



Amendment No. 4
to
Contract No. MA 1100 NS190000016
for
Network Perception Live and View Licenses with Tech Support
between
Network Perception, Inc.
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to incorporate the following:

- 1.1 Increase total contract amount by \$92,400.00 and add 36 months to term of contract effective February 22, 2022, to February 21, 2025. Fixed fee of \$30,800.00 will be paid annually as indicated in Exhibit A, Vendor Quote Number: Q-00428-1
- 1.2 Add **Austin Energy Supply Chain Risk Management Requirements Listing** attached as Exhibit B.
- 1.3 Contract **Section 5.1 Insurance, 5.1.2 Specific Coverage Requirements** is hereby deleted and replaced with the following:

Specific Insurance Coverage Requirements: The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum 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.

- i. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$2,000,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

(1) The policy shall contain the following provisions:

- a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
- b. Independent Contractors coverage (Contractor/Subcontracted work);
- c. Products/Completed Operations Liability for the duration of the warranty period;
- d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

- (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- ii. **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
- iii. **Cyber Liability Insurance:** Coverage of not less than \$5,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If 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.

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

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

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

Signature & Date:

Ted Greene

4/14/2022

Signature & Date:

Melita L. Harden

Digitally signed by Melita L.
Harden

Date: 2022.04.14 13:14:42 -05'00'

Signature & Date:

Exhibit A



Quote

Quote #:

Q-00428-1

Date:

1/27/2022 3:42 PM

Expires On:

2/11/2022

Network Perception

20 N Wacker Dr Suite 1200

Chicago, IL 60606

Phone: (872) 245-4100

Email: billing@network-perception.com

Ship To

Austin Energy

2500 Montopolis Dr

Austin, TX 787416404

United States

Bill To

Austin Energy

2500 Montopolis Dr

Austin, TX 787416404

United States

SALESPERSON	PHONE	EMAIL	PAYMENT TERMS
Betsy Williams		bwilliams@network-perception.com	Net 30

PRODUCT	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL PRICE
NP-LIVE	12 month Enterprise License for NP-Live	30	\$1,000.00	\$30,000.00
PREMIUM SUPPORT SERVICE	Premium Support Service	1	\$2,800.00	\$2,800.00
SUBTOTAL:				\$32,800.00
DISCOUNT:				\$2,000.00
TOTAL:				\$30,800.00

Quote 00428 created for Austin Energy to renew NP-Live Subscription (30 Devices) for the term 2/21/2022 through 2/20/2023

Note: Renewal Pricing for the 30 devices will be honored until February 20, 2025. Pricing subject to change should business needs change.

Austin Energy

Signature:

Name (Print):

Date:

Network Perception

Signature:

Name (Print):

Date:

Please sign and email to Betsy Williams at bwilliams@network-perception.com

THANK YOU FOR YOUR BUSINESS!

Austin Energy Supply Chain Risk Management Requirements Listing	
Rev. No: 1.0	Date: October 1, 2020
Owner: Reliability Compliance Office (RCO)	Category: Cybersecurity
Author: Thomas Standifur	SME: Thomas Standifur, Mike Goin, John Tempesta
	Doc Type: Contract Exhibit

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1. Definitions and Applicability Statement: The following definitions apply to the terms and conditions in this Supply Chain Risk Management Requirements Listing:
 - 1.1. Definitions
 - 1.1.1. "Business Day" means a day during which the City is open for regular business.
 - 1.1.2. "City Infrastructure" means City systems, networks and property.
 - 1.1.3. "City Information" means all information concerning AE and its business in any form, including, without limitation, the products and services provided under an agreement disclosed to or otherwise learned by Contractor while performing under a Contract with the City.
 - 1.1.4. "Cybersecurity Risk" means the probability of a cyber-attack or data breach on Contractor or City.
 - 1.1.5. "Incident" means an incident with Contractor's own systems, applications, or other physical or cyber assets (whether linked to City Infrastructure or not) which either has caused or has the potential to cause a Cybersecurity Risk to the City.
 - 1.2. Applicability
 - 1.2.1. This Supply Chain Risk Management Requirements Listing ("Listing") applies to any Contractor who does business with the City and within whose Contract it is included. The Listing provides additional binding requirements upon Contractor and shall be fully enforceable as a condition of contract.
2. Notification of Incidents
 - 2.1. Contractor agrees to immediately, but no later than four business hours of when Contractor discovers, is notified of, or otherwise has knowledge of an Incident, notify City by telephone and email whenever an Incident occurs. Such Incidents include but are not limited to any circumstance where
 - 2.1.1. Contractor knows or reasonably believes City Information hosted or stored by Contractor has been released; or
 - 2.1.2. Contractor knows or reasonably believes an act or omission has compromised or may reasonably compromise:
 - 2.1.2.1. The cybersecurity of the products or services provided to City by Contractor; or
 - 2.1.2.2. The physical, technical, administrative, or organizational safeguards protecting Contractor's systems or City's systems storing or hosting City Information; or
 - 2.1.3. Contractor receives any complaint, notice, or communication relating directly or indirectly to:
 - 2.1.3.1. Contractor's handling of City Information or Contractor's compliance with the data safeguards in a Contract or applicable law in connection with City Information; or
 - 2.1.3.2. The cybersecurity of the products or services provided to City by Contractor.
 - 2.2. The notice shall include the date and time the Incident occurred (or an approximate date and time if Contractor does not know the actual date and time) and a detailed

summary of the facts and circumstances of the Incident, including a description of (a) how the Incident occurred (e.g., a precise description of the reason for the Incident), (b) the amount of City Information known or reasonably believed to have been compromised and how (corrupted, destroyed, accessed, acquired, compromised, modified, used or disclosed), if any, and (c) the measures taken to address and remedy the occurrence to prevent the same or a similar event from occurring in the future.

- 2.3. Contractor shall provide written updates to City addressing any new facts or circumstances learned after the initial notice of the Incident is provided and shall provide such updates within a commercially reasonable time after learning of those new facts or circumstances.
- 2.4. Contractor shall cooperate with City in City's efforts to determine the risk to City of the Incident, including providing additional information within a commercially reasonable time regarding the Incident upon request from City.
- 2.5. Contractor shall make any notifications related to this paragraph to the following:

Austin Energy Enterprise Information Security (EIS)
AEITEnterpriseInformationSecurity@austinenergy.com
(512) 322-6076

- 2.6. Contractor shall provide a copy of such notices to City's Contract Manager.

3. Development and Implementation of Contractor's Response Plan: Upon execution of the Contract, Contractor shall, at its sole cost and expense, develop, document, and implement policies and procedures to address coordination of responses to Incidents ("Response Plan").
 - 3.1. Contractor's Response Plan shall mitigate the harmful effects of Incidents and address and remedy the occurrence to prevent the recurrence of Incidents in the future.
 - 3.2. Contractor shall develop and implement its Response Plan to follow best practices that, at a minimum, conform to the contingency planning requirements of NIST Special Publication 800-61 Rev. 2, NIST Special Publication 800-53 Rev. 4, CP-1 through CP-13 and the incident response requirements of NIST Special Publication 800-53 Rev. 4, IR-1 through IR-10 as those standards may be amended.
 - 3.3. Contractor shall provide City access to inspect Contractor's Response Plan.
4. Coordination of Responses: Contractor shall, at its sole cost and expense, coordinate its response pursuant to Contractor's Response Plan with the City.
 - 4.1. Immediately upon learning of an Incident, Contractor shall implement its Response Plan and, within 24 hours of implementing the Response Plan, notify City of that implementation.
 - 4.2. Within 3 days of notifying City an Incident, Contractor shall provide in writing:

- 4.2.1. Actions Contractor will take to prevent recurrence, and
 - 4.2.2. Recommendations to City on actions City may take to prevent recurrence, as applicable or appropriate.
 - 4.3. Contractor shall include, as appropriate, action plans and mitigating controls.
 - 4.4. Contractor shall coordinate with City and City's agents to develop recommended action plans and mitigating controls if City chooses to accept such recommendations.
 - 4.5. Contractor shall provide City guidance and recommendations for long-term remediation of any Cybersecurity Risks posed to City Information, equipment, systems, and networks as well as any information necessary to assist City in any recovery efforts in response to the Incident.
 - 4.6. Contractor shall assist and cooperate with City regarding any other remedial measures as requested by City in connection with an Incident or required under any applicable laws related to an Incident.
5. Notification to Affected Parties: In the event an Incident results in City Information being released such that notification must be made to any person or entity, including without limitation any customer or current or former employee of City under any applicable laws, including privacy and consumer protection laws, or pursuant to a request or directive from a governmental authority, such notification will be provided by City, except as otherwise required by applicable law or approved by City in writing. City will have sole control over the timing and method of providing such notification. Contractor shall, at its sole cost and expense, assist and cooperate with City with respect to any disclosures to affected parties.
6. Unrelated Security Incidents: Contractor shall also identify and provide notice to City as stated below when any of the following events occur (all, an "Unrelated Security Incident"):
- 6.1. Contractor's confidential information has been corrupted, destroyed, accessed, acquired, compromised, modified, used or disclosed by any unauthorized person or any person in an unauthorized manner or for an unauthorized purpose;
 - 6.2. Contractor knows or reasonably believes an act or omission has compromised or may reasonably compromise the cybersecurity of the products and services provided by Contractor to an entity other than City;
 - 6.3. Contractor has experienced a violation or potential violation of its cybersecurity policy; or
 - 6.4. Contractor receives any complaint, notice, or communication which relates directly or indirectly to:
 - 6.4.1. Contractor's handling of its confidential information or Contractor's compliance with applicable law in connection with confidential information or
 - 6.4.2. The cybersecurity of the products and services provided by Contractor to an entity other than City.

7. Notices for Unrelated Security Incidents: Within seven days of identifying an Unrelated Security Incident, Contractor shall provide to City (to the contact personnel identified in paragraph 2) a confidential report describing the Unrelated Security Incident. Contractor's report shall include a detailed description of:
 - 7.1. A summary of the facts and circumstances associated with the Unrelated Security Incident;
 - 7.2. How the Unrelated Security Incident occurred;
 - 7.3. The nature of the confidential information disclosed, if any; and
 - 7.4. The measures taken to address and remedy the occurrence and prevent the same or a similar event from occurring in the future.
8. Development and Implementation of Vulnerability Detection and Remediation Policy: Contractor shall develop, document, and implement policies and procedures to detect and remediate vulnerabilities related to products or services provided to City ("Vulnerability Detection and Remediation Policy"). Contractor's Vulnerability Detection and Remediation Policy shall be consistent with NIST Special Publication 800-53 Rev. 4 RA-5, SA-11, and SI-2, as may be amended.
9. Notification and Disclosure of Vulnerabilities by Contractor: Contractor shall immediately disclose to City (to the contact personnel identified in paragraph 2) all known vulnerabilities related to the products or services provided to City under this Contract. Such notification shall include, at a minimum, a description of the vulnerability, its potential security impact, its root cause, and recommended corrective actions involving the procured product or service.
10. Disclosure of Vulnerabilities by City: Whether or not publicly disclosed by Contractor and notwithstanding any other limitation in this Contract, City may disclose without negative action or consequence from Contractor any vulnerabilities or material defects in the products and services provided by Contractor to any of the following:
 - 10.1. The Electricity Information Sharing and Analysis Center (E-ISAC), the Industrial Control Systems Cyber Emergency Response Team, or any equivalent entity;
 - 10.2. Any entity when necessary to preserve the reliability of the Bulk Electric System as determined by City in its sole discretion; and
 - 10.3. Any entity required by applicable law.
11. Hardware, Firmware, Software, and Patch Integrity and Authenticity
 - 11.1. Contractor shall develop, document and implement policies, procedures, and risk management practices to verify integrity and authenticity of all hardware, firmware, software and patches provided by Contractor for products and services covered by

this Contract (“Product Integrity Policy”).

- 11.2. Upon delivery of hardware, software (including patches), and firmware provided under this Contract, Contractor shall provide supply chain documentation on the following:
 - 11.2.1. Contractor’s chain-of-custody practices,
 - 11.2.2. Contractor’s inventory management program (including the location and protection of spare parts),
 - 11.2.3. Contractor’s information protection practices,
 - 11.2.4. Contractor’s integrity management program for components provided by sub-suppliers,
 - 11.2.5. Contractor’s instructions on how to request replacement parts,
 - 11.2.6. Contractor’s commitment to ensure that for the duration of the contract, spare parts shall be made available to City by Contractor.
- 11.3. Contractor shall specify how digital delivery for procured products (e.g., software and data) including patches will be validated and monitored to ensure the digital delivery remains as specified. If City deems that it is warranted, Contractor shall apply encryption to protect procured products throughout the delivery process at no added cost to City.
- 11.4. If Contractor provides software or patches to City, Contractor shall publish or provide a hash conforming to the Federal Information Processing Standard (FIPS) Security Requirements for Cryptographic Modules (FIPS 140-2) or similar standard information on the software and patches to enable City to use the hash value as a checksum to independently verify the integrity of the software and patches and avoid downloading the software or patches from Contractor’s website that have been surreptitiously infected with a virus or otherwise corrupted without the knowledge of Contractor.
- 11.5. Contractor shall identify, and provide to the contact personnel identified in paragraph 2 within three business days of request, the country (or countries) of origin of the procured product and its components (including hardware, software, and firmware). More specifically, Contractor will identify the countries where the development, manufacturing, maintenance, and service for the product and its components are performed.
- 11.6. Contractor will notify City of changes in the list of countries where product maintenance or other services are provided in support of the procured product. This notification shall occur 180 days prior to initiating a change in the list of countries.
- 11.7. Contractor shall use trusted channels to ship procured products, such as U.S. registered mail.
- 11.8. Contractor shall demonstrate a capability for detecting unauthorized access throughout the delivery process.
- 11.9. Upon request by City and no added cost to City, Contractor shall demonstrate chain-of-custody documentation for procured products and require tamper-evident

packaging for the delivery of hardware.

12. Patching Governance

- 12.1. Prior to the delivery of any products and services to City or any connection of electronic devices, assets or equipment to City's electronic equipment, Contractor shall provide documentation regarding its patch management and vulnerability management/mitigation programs and update process (including third-party hardware, software, and firmware) for products, services, and any electronic device, asset, or equipment required to be connected to the assets of City during the provision of products and services under this Contract. This documentation shall include information regarding:
 - 12.1.1. The resources and technical capabilities to sustain this program and process such as Contractor's method or recommendation for how the integrity of a patch is validated by City; and
 - 12.1.2. Contractor's approach and capability to remediate newly reported zero-day vulnerabilities.
- 12.2. Unless otherwise approved by the City in writing, current or supported version of Contractor products and services shall not require the use of out-of-date, unsupported, or end-of-life version of third-party components (e.g., Java, Flash, Web browser, etc.).
- 12.3. Contractor shall verify and provide documentation that procured products (including third-party hardware, software, firmware, and services) have appropriate updates and patches installed prior to delivery to City.
- 12.4. In providing the products and services described in this Contract, Contractor shall provide appropriate software and firmware updates to remediate newly discovered vulnerabilities or weaknesses within 30 days. Updates to remediate critical vulnerabilities shall be provided within a shorter period than other updates, within 7 days. If updates cannot be made available by Contractor within these time periods, Contractor shall provide mitigations and/or workarounds within 2 days.
- 12.5. When third-party hardware, software (including open-source software), and firmware is provided by Contractor to City, Contractor shall provide appropriate hardware, software, and firmware updates to remediate newly discovered vulnerabilities or weaknesses within 60 days. Updates to remediate critical vulnerabilities shall be provided within a shorter period than other updates, within 30 days. If these third-party updates cannot be made available by Contractor within these time periods, Contractor shall provide mitigations and/or workarounds within 7 days.

13. Viruses, Firmware and Malware

- 13.1. Contractor will use reasonable efforts to investigate whether computer viruses or malware are present in any software or patches before providing such software or

- patches to City.
- 13.2. Contractor warrants that it has no knowledge of any computer viruses or malware coded or introduced into any Contractor-provided software or patches, and Contractor will not insert any code which has (a) the effect of disabling or otherwise shutting down all or a portion of such software or (b) damaging information or functionality.
- 13.3. When install files, scripts, firmware, or other Contractor-delivered software solutions are identified as malicious, infected, or suspicious by an anti-virus Contractor through open source solutions like "Virus Total," Contractor must provide technical proof as to why the "false positive" hit took place to ensure its code's supply chain has not been compromised.
- 13.4. If a virus or other malware is found to have been coded or otherwise introduced as a result of Contractor's breach of its obligations under this Contract, Contractor shall immediately and at its own cost:
- 13.4.1. Take all necessary remedial action and provide assistance to City to eliminate the virus or other malware throughout City's infrastructure, regardless of whether such systems or networks are operated by or on behalf of City; and
- 13.4.2. If the virus or other malware causes a loss of operational efficiency or any loss of data take all steps necessary and provide all assistance required by City and its affiliates.
14. Development and Implementation of Access Control Policy: Contractor shall develop, document, and implement policies and procedures to address the security of remote and on-site access to City Information and City Infrastructure ("Access Control Policy"). Contractor's Access Control Policy shall be consistent with the personnel management requirements of NIST Special Publication 800-53 Rev. 4 AC-2, PE-2, PS-4, and PS-5 as may be amended.
15. Notification and Revocation: No later than the end of the Business Day the reason to revoke access occurs, Contractor shall notify City (to the contact personnel identified in paragraph 2) when it should no longer grant remote or on-site access to City Information or City infrastructure to a particular Contractor employee or subcontractor.
- 15.1. Contractor shall take all steps reasonably necessary to immediately deny Contractor personnel, including subcontractors, electronic and physical access to City Information or City Infrastructure, including, but not limited to, removing and securing individual credentials and access badges, multi-factor authentication tokens, and laptops, as applicable.
- 15.2. In addition to the initial notification, Contractor shall notify City when Contractor has removed access to City Information and City Infrastructure.
- 15.3. Contractor shall return to City any City-issued property including, but not limited to,

City ID badge, keys, parking pass, documents, or laptop in the possession of Contractor personnel.

16. Contractor Review of Access: Contractor shall review and verify Contractor personnel's, including subcontractor's, continued need for access and level of access to City Information and City Infrastructure on a semi-annual basis.

16.1. No later than April 1 and October 1 of each year, Contractor shall submit to City (to the contact personnel identified in paragraph 2), in writing, the results of review.

16.2. Contractor shall retain evidence of the reviews for four years from the date of each review.

17. Remote Access Controls

17.1. Contractor shall coordinate with City on all interactive remote access to City Infrastructure, regardless of interactivity, and comply with any controls for interactive remote access and system-to-system remote access sessions requested by City.

17.2. If Contractor directly, or through any of its affiliates, Subcontractors or service providers, connects to City Infrastructure, Contractor agrees to the following protective measures:

17.2.1. Contractor will not access, and will not permit any other person or entity to access, City Infrastructure without City's authorization and any such actual or attempted access will be consistent with such authorization.

17.2.2. Contractor shall implement processes designed to protect credentials and ensure network devices have encryption enabled for network authentication to prevent possible exposure of credentials.

17.2.3. Contractor shall ensure its personnel do not use any virtual private network or other device to simultaneously connect machines on any City Infrastructure to any machines on any Contractor or third-party systems, without:

17.2.3.1. Using only a remote access method consistent with City's remote access control policies,

17.2.3.2. Providing City with the full name of each individual who uses any such remote access method and the phone number and email address at which the individual may be reached while using the remote access method, and

17.2.3.3. Ensuring any computer used by Contractor personnel to remotely access any City Infrastructure will not simultaneously access the internet or any other third-party system or network while logged on to City Infrastructure.

17.2.4. Contractor shall ensure Contractor personnel accessing City Infrastructure are uniquely identified and accounts are not shared between Contractor personnel.

18. Contractor Cybersecurity Policy: Contractor will provide to City all of Contractor's relevant cybersecurity policies and procedures. Contractor shall inform City of any changes to a Contractor cybersecurity policy or procedure applicable to products or services provided to City under this Contract.
19. Return or Destruction of City Information: Upon completion of this Contract or at any time upon City's request, Contractor will return to City all hardware and removable media provided by City containing City Information within 30 days of termination of the Contract. City Information in such returned hardware and removable media shall not be removed or altered in any way. If the hardware or removable media containing City Information is owned by Contractor or a third-party, Contractor shall provide to City a notarized statement confirming the destruction method used and the data sets involved, date of destruction, and the entity or individual who performed the destruction within fifteen calendar days after destruction. Contractor's destruction or erasure of City Information pursuant to this Section shall be in compliance with best industry practices (e.g., Department of Defense 5220-22-M Standard, as may be amended).
20. Cybersecurity Audit Rights: City or its third-party designee may perform audits and security tests of Contractor's IT or systems environment and procedural controls to determine Contractor's compliance with this Contract. Such audits or tests may include coordinated security tests, interviews of relevant personnel, review of documentation, and technical inspection of systems and networks as they relate to the receipt, maintenance, use, retention, and authorized destruction of City Information. Contractor shall provide all information reasonably requested by City in connection with any such audits and provide reasonable access and assistance to City upon request. Contractor will comply, within reasonable timeframes at its own cost and expense, with all reasonable recommendations that result from such inspections, tests, and audits. City reserves the right to view, upon request, any original security reports Contractor has undertaken or commissioned to assess Contractor's own network security. If requested, Contractor will send copies of reports via bonded courier to City's security contact. Contractor will notify City of any such security reports or similar assessments once completed. Any regulators of City or its affiliates shall have the same rights of audit as described herein. Contractor shall not charge City for complying with the requirements of this provision.



Amendment No. 3
to
Contract No. MA 1100 NS190000016
for
NP-Live / NP-View Licenses for Austin Energy
between
Network Perception, Inc.
and the
City of Austin

- 1.0 The City hereby exercise the final extension option for the above referenced contract. This extension option will be effective February 22, 2021 to February 21, 2022. No options remain.
- 2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/22/2019 – 02/21/2020	\$30,000.00	\$30,000.00
Amendment No. 1: Option 1 – Extension 02/22/2020 – 02/21/2021	\$0.00	\$30,000.00
Amendment No. 2: Add funding for Extension Option 1 2/12/2020	\$30,000.00	\$60,000.00
Amendment No. 3: Option 2 – Extension 02/22/2021 – 02/21/2022	\$30,000.00	\$90,000.00

- 3.0 All other terms and conditions remain the same.

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

Signature: Theodore Greene

Printed Name: _____

Authorized Representative
Network Perception, Inc.
20 N Wacker Dr., Suite 1200
Chicago, IL 60606
steven@network-perception.com

Date: 1-8-21

Signature: Paula Barriffe Digitally signed by Paula Barriffe
Date: 2021.01.20 14:49:13 -0600

Paula Barriffe
Procurement Specialist III
City of Austin
Purchasing Office

Date: 01/20/2021



Amendment No. 2
to
Contract No. MA 1100 NS190000016
for
NP-Live / NP-View Licenses for Austin Energy
between
Network Perception, Inc.
and the
City of Austin

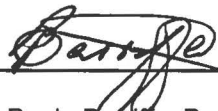
- 1.0 The City hereby amends the above referenced contract to add \$30,000 for extension option No. 1. This extension option will be effective February 22, 2020 to February 21, 2021. One option will remain.
- 2.0 The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/22/2019 – 02/21/2020	\$30,000.00	\$30,000.00
Amendment No. 1: Option 1 – Extension 02/22/2020 – 02/21/2021	\$0.00	\$30,000.00
Amendment No. 2: Add funding for Extension Option 1 2/12/2020	\$30,000.00	\$60,000.00

- 3.0 All other terms and conditions remain the same.

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

Signature & Date:

 2/12/2020

Paula Barriffe, Procurement Specialist III
City of Austin Purchasing Office



Amendment No. 1
to
Contract No. MA 1100 NS190000016
for
NP-Live / NP-View Licenses for Austin Energy
between
Network Perception, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective February 22, 2020 to February 21, 2021. One option will remain.
- 2.0 The total contract amount is not increased by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/22/2019 – 02/21/2020	\$30,000.00	\$30,000.00
Amendment No. 1: Option 1 – Extension 02/22/2020 – 02/21/2021	\$0.00	\$30,000.00

- 3.0 All other terms and conditions remain the same.

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

Sign/Date: _____

Joe G. Barrios
Contract Management Specialist III
Austin Energy
721 Barton Springs Road
Austin, Texas 78704

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
NETWORK PERCEPTION, INC.
For
NP-Live / NP-View Licenses for Austin Energy**

CONTRACT NUMBER: MA 1100 NS190000016

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Network Perception, Inc. ("Contractor"), having offices at 60 Hazelwood Drive, Champaign, IL 61820.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Michael Lyner, Phone: 612-677-7212, Email Address: mike.lyner@rsparch.com. The City's Contract Manager for the engagement shall be Crystal Heinrich, Phone: 512-322-6106, Email Address: Crystal.Heinrich@austinenergy.com. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed **\$30,000** for all fees and expenses.

3.2 **Invoices.**

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

	City of Austin
Department	Austin Energy
Attn:	Lisa Estus
Address	2500 Montopolis Drive
City, State, Zip Code	Austin, TX, 78741

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

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

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

3.3 **Payment.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12-months.

The Contract may be extended automatically beyond the initial term for up to two (2) additional 12-month periods at the City's sole option unless the Contractor is notified in writing no less than thirty (30) days prior to the contract's expiration.

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

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

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

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

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

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

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

SECTION 5. OTHER DELIVERABLES

5.1 **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

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 \$1,000,000 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 \$1,000,000 per occurrence for bodily injury and property damage. 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 \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 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 **Professional Liability Insurance.** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Cyber Liability Insurance.** Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for claims arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy and (7) Contractors acts, errors and omissions in delivering or failing to deliver its professional services.

5.1.2.6 **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.

5.1 **Equal Opportunity.**

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

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

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

5.3 **Delays.**

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

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

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

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

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

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

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

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

SECTION 6. WARRANTIES

6.1 **Warranty – Price.**

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

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

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

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

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

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

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

SECTION 7. MISCELLANEOUS

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

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

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

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

7.7 **Indemnity.**

7.7.1 Definitions:

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

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

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

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

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

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

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered

by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:
City of Austin, Purchasing Office
ATTN: CA's Name, Contract Administrator
P O Box 1088
Austin, TX 78767

To the Contractor:
Contractor's Name
ATTN: Name, Contract Manager
Street Address
City, State Zip Code

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

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

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

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

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

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

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the

City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

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

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

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

7.20 **Dispute Resolution.**

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

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

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

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

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

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

7.22 **Subcontractors.**

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

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

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

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

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

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

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

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

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

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

construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

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

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

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

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

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

7.29.2 the Supplemental Purchase Terms and Conditions;

7.29.3 the Standard Purchase Terms and Conditions;

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

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

NETWORK PERCEPTION, INC.

By: RB
Signature

Name: Robin Berthier
Printed Name

Title: President

Date: Feb. 16, 2019

CITY OF AUSTIN

By: Brett D. Hardy
Signature

Name: Brett Hardy
Printed Name

Title: Procurement Specialist III

Date: 22 Feb 2019

List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Network Perception Proposal dated 11 Feb 2019 ("Contractor's Proposal")

AUSTIN ENERGY

**STATEMENT OF WORK
FOR
NP-VIEW / NP-LIVE**



**721 BARTON SPRINGS ROAD
AUSTIN, TEXAS 78704**

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1 AUSTIN ENERGY BACKGROUND

AE is the nation's eighth largest publicly-owned electric utility and a department of the City of Austin. Our mission is to safely deliver clean, affordable, reliable energy and excellent customer service.

Our utility provides electricity to more than 450,000 customers and a population of more than a million in the City of Austin, several neighboring cities, unincorporated areas of Travis County, and a portion of Williamson County.

AE operates within the Electric Reliability Council of Texas statewide market and its operations are funded entirely through energy sales and services. AE further supports the City of Austin and its other departments through an annual transfer into the general fund of more than \$100 million.

AE is recognized for achieving some of the highest performance standards in the industry. These standards include aggressive renewable and reliability goals and demonstrated efforts to promote new clean energy technologies and a sustainable environment.

2 PROJECT PURPOSE AND OBJECTIVES

AE requires a Contractor to provide a software solution and support services. The software solution must perform highly specialized cyber security monitoring of critical infrastructure electronic access points (EAPs). The specific functionality of the NP-View and NP-Live solution is needed to satisfy requirements of National Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) regulatory standard CIP-005, Parts 1.2 and 1.3 for the upcoming 2019 NERC-CIP Audit.

CIP-005, Part 1.2 requires Asset Owners (AOs) to know what traffic needs to cross EAPs and document the reasons for that traffic to ensure EAPs limit traffic to known communication needs, which include, but are not limited to, communications needed for normal operations, emergency operations, support, maintenance and troubleshooting.

CIP-005, Part 1.3 requires AOs to know and document which systems can talk to other systems or ranges of systems on the other side of an EAP so AOs can detect and block rogue connections.

The Texas Reliability Entity (TRE)—the NERC auditing body—uses vendor solution NP-View for reviewing ACLs and firewall rules during an audit. AE is required either to produce NP-View proprietary-file-format output files for all EAPs for auditor review, or permit the auditors to run the tool themselves against the AE network, which poses a risk to cyber security.

3 CURRENT STATE OVERVIEW

AE's IT work group is currently using another network tool to document Access Control Lists (ACLs) and Firewall Rules. However, IT is experiencing ongoing difficulties updating and documenting in this tool, due to system instability. AE will eventually be out of compliance if we cannot document ACLs and Firewall Rules as per the NERC Requirements above.

4 PROJECT BACKGROUND AND OBJECTIVES

The City of Austin, d/b/a Austin Energy (AE) on behalf of the IT Planning, Resource Management and Compliance team, has an urgent and critical need to procure a software solution for the upcoming 2019 NERC CIP Audit. The solution, which consists of component software applications NP-View and NP-Live, performs highly specialized cyber security monitoring of critical infrastructure electronic access points (EAPs).

Network Perception Inc. is the sole source provider in the United States for the products NP-View and NP-Live, and these products are the only viable solution. NP-View and NP-Live address the challenge of auditing firewalls and network security policies. NP-View is a software product that works offline and generates a network topology diagram by analyzing configuration files from firewalls, routers and switches. NP-Live provides a continuous network monitoring solution that works in the background and automatically alerts when a relevant compliance or security event occurs.

The project comprises the following:

1. Enterprise license purchase of NP-View and NP-Live for monitoring up to 30 devices.
2. Professional technical services for installation and support for two (2) users for NP-View and NP-Live.
3. Professional training services and materials for NP-View and NP-Live for up to four (4) participants.

5 SCOPE OF WORK

The NP-View and NP-Live solution (“NP-Live/NP-View”) will audit firewalls and network security policies. NP-Live/NP-View performs a comprehensive configuration checking operation and network path analysis to determine connectivity, and identify the deviation of implementation from security policies, standards, and best practices. The team at Network Perception will support Austin Energy in successfully deploying and leveraging NP-Live / NP-View through training, technical support and software updates. The implementation includes importing documentation of port justifications from current network modeling tool (RedSeal) using custom scripting created for Austin Energy.

6 VENDOR QUALIFICATIONS

- The Contractor must have knowledge of NERC CIP Reliability Standards; specifically, CIP-005, Parts 1.2 and 1.3.
- The Contractor must have expertise in developing technological solutions to assess and manage NERC CIP compliance, specifically CIP-005.
- The Contractor must have expertise deploying its products in the utilities industry.

7 PROJECT REQUIREMENTS

7.1 TECHNICAL REQUIREMENTS

Hardware Requirements:

No hardware will be purchased in this procurement.

Software Requirements:

- The software must identify and document which systems can talk to other systems or ranges of systems on the other side of an EAP.
- The software must check device configurations and network path analysis to determine connectivity.
- The software must alert with notice of deviations from required security policies.
- The software must be compatible with Cisco switches and firewalls, as well as Palo Alto and Fortinet firewalls.
- The software must be compatible with Cisco ACI environments.
- The software must be able to generate reports of ACL justifications on demand and in one of the following formats: ASCII, Excel, or PDF.

8 TESTING

- The contractor must develop a Test Plan for NP-View in Microsoft Word format.
- The contractor must develop a Test Plan for NP-Live in Microsoft Word format. The contractor must provide troubleshooting assistance during the testing process.

9 TRAINING

- Professional training services for up to four (4) participants.
- Training materials to include a participant guide for each participant.
- Any travel expenses (meals, lodging, transportation, incidentals) incurred by Contractor must be paid by Contractor.

10 VENDOR SUPPORT

The contractor must provide:

- E-mail, telephone, and video conference support from 8:00 am to 5:00 pm Central Standard Time (CST).
- Priority response within twenty-four (24) hours.

11 VALUE ADDS

The contractor must provide an annual health check of NP-View and NP-Live implementations.

The contractor must provide a runbook with contents as listed in the attached template “Runbook TOC.”

12 RESPONSIBILITIES AND OBLIGATIONS

12.1 Vendor Responsibilities

The following describes the responsibilities of the vendor for the implementation of the project.

- Test all functionality as described in the Testing section of the document.
- Provide ongoing technical support for the duration of the contract.
- Provide a project management counterpart to work with the AE project manager to:
 - Determine any timelines deemed “to be determined” (TBD);
 - Monitor implementation and testing phases;
 - Resolve any quality issues that may arise; and
 - Present formal request for acceptance of deliverables.

12.2 AE Responsibilities

AE will provide project management of the planning, implementation, and testing phases of the project.

13 SOLUTION DELIVERABLES AND MILESTONES

13.1 Solution Deliverables

List and describe deliverables by phase in this section.

1. Enterprise license purchase for monitoring up to thirty (30) devices.
 - Software license code(s) or credentials to access NP-View on an unlimited number of workstations.
 - Software application for NP-Live.
2. Professional technical services for installation and support for two (2) users.
 - Runbook completed with information listed in the attached runbook template’s table of contents.

- Support installation of security patches and maintenance updates for the duration of the contract.
3. Professional training services for up to four (4) participants.

13.2 Deliverable Milestones

The following table outlines the project milestones.

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Phase I				
Software license code(s) or credentials to access NP-View.		February 12, 2019	See section 15 below	
Fully functional NP-View implementation.	Includes testing phase.	February 28, 2019		
Training Delivery for NP-View.	Occurs up to two (2) weeks prior to or no later than two (2) weeks following implementation for NP-View.	TBD (Depends on NP-View implementation date.)	See section 15 below	
Phase II				
Software application for NP-Live.	All software installation data delivered or downloaded.	TBD		
Fully functional NP-Live implementation.	Includes testing phase. NP-Live implementation needs to occur after the NERC-CIP Audit at Austin Energy, currently expected to conclude in April 2019.	TBD	See section 15 below	
Training Delivery for NP-Live.	Occurs up to two (2) weeks prior to or no later than two (2) weeks following implementation for NP-Live.	TBD (Depends on NP-Live implementation date.)	See section 15 below	

14 ACCEPTANCE CRITERIA

Project Deliverable	Acceptance Criteria
Software license code(s) or credentials to access NP-View on an unlimited number of workstations.	Confirmation by Technical Lead of access to licensed version of NP-View.
Test Plan for NP-View.	Approval of Project Manager.
Fully functional NP-View implementation compatible with Austin Energy infrastructure Austin Energy infrastructure.	Approval of Project Manager.
Training Materials for NP-View	Approval of Project Manager.
Complete runbook for NP-View.	Approval of Project Manager.
Software application for NP-Live.	Confirmation by Technical Lead of access to licensed version of NP-Live.
Fully functional NP-Live implementation compatible with Austin Energy infrastructure.	Approval of Project Manager.
Training materials for NP-Live	Approval of Project Manager.
Test Plan for NP-Live.	Approval of Project Manager.
Complete runbook for NP-Live.	Approval of Project Manager.
Final Project Acceptance	Written approval of Project Manager.

15 PROJECT TERMINOLOGY

To provide some background into the technical details presented in this project here is a list of helpful acronyms and terminology used in this document:

Access Control Lists (ACLs)—ACLs are a network filter utilized by routers and some switches to permit and restrict data flows into and out of network interfaces. When an ACL is configured on an interface, the network device analyzes data passing through the interface, compares it to the criteria described in the ACL, and either permits the data to flow or prohibits it.

BES Cyber System (BCS)—One or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity.

Electronic Access Point (EAP)—A Cyber Asset interface on an ESP which allows routable communication between Cyber Assets outside an ESP and Cyber Assets inside an ESP.

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

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

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

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

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

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

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

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

Sanctions:

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

Term:

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

Dated this Tuesday 19th day of February, 2019

CONTRACTOR
Authorized
Signature

Network Perception
Robin Berthier



Title

President