Manager or designee may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such order shall be made the subject of a claim for extension of time or for excess costs or damages to Contractor.

**9. REPORTS AND MEETINGS**

- 9.1. The Contractor shall schedule meetings as determined in conjunction with the Contract Manager. Notice of any such meeting may be given by Contract Manager to Contractor either orally or in writing and will designate the time, date, location, Contractor attendees, and general purpose. Contractor's designated attendees must be present at any such performance meeting.
- 9.2. Upon completion of services, the Contractor shall provide a detailed report describing services, including parts repaired or replaced for each service performed. The Contractor shall keep Contract Manager advised of developments relating to the performance of this Contract.
- 9.2.1. Provide all reports in a searchable electronic format to the Contract Manager or designee, via email, or another method as mutually agreed to by the Contractor and Contract Manager or designee.

**10. OMISSIONS**

- 10.1. Any requirements omitted from this specification, which are clearly necessary for the completion of this work, should be noted by the contractor in their submittal.



## City of Austin Purchasing Office

### Sole Source

### Certificate of Exemption

**DATE:** October 18, 2019

**DEPT:** Austin Convention Center

**TO:** Purchasing Officer or Designee

**FROM:** Kelly Rodriguez

**PURCHASING POC:** Jo Gutierrez

**PHONE:** (512)404-4351

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?
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source?
- Has this procurement or a similar procurement been competitively solicited in the past?
- Why is the vendor the only viable solution?
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
- Is there a concern regarding warranty, compatibility, and/or routine safety?
- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services 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?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **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: NS160000041, Siemens Industries
- ☐ 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.

- What it is for and why it is needed?
  - Way Service is needed to maintain and repair Palmer Events Center's (PEC) KMC controls for the facility's HVAC systems which have proprietary components crucial to maintaining the electrical systems controlling the entire HVAC system of the facility.
- What is the municipal purpose that this procurement addresses or furthers?
  - To maintain City operated facilities.
- Why is the procurement a sole source?
  - Way Service, LTD. is the only authorized KMC Controls partner in the Central Texas area.
- Has this procurement or a similar procurement been competitively solicited in the past?
  - No, not to our knowledge. The services are currently being subcontracted through NC180000024 with Carrier and NA140000061 with Entech.
- Why is the vendor the only viable solution?
  - Way Service, LTD. is the only authorized KMC Controls partner in the Central Texas area.
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
  - The only other alternative would be to replace the entire KMC control system. To move away from KMC would be at a significant effort and cost to the City.
- Is there a concern regarding warranty, compatibility, and/or routine safety?
  - No.
- Are there territorial or geographic restrictions for the product distribution and sale?
  - No.
- Are there other resellers, distributors, or dealers in the market?
  - Yes, in Beaumont, Houston, and San Antonio.
- What other suppliers or products/services were considered?
  - None.
- 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?
  - The KMC Building Automation Control system has been in place at Palmer Event Center since its inception in 1998 as part of an upgraded HVAC system control unit with a typical life cycle around 20-25 years. The estimated cost of a completely new automation systems will cost approximately \$750,000 to \$1 million.
- Is there a way to retrofit another brand? What is this estimated associated cost?
  - To retrofit with another brand or to change iatrical parts to an automated system will run the department on average \$500,000.00.
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
  - The KMC Building Automation Control System has proprietary components that only few companies are authorized to service. Technicians have specified training in the use, maintenance and repair of the systems components. The proprietary components are specific to this vendor as they are the only authorized service technician for this system within the central Texas.



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): Way Service Ltd. for
- (Description of Procurement): Building Automation System Maintenance and Repairs
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 an initial twelve-month term in the amount of \$60,000 with four additional renewal options for \$60,000 each for a total contract amount of \$300,000.

Recommended  
Certification

Kelly Rodriguez  
Originator – Kelly Rodriguez

10/13/19  
Date

Approved  
Certification

MOSB  
Department Director or designee

10/21/19  
Date

\_\_\_\_\_  
Assistant City Manager / General Manager  
(procurements requiring Council approval)

\_\_\_\_\_  
Date

Purchasing Office  
Review

Jo S  
Authorized Purchasing Office Staff

11/6/19  
Date

Purchasing Office  
Management Review

\_\_\_\_\_  
Purchasing Officer or designee  
(procurements requiring Council approval)

\_\_\_\_\_  
Date

**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 19 day of November, 2019

CONTRACTOR  
Authorized  
Signature

Title

Way Service LTD  
READ Montfort  
BAS Sales Manager

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

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

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

Contractor's Name:

Way Service LTD

Signature of Officer or  
Authorized  
Representative:

Ronald A. Dombrowski

Date:

11/19/2019

Printed Name:

Ronald A. Dombrowski

Title

BAS Sales Manager

**City of Austin, Texas**  
**NONRESIDENT BIDDER PROVISIONS**  
**SOLICITATION NO.**

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

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

Answer: RESIDENT BIDDER

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

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

Answer: N/A Which State:

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

Answer: N/A

Bidder's Name: Way Service LTD

Signature of Officer or  
Authorized  
Representative:

Ronald A. Dombrowski Date: 11/19/19

Printed Name: Ronald A. Dombrowski

Title: BAS Sales Manager

**WAGE RATES AND PAYROLL REPORTING**

Section 00830BC

**WAGE RATE DETERMINATION****Building Construction Type**

County Name: TRAVIS

Wages based on DOL Prevailing Wage Rate General Decision: TX20190271 07/19/2019 and City of Austin Ordinance #20160324-015

**DOL Rate column is for information only. The Total Minimum Wage Rate is derived from the Adjusted Wage Rate Required pursuant to City Ordinance plus the DOL Fringes and can be met using any combination of cash and non-cash qualified fringe benefits, provided the cash component is at least \$15.00/hour.**

<b>Classification</b>	<b>DOL Rate For info Only</b>	<b>Adjusted Wage Rate Required Pursuant to City Ordinance</b>	<b>DOL Fringes</b>	<b>Total Minimum Wage Rate Required</b>
Asbestos Worker/Heat & Frost Insulator (Duct, Pipe, and Mechanical System Insulation)	\$ 22.72	\$ 22.72	\$ 10.02	\$ 32.74
Boilermaker	\$ 28.00	\$ 28.00	\$ 22.35	\$ 50.35
Bricklayer	\$ 20.07	\$ 20.07	\$ -	\$ 20.07
Carpenter	\$ 21.96	\$ 21.96	\$ 7.90	\$ 29.86
Carpenter (Acoustical Ceiling Installation only)	\$ 14.00	\$ 15.00	\$ -	\$ 15.00
Carpenter (Form Work Only)	\$ 15.62	\$ 15.62	\$ 0.05	\$ 15.67
Cement Mason/Concrete Finisher	\$ 15.71	\$ 15.71	\$ -	\$ 15.71
Drywall Finisher/Taper	\$ 17.06	\$ 17.06	\$ 4.43	\$ 21.49
Drywall Hanger and Metal Stud Installer	\$ 17.47	\$ 17.47	\$ 3.45	\$ 20.92
Electrical Installer (Sound and Communication Systems, Excluding Wiring)	\$ 18.00	\$ 18.00	\$ 2.30	\$ 20.30
** Electrician (Excludes Installation of Sound and Communication Systems)	\$ 28.03	\$ 28.03	\$ 8.81	\$ 36.84
***Elevator Mechanic <5 years' experience	\$ 40.96	\$ 40.96	\$ 36.17	\$ 77.13
***Elevator Mechanic >5 years' experience	\$ 40.96	\$ 40.96	\$ 36.99	\$ 77.95
Floor Layer (Carpet)	\$ 21.88	\$ 21.88	\$ -	\$ 21.88
Glazier	\$ 12.83	\$ 15.00	\$ -	\$ 15.00
HVAC Mechanic (HVAC Unit Installation Only)	\$ 23.78	\$ 23.78	\$ 6.89	\$ 30.67
Ironworker, Ornamental	\$ 23.77	\$ 23.77	\$ 7.12	\$ 30.89
Ironworker, Reinforcing	\$ 12.27	\$ 15.00	\$ -	\$ 15.00
Ironworker, Structural	\$ 20.73	\$ 20.73	\$ 5.24	\$ 25.97
*Lead Paint or Asbestos Abatement Worker	*	\$ 15.00	\$ -	\$ 15.00
Laborer, Common or General	\$ 11.44	\$ 15.00	\$ -	\$ 15.00
Laborer, Mason Tender - Brick	\$ 12.22	\$ 15.00	\$ -	\$ 15.00
Laborer, Mason Tender - Cement/Concrete	\$ 11.85	\$ 15.00	\$ -	\$ 15.00

## Bidding Requirements, Contract Forms Conditions of the Contract

Laborer, Pipelayer	\$ 12.45	\$ 15.00	\$ -	\$ 15.00
Laborer, Roof Tearoff	\$ 11.28	\$ 15.00	\$ -	\$ 15.00
Operator, Backhoe/Excavator/Trackhoe	\$ 19.43	\$ 19.43	\$ 3.49	\$ 22.92
Operator, Bobcat/Skid Steer/Skid Loader	\$ 13.00	\$ 15.00	\$ -	\$ 15.00
Operator, Bulldozer	\$ 14.00	\$ 15.00	\$ -	\$ 15.00
Operator, Crane	\$ 34.85	\$ 34.85	\$ 9.85	\$ 44.70
Operator, Drill	\$ 14.50	\$ 15.00	\$ -	\$ 15.00
Operator, Forklift	\$ 16.64	\$ 16.64	\$ 6.26	\$ 22.90
Operator, Grader/Blade	\$ 19.30	\$ 19.30	\$ -	\$ 19.30
Operator, Loader	\$ 14.00	\$ 15.00	\$ -	\$ 15.00
Operator, Mechanic	\$ 18.75	\$ 18.75	\$ 5.12	\$ 23.87
Operator, Paver (Asphalt, Aggregate, and Concrete)	\$ 16.03	\$ 16.03	\$ -	\$ 16.03
Operator, Roller	\$ 11.25	\$ 15.00	\$ -	\$ 15.00
Painter (Brush, Roller, and Spray, Excludes Drywall Finishing/Taping)	\$ 18.76	\$ 18.76	\$ 6.35	\$ 25.11
Pipefitter (Including HVAC Pipe Installation)	\$ 29.50	\$ 29.50	\$ 12.82	\$ 42.32
Plumber, Excludes HVAC Pipe Installation	\$ 23.57	\$ 23.57	\$ 6.37	\$ 29.94
Roofer	\$ 12.00	\$ 15.00	\$ -	\$ 15.00
*Roofer, Metal	\$ 14.05	\$ 15.00	\$ -	\$ 15.00
Sheet Metal Worker (Excluding HVAC, Including HVAC Duct Installation)	\$ 25.76	\$ 25.76	\$ 15.10	\$ 40.86
Sprinkler Fitter (Fire Sprinklers)	\$ 29.03	\$ 29.03	\$ 15.84	\$ 44.87
Tile Finisher	\$ 11.32	\$ 15.00	\$ -	\$ 15.00
Tile Setter	\$ 16.35	\$ 16.35	\$ -	\$ 16.35
Truck Driver, Dump Truck	\$ 12.39	\$ 15.00	\$ 1.18	\$ 16.18
Truck Driver, Flatbed Truck	\$ 19.65	\$ 19.65	\$ 8.57	\$ 28.22
Truck Driver, Semi-Trailer Truck	\$ 12.50	\$ 15.00	\$ -	\$ 15.00
Truck Driver, Water Truck	\$ 12.00	\$ 15.00	\$ 4.11	\$ 19.11
Waterproofers	\$ 16.30	\$ 16.30	\$ 0.06	\$ 16.36

<http://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>

### **See below for Additional Wage Information.**

Note: \*Lead Paint & Asbestos Abatement and Roofer, Metal Classifications have been added to this Prevailing Wage Rate Determination pursuant to a City of Austin Prevailing Wage Survey (trades absent from DOL).

**The Wage Compliance information detailed below was excerpted from DOL General Decision TX180323 or other sources.**

### **1. ADDITIONAL TRADE INFORMATION**

\*\*Electricians - Including low voltage wiring for computers, fire/smoke alarms.

\*\*\*Elevator Mechanics - also must be paid for 8 holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added upon the advance approval of City of Austin Contract Administration. CONTRACTOR shall submit to City of Austin Contract Administration for review the classification, a bona fide definition of work to be performed and a proposed wage with sample payrolls conforming to area practice **prior** to the start of the job for that type of work.

## **2. WAGES**

The Total Wage may be met by any combination of cash wages and credible "bona fide" fringe benefits paid for by the employer. Overtime wages must be calculated using the Adjusted Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher. City of Austin Ordinance No. 20160324-015 requires that construction workers are paid a Minimum Wage of at least \$15.00/hour. The cash portion of their compensation must meet or exceed this amount.

## **3. CREDITING FRINGE BENEFIT CONTRIBUTIONS TO MEET DBA/DBRA AND CITY OF AUSTIN REQUIREMENTS**

The Davis-Bacon Act (and 29 CFR 5.23), list fringe benefits to be considered. Examples are:

- > Life Insurance
- > Health Insurance
- > Pension
- > Vacation
- > Holidays
- > Sick Leave

Note: The use of a truck is not a fringe benefit; a Thanksgiving turkey or Christmas bonus is not a fringe benefit. No credit may be taken for any benefit required by federal, state, or local law such as: workers compensation, unemployment compensation; or social security contributions.

Contributions to fringe benefit plans must be made regularly, e.g. daily, weekly, etc. They must be more frequent than quarterly. (See 29 CFR 5.5 (a)(1)(I)) A periodic bonus may not be counted as a fringe benefit.

## **4. ANNUALIZATION OF BENEFIT COSTS**

If a firm provides an electrician with \$200 per month medical insurance, to calculate allowable fringe benefit credit contributions per hour, the formula  $([\$200 \times 12 \text{ months}] \text{ divided by } 2080 \text{ hours} = \$1.15 \text{ per hour})$  should be used.

## **5. PROPER DESIGNATION OF TRADE**

A work classification on the wage decision for each worker must be made based on the actual type of work he/she performed and each worker must be paid no less than the wage rate on the wage decision for that classification **regardless** of his or her level of skill.

## **6. SPLIT CLASSIFICATION**

If a firm has employees that perform work in more than one classification, it can pay the wage rates specified for each classification **ONLY** if it maintains accurate time records

showing the amount of time spent in each classification. If accurate time records are not maintained, these employees must be paid the highest wage rate of all the classifications of work performed by each worker. Accurate time records tracking how many hours a worker performed the work of one trade and then switched to another trade must be accounted for on a daily basis and reflected on Employer Certified Payroll accordingly.

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### **6.1 Union Rate Identifiers**

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: **PLUM0198-005 07/01/2014**. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014. Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### **6.2 Survey Rate Identifiers**

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: **SULA2012-007 5/13/2014**. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier. Survey wage rates are not updated and remain in effect until a new survey is conducted.

### **6.3 Union Average Rate Identifiers**

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: **UAVG-OH-0010 08/29/2014**. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that

identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

## **7. WAGE DETERMINATION APPEALS PROCESS**

**7.1** Has there been an initial decision in the matter? This can be:

- .1** An existing published wage determination
- .2** A survey underlying a wage determination
- .3** A Wage and Hour Division letter setting forth a position on a wage determination matter
- .4** A conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in **.2** and **.3** should be followed.

**7.2** With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determination  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W. Washington, DC 20210

**7.3** If the answer to the question in **.1** is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W. Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

**7.3** If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W. Washington, DC 20210

**7.4** All decisions by the Administrative Review Board are final.

**END**





**WAGE RATES AND PAYROLL REPORTING**

Section 00830

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**1. PAYMENT**

**1.1 Classification Definitions, Building and Heavy and Highway**

**1.1.1** Definitions for Building Construction and Heavy and Highway classifications shall conform to the current "Dictionary of Occupational Titles" as published by the U.S. Department of Labor.

**1.2 Minimum Wages**

**1.2.1** Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) or the \$15.00 minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the \$15.00 minimum wage required.

**1.2.2** Such wage rates shall be used throughout the Contract. If a classification is to be used, which is not listed in the attached wage rates, CONTRACTOR shall submit to OWNER rates and classification proposed for use, for approval, prior to performance of the Work.

**1.2.3** All laborers and mechanics working upon the Work for this Project shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29 CFR, Part 3) full wages accrued and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Heavy and Highway wage scales are incorporated into contract, CONTRACTOR shall pay wage rates to mechanics or laborers performing Work in more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists (project superintendent and administrative personnel only) in the permanent employment of CONTRACTOR do not fall under any Wage Classification. A supervisor/foreman who is not exempt under 29 CFR Part 541 and who spends more than a substantial amount of time (20 percent) in a given workweek as a laborer or mechanic must be paid the applicable Wage Rate for the classification of work performed for all hours engaged in such work as a laborer or mechanic.

**1.2.4** Wage rates shall be posted by CONTRACTOR at site(s) of Work in prominent, easily accessible places where they can be seen by all workers. The following shall also be posted by the CONTRACTOR: City of Austin wage contact posters (English and Spanish), City of Austin Equal Employment Opportunity posters (English and Spanish), Workers' Compensation Notice (English and Spanish), Texas Payday Law (English and Spanish), City Rest Break Ordinance (English and Spanish), City of Austin Non-Discrimination Statement (related to Title VI of the Civil Rights Act), and Federal Notices, as appropriate.

### **1.3 Overtime Requirements**

**1.3.1** No CONTRACTOR, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times their basic rate of pay for all hours in excess of forty hours in such workweek.

**1.3.2** Overtime wages must be calculated using the Adjusted Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher.

## **2. APPRENTICES**

### **2.1 Locally and Federally Funded Projects**

**2.1.1** The terms journeyman and apprentice apply to both union and independent workers, and are not intended to imply that these positions are union workers only.

**2.1.2** Apprentices and Trainees will be permitted to work as such only when they are registered, individually, under a bonafide Apprenticeship or Trainee program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of Apprentices or Trainees to journeymen in any craft classification shall not be greater than the ratio permitted to CONTRACTOR as stated in the registered apprenticeship program standards. Any employee listed on a payroll at an Apprentice or Trainee wage rate, who is not registered as above, shall be paid the wage rate provided in Contract for Work employee actually performed. CONTRACTOR, Subcontractor, or Sub-subcontractor shall furnish to OWNER written evidence of registration of his program for Apprentices and Trainees as well as of the appropriate ratios and wage rates, for the area of construction prior to using any Apprentices or Trainees on this Contract.

## **3. WITHHOLDING PAYMENTS**

**3.1** OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments as necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors the amount of wages required to comply with the Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this Contract, OWNER may, after Written Notice to CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made. Payments may also be withheld if CONTRACTOR fails to maintain weekly payroll reports or fails to provide copies in a timely manner upon request of Owner.

## **4. PAYROLLS**

**4.1** CONTRACTOR shall keep records showing:

**4.1.1** The name, address and occupation of each worker employed by the CONTRACTOR or subcontractor(s) in the construction of the public work.

**4.1.2** The actual per diem wages paid to each worker

**4.1.3** Employee Certification. CONTRACTOR, all levels of Subcontractors shall identify in writing, the classification agreed to by all laborers and mechanics employed by

them in the execution of the Contract, and pay not less than rates specified in the attached Wage Rate Determination(s). Contractor shall prepare a completed form for the signature of Employee and a witness shall sign the form in the presence of Employee. If work performed by worker is different than the trade classification agreed upon, the worker shall be paid for that work no less than the minimum prevailing wage for that specified trade.

**4.1.4** Payroll Deduction Authorization Form. CONTRACTOR, Subcontractor, and Sub subcontractor shall prepare for employee signature a payroll deduction authorization form to identify all payroll deductions excluding those required by statute, such as federal income taxes, Medicare and social security.

**4.2** The record shall be open at all reasonable hours to inspection by the officers and agents of the Owner as requested. CONTRACTOR will be responsible to provide copies of records as requested by the Owner within two (2) working days. Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work.

**4.3** A Statement of Compliance, a letter signed and dated by party responsible for supervising the payment of persons employed by CONTRACTOR or subcontractor shall accompany payrolls required by Owner. The Statement of Compliance letter shall identify but is not limited to:

**4.3.1** Name of signatory party and title

**4.3.2** Name of project, payroll period and

**4.3.3** Name of CONTRACTOR or Subcontractor

**4.4** The signed letter attests that the payroll complies with 29CFR issued by the Secretary of Labor.

**4.5** Federal Funding. In the event that federal funding is used:

**4.5.1** Contractor and all levels of Subcontractors shall submit weekly certified payroll reports and signed wage compliance statements to the Owner's designated office no later than seven (7) calendar days after the scheduled payday.

**4.5.2** Contractors and all levels of Subcontractors shall pay all "mechanics and laborers" not less often than once per week, for work performed the previous week.

**4.5.3** Submit to the Owner's designated office Standard Form 1413, Statement and Acknowledgement, from each subcontractor prior to the subcontractor performing work on the project.

## **5. NONCOMPLIANCE**

**5.1** According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

**5.2** Confirmed Disciplinary action taken by CONTRACTOR against employees who provide information during an interview or investigation by the Owner on wages received, may result in suspension or debarment from consideration of award of City contracts.

## **6. AREA PRACTICE**

**6.1** Heavy and Highway Construction Rates shall be used on this Project, unless the Project consists primarily of Building Construction and Building Construction Rates are to be used.

**6.1.1** Building Construction consists generally of all aspects of construction of buildings, which are sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including without limitation the installation of utilities and equipment, both above and below grade level, as well as incidental demolition, grading, utilities, paving and other site work. Buildings need not be "habitable" to be classified as Building Construction and the installation of heavy machinery and/or equipment will not generally change a Building Construction project's classification.

**6.1.2** The determination of Building Construction Wage Rates includes all construction trades and work necessary to complete a building, regardless of the number of contracts involved, so long as all such contracts are closely related in purpose, time and place.

**6.2** For projects that involve both Building Construction and Heavy and Highway trades, the following classifications shall be used:

**6.2.1** A multiple classification shall be used if Building Construction items are more than 20% of the Heavy and Highway project cost.

**6.2.2** A multiple classification shall be used if Heavy and Highway Construction items are more than 20% of the Building Construction Project cost.

**6.3** Split classifications/multiple wage rate schedules: When construction work requires that an employee perform work under multiple classifications or multiple wage scales, the employer must pay that worker (at least) the highest prevailing wage or the employer payroll records must accurately set forth the times spent performing the work of each classification and under each scale. For those projects that involve both Building Construction and Heavy and Highway trades, the Heavy and Highway wage rates may only be applied to workers when engaged in site work at least five (5) feet beyond the building.

## **7. TEXAS OPEN RECORDS ACT**

**7.1** Unless covered by an exception to mandatory disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code, any and all documents submitted to the City of Austin become Public Records and are, therefore, subject to public disclosure.

**Wage Rates for This Project Are Attached**

**END**



AUSTIN • BUDA • DALLAS • FT. WORTH • GARLAND • SAN ANTONIO

Atten: Mr. Mark Mason  
Contract Management Specialist III  
Austin Convention Center Dept.  
500 East Cesar Chavez Street  
Austin, Texas 78701  
Ph: 512-404-4066

Dear Mark,

Entech currently services the HVAC service and repairs for Palmer Auditorium. This building has KMC controls throughout the facility. KMC Controls are proprietary controls, serviced and repaired only through Way Services. We cannot work on these control systems.

Sincerely,

A handwritten signature in black ink, appearing to read "George Vipond", is written over the word "Sincerely,".

George Vipond, Account Executive  
Entech Sales and Service, LLC  
199 Trademark Drive  
Buda, Texas 78610  
(512) 312-2003

BUDA • ENTECH SALES & SERVICE, INC. • 199 TRADEMARK DRIVE • AUSTIN, TX 78610  
PHONE • 512-312-2003 FAX • 512-312-2203 TOLL FREE • 888-368-3247  
SAN ANTONIO • ENTECH SALES & SERVICE, INC. • 2516 FREEDOM ST. • SAN ANTONIO, TX 78217  
PHONE • 210-930-8782 FAX • 210-930-8759 TOLL FREE • 888-368-3247

[www.entsales.com](http://www.entsales.com)

TACLA010059C

Regulated by the Texas Department of Licensing and Regulation, PO Box 12157, Austin, TX 78711, 1-800-803-9202, 512-463-6599