



Amendment No. 1
to
Contract No. MA 5000 NA210000197
for
Bluebeam Licenses, Cloud Service, Maintenance & Support
Bluebeam, Inc.
and the
City of Austin, Texas

- 1.0 The City hereby amends the above referenced contract to increase the amount by \$74,000.
- 2.0 The parties hereby agree that Exhibit A is deleted in its entirety and replaced with the new Exhibit A integrated herein by this reference after the signature page.
- 3.0 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 SIGNATURES affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

DocuSigned by:

Roger Piskulick

21-Feb-2024

56AFFA896EB94CD...
Roger Piskulick

CFO

Bluebeam, Inc.

Signature & Date:

**Patricia
Sustaita**

Digitally signed by
Patricia Sustaita
Date: 2024.02.21
15:23:23 -06'00'

Patricia Sustaita, Procurement Specialist IV
City of Austin

**EXHIBIT A
BLUEBEAM
GENERAL TERMS AND CONDITIONS OF USE**

As of March 21, 2023

[Archived Agreements](#)

IMPORTANT—READ CAREFULLY PRIOR TO PURCHASING BLUEBEAM’S SERVICES AND/OR SOFTWARE.

THESE GENERAL TERMS AND CONDITIONS OF USE (“GENERAL TERMS”), ALL APPLICABLE ADDITIONAL TERMS, AND THE ORDER REGARDLESS OF FORM (COLLECTIVELY, “TERMS”) CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND BLUEBEAM (“BLUEBEAM” OR “WE” OR “OUR”). THE “ORDER” IS ANY METHOD THROUGH WHICH YOU ORDER SERVICES AND SOFTWARE FROM BLUEBEAM AND INCLUDES, BUT IS NOT LIMITED TO A QUOTE, ORDER FORM, PROPOSAL, STATEMENT OF WORK, ONLINE TRANSACTION, OR VERBAL ORDER PLACED TELEPHONICALLY. YOU ALSO INCLUDES VARIATIONS OF THE TERM SUCH AS YOUR AND YOURS. BY ACCEPTING THESE TERMS, WHETHER BY CHECKING A BOX ONLINE, EXECUTING AN ORDER, OR USING THE SERVICES OR SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND ACCEPT THE TERMS ON BEHALF OF YOURSELF OR THE COMPANY OR OTHER LEGAL ENTITY FOR WHICH YOU ARE PURCHASING (“ENTITY”), WHICHEVER IS APPLICABLE.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND SUCH ENTITY. IN THIS CASE THE TERM “YOU” OR YOUR SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT AGREE TO THESE TERMS DO NOT PURCHASE, DOWNLOAD, INSTALL, OR OTHERWISE USE THE SOFTWARE OR SERVICES.

The General Terms govern Your use of Bluebeam’s websites, support services, training services, and consulting services (the “Services”) and any Bluebeam software applications purchased by You, whether provided as part of the Services, made available for download, or software as a service accessed via the internet (the “Software”), and any other content or other materials that Bluebeam makes available to You or that You may license from Bluebeam. If You have entered into another negotiated agreement with Bluebeam for Services or Software that references the Terms, then that negotiated agreement will control where it conflicts with these Terms.

Additional Terms

As applicable, Bluebeam’s Services and Software are subject to one or more of the additional terms below (“Additional Terms”), each found at <https://www.bluebeam.com/Legal/>, based on the Services and/or Software purchased. If there is a conflict between the Order and the General Terms or the Additional Terms, the Order shall govern. If there is a conflict between the General Terms and the Additional Terms, the Additional Terms govern in regard to those particular Services and/or Software only. If there is conflict between the Terms and agreements published in the Software, these Terms govern and supersede the agreement in the Software in its entirety. All capitalized terms not otherwise defined herein shall have the meaning given in the below Additional Terms.

[Bluebeam Products and Services Addendum](#)

[Bluebeam Privacy Policy](#)

[Bluebeam Data Processing Addendum](#)

[Code of Conduct](#)

1. Intellectual Property Notice and Reservation of Rights

You acknowledge and agree that the Services and Software provide a right of use, right of access or are licensed, not sold. For clarity, all references in the terms to “sale”, “selling” or “purchase” of the Services and/or Software means the sale and/or purchase of a right of use, right of access, or a license to the Services and/or Software as further described in the Bluebeam Products and Services Addendum or other applicable document. Nothing in the Terms, nor Your use of the Services or Software, shall constitute a sale or transfer of any copyright, trademark, trade dress, trade secret rights, moral right, patent (whether pending or issued) or trade secret right in or to the Services or Software (collectively the “Intellectual Property Rights”).

- 1.1. Services and Software. All right, title and interest in and to the Intellectual Property Rights of the Services and Software not expressly granted in the Terms are reserved by Bluebeam. Documentation, training materials, and specifications for the Services provided or Software licensed or subscribed to by You (“Documentation”) are protected by patent, copyright and/or other intellectual property laws of the United States, other countries and by international treaty provisions. You agree to take no actions that would interfere with Bluebeam’s Intellectual Property Rights.
- 1.2. Open Source. The Services and Software may contain open source software or other third-party software or content. The license terms for open source software and information on obtaining access to the source code to which You may be entitled under the applicable open source licenses will be provided upon request.

- 1.3. **Your Content.** All right, title, and interest in and to the Intellectual Property Rights of electronic data or information submitted to Bluebeam by You while using a Service or Software ("**Your Content**") shall be retained by You and may be protected by applicable copyright or other intellectual property laws. Bluebeam will not access, view, or download Your Content, except as reasonably necessary to perform, maintain, or improve the Services or the Software, including without limitation: (a) to identify, investigate, respond to or resolve technical support inquiries and problems with the Services; (b) to conform to any legal requirements; (c) to maintain any software or hardware required to perform the Services or deliver the Software; (d) to enforce these Terms; (e) to improve the Services or Software, (f) to do discovery and analysis for consulting or training engagements; (g) to analyze and report on usage, or (h) to host and provide access to Services and Software functions. Your Content accessed by Bluebeam will be kept confidential and handled according to applicable laws and regulations. You acknowledge that Bluebeam's technical and support teams are located throughout the world and that certain Services may require access of Your Content from Bluebeam's personnel located outside of your country of residence. I You provide Bluebeam a limited license to access, use, transmit and store Your Content only for the purpose of maintaining, supporting, and improving the Services and Software or removing Your content due to a breach of these Terms. Subject to the limited licenses granted herein, Bluebeam acquires no right, title or interest from You under these Terms in Your Content.
- 1.4. **Suggestions.** If You provide Bluebeam with any suggested improvements to the Services or Software, then that suggestion is provided "as is" and unrestricted. No suggestion will be deemed the Confidential Information of You. You grant Bluebeam a nonexclusive, perpetual, irrevocable, royalty free, worldwide license, with rights to transfer, sublicense, sell, use, reproduce, display, and make derivative works of such suggestions.
- 1.5. **Restrictions.** Except where Bluebeam is required to permit such activity under the terms of an applicable open source license or applicable law or as provided in the Terms, ***You may not and are restricted from the following in regard to Bluebeam's Intellectual Property Rights, Services, and Software:***
 - 1.5.1. Use any software, hardware or other services (i) to bypass any of the terms, conditions or restrictions set forth herein or any application technology restrictions; or (ii) to modify the number of devices, users or seats that access or utilize the Services or Software outside of the validly licensed number of each, including for purposes of "multiplexing," "pooling," or "virtualization" (i.e., the validly licensed devices, users or seats must equal the number of distinct inputs to the multiplexing or pooling software or hardware "front end");
 - 1.5.2. Modify or create any derivative works based on Bluebeam's Intellectual Property Rights, including customization, translation, or localization of Software; (ii) Bluebeam training or consulting materials; or (iii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Services or Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Services or Software, or the underlying ideas or algorithms (e.g., in an effort to develop other applications or services that provide similar or substitute or complimentary functionality to the Services or Software), except where such activity is permitted by applicable law;
 - 1.5.3. Redistribute, encumber, sell, resell, rent, lease, sublicense, loan, assign, commercialize or otherwise transfer rights to the Services or Software or make any similar commercial use of the Services or Software, except where such activity is permitted by applicable law. Each license or right of access is unique to You and may not be resold in any manner to third parties unless expressly authorized by Bluebeam;
 - 1.5.4. Benefit from the Services or Software via a facility management, timesharing, services bureau or other arrangement or allow a third party (including, without limitation, parent, affiliates, subsidiaries, employees or agents) to so benefit;
 - 1.5.5. Remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels; or
 - 1.5.6. Use the Software in an attempt to or in conjunction with, any device, program or services designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction.

2. The Basics

2.1. User ID.

To use Bluebeam's Software, You will be required to sign up for an account and select a password and user-name ("**User ID**"). A User ID may also be created by Your administrator. If You are using a User ID assigned by an administrator, different or additional terms may apply and the administrator may be able to access or disable Your User ID. You promise to provide Bluebeam with accurate, complete, and updated registration information about Yourself. You may not select as Your User ID a name that You don't have the right to use, or another person's name with the intent to impersonate that person, or create a generic User ID not assigned to an Authorized User as further described in the Product and Services Addendum. Some Software may require additional accounts to

access and are governed by these Terms. Each will have a User ID.

You are solely responsible for any and all activity that occurs under Your User ID. Bluebeam shall have no responsibility with regard to the use, disclosure, or management of Your User ID, information or any content accessed, uploaded, processed or exchanged through Your User ID. You are responsible for (a) keeping Your User ID information confidential; (b) promptly notifying Bluebeam of any suspected or unauthorized use of Your User ID; (c) disclosure of Your password to any third person/party; and (d) protecting the security of Your account.

All users (including, without limitation, customers, potential customers, end-users, and visitors to Bluebeam's websites and events) are required to comply with the following Acceptable Use Policy to protect Bluebeam and its customers from illegal, irresponsible, or disruptive activities.

2.2. Acceptable Use Policy.

All users of Bluebeam's Services and Software must abide by Bluebeam's Acceptable Use Policy. When using Bluebeam's Services and Software, You agree that neither You nor any of Your users will not (and You will not encourage, create or facilitate the ability of other users or third parties to):

- 2.2.1. upload, post, store or otherwise transmit any documents (regardless of format, pdf, Word, Excel, text, etc.), images (regardless of format, jpeg, tiff, gif, etc.), files or personal information that violates, misappropriates, or infringes, in any way, upon the rights of others, which is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, obscene, profane, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, or which encourages conduct that would constitute a criminal offense, or otherwise violate any law;
- 2.2.2. impersonate any person or entity, or falsely state or otherwise misrepresent Your affiliation with any person or entity;
- 2.2.3. abuse, stalk, defraud or otherwise harass or disparage any person or entity, including Bluebeam or any Bluebeam employee, or advocate prejudice or hatred against any person or entity based on their race, religion, ethnicity, sex, gender identify, sexual preference, disability or impairment;
- 2.2.4. upload, post, store or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, chain letters, pyramid schemes or other forms of solicitation;
- 2.2.5. send altered, deceptive or false source-identifying information, including spoofing and phishing;
- 2.2.6. upload, post, store or otherwise transmit any content of any kind that contain software viruses, malicious code, harmful materials, or any other computer code or programs designed to interrupt, destroy or limit the functionality of any software or hardware, including without limitation the Services and Software;
- 2.2.7. interfere or attempt to interfere in any manner with the proper working of Bluebeam's Services or Software, including without limitation, breach or otherwise circumvent any security or authentication measures;
- 2.2.8. probe, scan or test the vulnerability of Bluebeam's products or services;
- 2.2.9. violate any applicable local, state, national or international law, including without limitation all applicable export laws and regulations or intellectual property laws;
- 2.2.10. circumvent or render ineffective any geographical restrictions, including IP address-based restrictions;
- 2.2.11. sell, lease, rent, redistribute, or sublicense access to or use Bluebeam's Services or Software unless authorized in writing by Bluebeam to do so; or
- 2.2.12. permit any person or entity to use Bluebeam's Services or Software to access, upload, generate, or maintain files, metadata or personal information of any kind in violation of any of Bluebeam's Terms or any applicable law.

Notwithstanding Bluebeam's Acceptable Use Policy, as a user of the internet (including Bluebeam's Software and Services), You undertake such activities at Your own risk while acknowledging that there are known and unanticipated risks associated with the internet. Bluebeam assumes no liability for the actions of its users or the content they may post or communicate.

3. **Does Bluebeam Offer Trials and Beta Test of its Services and Software**

Yes, Bluebeam does offer trials for some Services and Software and may also offer You an opportunity to participate in beta tests for new products or releases in the future. Such trials and beta tests will be described in the relevant offer and are subject to these General Terms and as further detailed in the Bluebeam Products and Services Addendum.

4. **Privacy, Non-personal data, and Security**

Your privacy is important to us. For more information about how we collect, use, share or otherwise process Personal Data as a "controller", please see Our [Privacy Policy](#). When acting as a "processor" for Your Personal Data, the Data Processing Addendum found [here](#) will apply and is integrated into these Terms by this reference.

To provide the Services and Software, Bluebeam collects, transmits, stores, and uses Personal Data and Non-personal data to deliver, improve, and administer the Services and Software. "Personal Data" means any information relating to an identified or Bluebeam General Terms and Conditions of Use

identifiable natural person which may be used to identify such person and includes information referred to as “personally identifiable information” or “personal information” under applicable data privacy laws, rules or regulations. It does not include categories of sensitive personal information. Non-personal information excludes Personal Data but includes information and data that by itself does not identify You or another individual and can be generated by use of the Services and Software, use of Our website, or other online activity. Together, Personal Data and Non-personal Information comprise “Your Data”. Since Bluebeam Services and Software are not designed for sensitive personal data such as social security numbers, Personal Data of minors, or credit cards, You agree not to upload such data to Bluebeam’s systems.

Your Data is used to provide transactional information to You, information about updates and upgrades to the Services or Software, respond to inquiries and collect feedback, verifying compliance with the Terms including user validation via the internet, to analyze bugs, error reports or logs, and/or to improve, understand, or monitor the Services or Software by itself or through its selected vendors. You expressly provide Bluebeam a license to Your Data for these purposes.

Bluebeam shall establish and maintain administrative, physical and technical safeguards designed to guard against the destruction, loss, or alteration of Your Data and Your Content to the extent it is stored within Bluebeam systems. Without limiting the foregoing, Bluebeam shall at all times in connection with this Agreement: (i) maintain and enforce an information security program including administrative, physical and technical security policies and procedures with respect to its processing of Your Data and Your Content consistent with commercially reasonable industry practices and standards and the Terms; (ii) provide technical and organizational safeguards designed to protect against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or processing of such information and ensure a level of security appropriate to the risks presented by the processing of such information and the nature of such information, consistent with commercially reasonable industry practice and standards; (iii) take commercially reasonable measures to secure the Software against “hackers” and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use the Services or Software or the information found therein; and (iv) take commercially reasonable measures to logically separate Your Data from that of other customers. Bluebeam shall periodically test and continuously monitor its systems for potential areas where security could be breached and shall also periodically conduct security testing, including penetration testing. Bluebeam shall be solely responsible for its information technology infrastructure, including all computers, software, databases, electronic systems and networks that are owned or controlled by Bluebeam that may be used by Bluebeam in connection with the Services and Software. You agree not to tamper, compromise, or attempt to circumvent any administrative, physical, or technical safeguards implemented by Bluebeam for purposes of penetration testing, system assessment or otherwise attempt to probe, scan, or test the vulnerability of any Bluebeam system or network or breach any security or authentication measures.

Bluebeam will require any third-party service providers used to provide the Services or Software to implement and maintain commercially reasonable and appropriate technical, administrative, and physical safeguards for protection of the security, confidentiality and integrity of Your Data. The safeguards will include, but not be limited to, measures designed to prevent unauthorized access to or disclosure of Your Data. Bluebeam shall neither sell Your Data or Your Content nor use either for any purpose other than as described in the Terms.

Your use of third-party software or applications or Your integration of such software or applications with Bluebeam’s Services and Software (“Third-Party Applications”) may result in Your Data or Your Content being transferred to such third party. Bluebeam is not responsible for the performance or security practices of such Third-Party Applications.

5. Will The Terms Ever Change?

Yes. The Terms may change for a variety of reasons including, but not limited to, product enhancements, improvements, or applicable law or regulatory changes that affect the Services or Software. You agree that Bluebeam has the right to modify the Terms at any time in its sole discretion. When We do, notice on Bluebeam’s Legal page which can accessed [here](#), sending You an email, providing notice through the Services or Software itself, and/or other means to which you have access are agreed to be acceptable written notice of such modifications.

If You don't agree with the updated Terms, You are free to reject them. Unfortunately, that means You will no longer be able to use the Services or Software. In the event you decide to reject Bluebeam’s new Terms, You must (i) provide Bluebeam written notice of termination, (ii) remove Your Content by the termination date; (iii) cancel Your User ID; and (iv) discontinue all access and use of the Services and Software as further described in Section 8.4.3.1 in the Term and Termination section below. If You continue to use the Services or Software after a change to the Terms is effective, that means You agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both You and Bluebeam.

6. Will Bluebeam Change its Services?

Bluebeam is always trying to improve its Services and Software, so they may change over time. These changes may introduce new features, impose limits on certain features, or restrict access to parts or all of the Services and Software. Bluebeam reserves the right to revise, modify, or update the Services and Software in its sole discretion. Bluebeam will try to give notice when we make a material change that would adversely affect You, but this isn't always practical. Similarly, we reserve the right to remove features,

functionality, or decommission the Services or Software in compliance with Bluebeam's end of life policies.

7. Is Bluebeam Software Available Via a Mobile App

Bluebeam may offer certain Services and Software via mobile applications (for iOS and Android). Mobile applications may include content, services, data, technology and other digital materials and functions. Functionality, technical limitations and technical protection measures, if any, can be found in the respective application description. The Terms also apply to the legal relationships between You and Bluebeam regarding Services provided by Bluebeam via mobile applications for mobile devices including any additional terms of use provided at download. See the Bluebeam Products and Services Addendum for specific licensing provisions regarding Bluebeam's mobile applications. The mobile applications are provided in cooperation with third parties, or so-called "application providers", such as an app store which may require acceptance of terms applicable to their platform. Mobile applications can only be used after agreeing to the Terms and payment of any applicable fees, if any. Download and use of a mobile application indicates Your agreement to the Terms.

Mobile applications are only available on supported devices and might not work on every device. Determining whether your device is a compatible device is solely your responsibility.

8. What else do I need to know?

8.1. **Fees and Payments.** Unless otherwise mutually agreed in writing, payment terms to purchase Bluebeam Services and Software are as follows:

8.1.1. You agree to provide Bluebeam with complete and accurate billing contact information including a valid email address.

8.1.2. Services or Software Purchases.

8.1.2.1. When Services or Software are purchased directly from Bluebeam, You agree to pay Bluebeam the fees specified in the applicable Order at purchase if required, or if by invoice, within thirty (30) days of the invoice date. Additional Services or Software may be purchased and added to Your account at any time. Unless otherwise agreed in writing by the parties, promotional or discounted pricing is one-time. New purchases or renewals of Services or Software shall be at the applicable fee in effect on the date of such new purchases.

8.1.2.2. If purchased through a Bluebeam authorized reseller (a "Reseller"), You agree to pay Reseller such fees as mutually agreed upon between You and Reseller. You further acknowledge and agree that Reseller has no authority to bind Bluebeam, modify the Terms, or provide any warranty or other commitment or obligation on behalf of Bluebeam.

8.1.3. Bluebeam reserves the right to increase fees on products and services up to ten percent (10%) each Renewal Term which You agree to pay.

8.1.4. If You provide credit card information to Bluebeam for payment, You authorize Bluebeam to charge such credit card for all purchased Services and Software listed in the applicable Order and amounts due for any Renewal Term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order.

8.1.5. Fees are only refundable if an Order is terminated in accordance with Term and Termination sections 8.4.3.1 or 8.4.3.2 below. Except as provided in the cited sections or elsewhere in the Terms, Fees due Bluebeam's are non-cancelable and non-refundable to the fullest extent allowed under applicable law.

8.1.6. If a payment is past due and Bluebeam has provided written notice of the past due status, then Bluebeam may suspend access to the Services and Software, without liability, until such amounts are paid in full.

8.1.7. Fees invoiced pursuant to these Terms, are subject to and may not be reduced to account for, any taxes, which may include local, state, provincial, federal or foreign taxes, withholding taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes, excise, use, goods and services taxes, consumption taxes or similar taxes (collectively "Taxes"). You shall pay all Taxes imposed on the Services or Software provided under these Terms. If Bluebeam has a legal obligation to pay or collect Taxes for which You are responsible, the appropriate amount will be computed and invoiced to and paid by You, unless You provide Bluebeam with a valid tax exemption certificate authorized by the appropriate taxing authority.

8.2. Audit.

Services and Software are subject to the limits specified in the applicable Order, the Terms or the applicable Documentation. If You exceed specified limits, Bluebeam may choose to work with You in its sole discretion to reduce Your usage or it may suspend access to the Services or Software until such usage conforms to agreed limits. If, notwithstanding Bluebeam's efforts, You are unable or unwilling to abide by a limit, You will execute an Order for additional quantities of the applicable Services or Software promptly upon Bluebeam's request, and/or pay any invoice issued by Bluebeam for excess of the limits to bring Your usage into conformance.

8.3. Confidentiality.

- 8.3.1. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Recipient”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure, including, without limitation, business and marketing plans; training materials and consulting advice; technology and technical information, including security information, Your Data, Your Content; product plans and designs, and business processes. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party under these Terms, (ii) was rightfully known to the Recipient prior to its disclosure by the Disclosing Party, (iii) is rightfully received by the Recipient from a third party, or (iv) was independently developed by the Recipient without use of or reference to Confidential Information of the Disclosing Party. If applicable, Bluebeam’s obligations with respect to Personal Data is outlined in its Privacy Policy and Data Processing Addendum.
- 8.3.2. Recipient expressly agrees (i) to hold the Confidential Information of the Disclosing Party in strict confidence and to take all reasonable precautions to protect the confidentiality of the Confidential Information (including, without limitation, all precautions Recipient employs with respect to its own confidential information and materials of a similar nature); (ii) to refrain from using the Confidential Information other than in furtherance of these terms or as otherwise authorized in writing by the Disclosing Party; (iii) that it will not disclose, publish or otherwise reveal any Confidential Information (including any extract or portion thereof) to any other person, party or entity whatsoever except employees and contractors of Recipient with a legitimate need-to-know the Confidential Information in furtherance of these Terms and who are instructed and agree not to disclose the Confidential Information under an obligation no less restrictive than the terms in this section; and (iv) to make reasonable efforts not to mingle the Disclosing Party’s Confidential Information with any information of Recipient, however, any such mingling shall not affect the confidential nature or ownership of the same.
- 8.3.3. The Recipient will protect the other party’s Confidential Information with the same degree of care as it uses to protect its own Confidential Information. Nothing in these Terms will prevent the Recipient from disclosing the Confidential Information pursuant to any judicial or governmental order or as otherwise required by law, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure unless such notice is prohibited by applicable law.

8.4. Term and Termination.

- 8.4.1. Term. These Terms are effective as of the date they are first accepted by You by any means including, but not limited to, clicking a box, executing an Order, or using the Services or Software (the “Effective Date”) and shall continue until all applicable subscriptions have expired as provided below, professional services have been delivered or until terminated by Bluebeam or You as provided herein (the “Term”).
- 8.4.2. Subscriptions. Except as otherwise specified in the Additional Terms or a written and mutually executed agreement, subscriptions to Bluebeam Software are for one (1) year (“Initial Term”) and will automatically renew for additional one year terms (each a “Renewal Term”), unless either party gives the other written notice (email notice is acceptable) of at least thirty (30) days before the end of Initial Term or Renewal Term as applicable.
- 8.4.3. Termination of Terms.
- 8.4.3.1. Cause. Either party may terminate the Terms and all related Services and Software for cause (i) upon (30) days written notice to the other party in the event of a material breach of the Terms and provided such breach remains uncured at the expiration of such notice period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 8.4.3.2. Convenience. You may terminate a subscription or license to Software within thirty (30) days of the license or subscription start date and receive a refund if such termination occurs during this thirty (30) day period.
- 8.4.4. Partial Termination. Either party may be able to terminate a particular Service or Software subscription without terminating all Services or Software Subscriptions by written agreement of the parties.
- 8.4.5. Effect of Termination. Upon termination, all licenses and/or rights of use in Software, and performance of Services shall cease as of the effective date of termination. Upon “Partial Termination”, only the Software or Services terminated shall discontinue upon the effective date of termination and all remaining, unterminated Services and Software shall continue under these Terms. On the effective date of termination, You agree to and shall (i) discontinue use of the Services or Software; (ii) unregister Software from all Devices; (iii) delete and/or destroy all copies of Software including all copies or extracts of the Documentation excluding one (1) archival copy, and subject

to section 8.4.6 remove Your Content from Bluebeam's systems. Bluebeam shall terminate all Subscriptions as of the effective date of termination. Upon termination under section 8.4.3.1(i) or 8.4.3.2. by You, Bluebeam will provide a refund of prepaid subscription fees for the affected Services or Software pro-rated for Services delivered or Software used prior to the effective date of termination. Termination for any other reason is not entitled to a refund or cancellation and will not relieve You of the obligation to pay any fees due to Bluebeam.

8.4.6. Upon Your written request made on or prior to the effective date of termination, Bluebeam shall give You limited access to the terminated Services or Software storing Your Data or Your Content for a period up to thirty (30) days, at no additional cost, solely for purposes of retrieving Your Data and Your Content. After such time, Bluebeam has no obligation to maintain Your Data or Your Content and shall, unless legally prohibited, delete Your Data and Your Content; provided, however, Bluebeam will not be required to remove copies of the same from its backup media and servers until such time as the backup copies are scheduled to be deleted. Downloaded files and data are available in a format determined in Bluebeam's sole discretion.

8.4.7. Survival. The following sections shall survive termination or expiration of these Terms: Section 1 "Intellectual Property Rights Notice and Reservation of Rights"; Section 4 "Privacy, Non-personal data, and Security"; Section 8.2 "Audit" for a period of three (3) years; Section 8.3 "Confidentiality"; Section 8.4.6; Section 8.6 Indemnity; Section 8.6 "Limitation of Liability"; Section 8.12 "Governing Law"; Section 8.13 "Arbitration"; Section 8.14. Attorney's fees; and Section 8.16 Trade and Export Law".

8.5. Warranties and Disclaimers.

BLUEBEAM WARRANTS THAT SOFTWARE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE APPLICABLE DOCUMENTATION AND THAT SERVICES ARE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS. OTHER THAN AS EXPRESSLY SET FORTH IN THESE TERMS, SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND YOUR USE OF THE SERVICES AND/OR SOFTWARE IS AT YOUR OWN RISK. BLUEBEAM DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES RELATED TO AVAILABILITY, ACCURACY, NON-INFRINGEMENT, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SERVICES AND SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE USE THEREOF. BLUEBEAM MAKES NO WARRANTY THAT THE SERVICES OR SOFTWARE WILL MEET YOUR EXPECTATIONS OR REQUIREMENTS OR THAT THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.

8.6. Indemnity

8.6.1. Indemnification by Bluebeam.

8.6.1.1. Subject to section 8.6.3, Bluebeam agrees to defend, indemnify and hold You harmless against any third-party claim arising out of or relating to an allegation that the Services or Software violates, misappropriates or infringes upon any issued patent, copyright, trademark, trade secret or other intellectual property right owned by such third party.

8.6.1.2. The indemnification provided in this section will not apply to any claim to the extent such claims arises from or relates to (a) use of the Services or Software not in accordance with the Documentation (b) any modification, alteration or conversion of the Services or Software not created or approved in writing by Bluebeam, (c) any combination or use of the Services and Software with any computer, hardware, software, Services or data not approved by Bluebeam where the infringement arises out of such combination or use, (d) Bluebeam's compliance with specifications, requirements or requests of You, or (e) Your negligence or willful misconduct.

8.6.2. Indemnity Procedures.

8.6.2.1. The indemnification provided in sections 8.6.1 and 8.6.2 are expressly conditioned upon the indemnitee (i) giving the indemnitor prompt notice in writing of any such third party intellectual property claim or threat thereof; (ii) permitting indemnitor sole control of the defense, through counsel of indemnitor's choice, to defend and/or settle the claim; and (iii) giving indemnitor all reasonably requested information, assistance and authority, at indemnitor's expense, to enable indemnitor to defend or settle such claim. Indemnitee has the right to approve all settlements prior to acceptance in regard to rights or restrictions directly affecting Indemnitee. Indemnitee may participate in the defense of such claim with counsel of indemnitee's choice and at Indemnitee's sole expense.

8.6.2.2. In regard to Bluebeam, if the Services or Software are determined to infringe by the applicable tribunal or court, or Bluebeam reasonably determines that it is likely to infringe, Bluebeam may at its option (a) procure

for You the rights to continue access and use of the Services or Software; (b) replace or modify the Services or Software so that it becomes non-infringing without causing a material negative effect on the functionality provided by the infringing version; or (c) if neither (a) or (b) are viable options, remove the infringing part of the Services or Software and provide a pro-rated refund of the fees paid which shall be negotiated in good faith with You considering the materiality of the portions removed.

8.6.2.3. Section 8.6.3.2. states the entire liability and obligation of Bluebeam and the exclusive remedy of You with respect to any claims of infringement relating to or arising out of the Software.

8.7. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL BLUEBEAM OR ITS AFFILIATES, SUPPLIERS OR RESELLERS BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, FOR PERSONAL INJURY, LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING A DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OR INABILITY TO USE THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THE TERMS, EVEN IN THE EVENT OF FAULT, NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF WARRANTY BY BLUEBEAM, ITS RESELLERS OR ITS SUPPLIERS, AND EVEN IF BLUEBEAM OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL BLUEBEAM, ITS RESELLERS OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY DAMAGES IN EXCESS OF THE FEES PAID FOR THE SERVICES AND SOFTWARE HEREUNDER WITHIN THE PRECEDING TWELVE (12) MONTHS FROM THE CLAIM, IF ANY.

8.8. Links and Third Parties.

Some Services and Software allow access to the internet or may contain links to other internet sites or online resources over which Bluebeam has no control. These resources are provided for convenience only and should not be construed as an endorsement by Bluebeam of any content, items, or services on such third-party websites. Your access, viewing and use of internet functionality and website links, including any content, items or services therein, are solely at Your own risk. Bluebeam is not responsible or liable in any way for any internet services, content, advertising, services or goods used or available from such resources.

8.9. Publicity.

Unless You notify Bluebeam in writing to restrict the following, Bluebeam shall be entitled to identify You as a customer of Bluebeam on its websites. You hereby grant Bluebeam a non-exclusive, non-transferable, worldwide, royalty-free license to use Your trademarks, Services marks and trade names ("Marks") in conjunction with the foregoing and in accordance with Your brand guidelines, if any, during the Term. Any other use of Your Marks in any advertising, promotional or sales literature, or in any other form of publicity, news release or other public announcements shall require Your prior written approval.

8.10. Availability.

Bluebeam's websites describing the Services and Software are accessible worldwide; however, not all Services or Software may be available in Your country or in local language.

8.11. English Language.

These Terms have been prepared in American English. In the event of any conflict between the American English language version and any translation of the Terms that may be provided for convenience only, the American English version shall control. All notices to be provided by either party hereto shall be in the English language.

8.12. Bluebeam Contracting Entity, Governing Law.

The Bluebeam entity entering into the Terms with You determines the law that will apply in any dispute arising out of or in connection with the Terms, or courts that have jurisdiction over any such dispute, venue for any disputes, and the address to which notices should be directed according to the chart below. Each party agrees to the applicable governing law and jurisdiction below without regard to either choice or conflict of law rules. The Bluebeam entity You are contracting with is

determined by the Bluebeam entity specified on Your Order, or if purchasing via a Bluebeam website, the localized version of the website (for example, if purchasing from the Bluebeam UK website You are contracting with Bluebeam Limited UK Ltd entity); or if telephonically or otherwise, the Bluebeam entity through which Your purchase is processed.

Bluebeam Entity	Notice Address	Governing Law	Arbitral Body	Venue and Jurisdiction
Bluebeam, Inc.	One McKinney Plaza 3232 McKinney Ave., Ste. 900 Dallas, TX 75204 USA	Texas and controlling United States Federal Law.		Travis County, Texas, USA
Bluebeam GmbH	Konrad-Zuse-Platz 1 81829 Munich Germany	Germany	Deutsche Institution für Schiedsgerichtsbarkeit (DIS)	Munich, Germany
Bluebeam AB	Kistagång 12, 164 40 Kista Sweden	Sweden	Arbitration Institute of the Stockholm Chamber of Commerce	Stockholm, Sweden
Bluebeam Limited UK Ltd	20 Eastbourne Terrace, Ste. 5.07 London W2 6LG UK	England	London Court of International Arbitration	London, England
Bluebeam Australia Pty Ltd	310 Edward Street Brisbane QLD 4000 Australia	Australia	Australian Centre for International Commercial Arbitration	Brisbane, Australia

8.12.1. Reserved

Reserved.

8.13. Code of Conduct.

Bluebeam shall comply with Nemetschek's Group's, Bluebeam's parent company, policies, including its Code of Conduct and statement regarding the UK Modern Slavery act which are incorporated into these Terms by this reference and can be found [here](#).

8.14. Trade and Export Law.

The Services and Software may be subject to export laws of the United States and other jurisdictions. The parties each represent to the other that it is not on any United States Government denied-party list. You will not permit access to or use of any Services or Software in a United States embargoed country or region or in violation of any United States export law or regulation (currently Cuba, Iran, North Korea, Syria, Crimea, Donetsk, Lubansk, Belarus, and Russia). You shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of the Services or Software from the United States or the transfer of the Services or Software from any other location into another country.

8.15. Federal Government End Use Provisions

If applicable and as provided under U.S. federal law and regulation, Bluebeam provides a pre-existing, commercial Service, including related Software and technology, for federal government end use solely in accordance with these Terms, and provides only the technical data and rights as provided herein. If a government agency has a "need for" rights not conveyed under these Terms, it must negotiate with Bluebeam to determine whether there are acceptable terms for transferring additional rights. A mutually acceptable addendum specifically conveying such rights must be executed by the parties in order to convey such rights beyond those set forth herein.

8.16. Notices.

All notices required by the Terms shall be in writing, delivered to the address specified in section 8.12. above and via email to legal@bluebeam.com, and is effective upon receipt or if sent by email after 5pm United States Pacific Time the next

business day. Notices to You shall be mailed to the physical address provided and/or emailed to the email address appointed by You, and if none, the email address of the contact provided in the Order.

8.17. Independent Contractor.

Each party is an independent contractor and neither party is, nor shall be considered to be, an agent, employee or representative of the other.

8.18. Non-Assignment.

The Terms are personal to You and may not be assigned, delegated, or otherwise transferred, without Bluebeam's express written consent which may be withheld, delayed or conditioned in the sole discretion of Bluebeam. Notwithstanding the foregoing, in the event of the sale or transfer of substantially all of Your assets, or a sale, merger or change of control, You may assign any or all rights and obligations contained herein without consent if the assignee agrees in writing to be bound by the Terms; by providing written notice to Bluebeam; and all past due and owed fees are paid in full prior to the assignment. Any attempt to assign Your rights or obligations under these Terms other than as permitted by this section will be void. Subject to the foregoing, these Terms will bind and inure upon to the benefit of successors and permitted assigns.

8.19. Force Majeure.

Neither party will be liable for any failure or delay in performance under these Terms for causes beyond that party's reasonable control. Dates by which performance obligations are scheduled to be met will be extended for a period equal to the time lost due to any delay so caused.

8.20. Severability.

If any provision of the Terms is held to be unenforceable or invalid, the enforceability of the remaining provisions shall in no way be affected or impaired thereby but shall remain in full force and effect.

8.21. Waiver.

No failure or delay in enforcing any right, power or privilege granted herein will be deemed a waiver unless made in writing and signed by a duly authorized representative of the party providing the waiver. No single waiver will be considered a continuing or subsequent waiver.

8.22. Equitable Relief.

You agree that any breach or alleged breach of the Terms may cause irreparable harm and significant injury to Bluebeam that may be difficult to ascertain and in which a remedy at law would be inadequate. Therefore, You agree that Bluebeam shall have the right to seek and obtain, without the posting of a bond, immediate injunctive relief to enforce the obligations under the Terms in addition to any other rights and remedies it may have.

8.23. Entire Agreement.

The Terms, including all exhibits and addendums hereto, contain the entire agreement of the parties with respect to the subject matter hereof and supersede all prior or contemporaneous discussion, understandings, communications, proposals, and agreements, whether written or oral. The parties agree that any term or condition stated in Your purchase order or in any other order documentation You provide, even if signed by both parties (excluding Bluebeam's Order) is void and has no effect, nor creates any modification on these Terms.

8.24. Amendment. The Terms may not be modified, amended or supplemented except in a writing signed by an authorized representative of Bluebeam.



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
Bluebeam, Inc. ("Contractor")
for
Bluebeam Revu eXtreme Licenses
Contract Number: MA 5000 NA210000197**

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between Bluebeam, Inc. having offices at 443 S Raymond Ave, Pasadena, CA 91105 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document
- 1.1.2 Negotiated City of Austin Terms and Conditions and Contractor's End-User License Agreement, attached as Exhibit A
- 1.1.3 The City's Solicitation RFP 5000 PAX3165 including all documents incorporated by reference
- 1.1.45 Contractor's Offer, dated 05/25/2021, and Price Submittal Sheet V.3 date 06/07/2021 incorporated herein and attached as Exhibit B hereto.

1.2 Term of Contract.

This Contract shall remain in effect for an initial term of 36 months.

- 1.3 Designation of Key Personnel.** 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 shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's, City's key personnel, and invoice addresses are identified as follows:

The City's key personnel and invoice addresses are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
City Contract Manager	Deanna Davidson	(512) 974-1382	Deanna.Davidson@austintexas.gov
City Contract Administrator, Procurement Specialist	Brett Hardy	(512) 978-1525	Brett.Hardy@austintexas.gov

Invoices should be emailed to departments at the applicable Email address listed below.

Department	Development Services Department
Contract Monitor/Point of Contact	David Rodriguez

Email Address	David.Rodriguez2@austintexas.gov
Phone Number	(512) 974-1639
Invoice Address	dsdfinance@austintexas.gov

Department	Austin Fire Department
Contract Monitor/ Point of Contact	Karen Bitzer
Email Address	Karen.Bitzer@austintexas.gov
Phone Number	(512) 974-4131
Invoice Address	FIREAcctsPayable@austintexas.gov

Department	Watershed Protection Department
Contract Monitor/ Point of Contact	Josephine Archer
Email Address	Josephine.Archer@austintexas.gov
Phone Number	(512) 974-9735
Invoice Address	WPDInvoices@austintexas.gov

Department	Austin Transportation Department
Contract Monitor/ Point of Contact	Dan Valbracht
Email Address	Dan.Valbracht@austintexas.gov
Phone Number	(512) 974-7901
Invoice Address	ATDAccountsPayable@austintexas.gov

Department	Austin Energy
Contract Monitor/ Point of Contact	Knox Pitzer/Kyle Markovits
Email Address	Knox.Pitzer@austinenergy.com Contractor-MarkovitsKy@austinenergy.com
Phone Number	(512) 322-6459/ (512) 322-6798
Invoice Address	aeitvendor_assetmanagement@austinenergy.com

Department	Austin Water
Contract Monitor/ Point of Contact	Jason Kelly / Brian Courtney
Email Address	Jason.Kelly@austintexas.gov Brian.Courtney@austintexas.gov
Phone Number	(512) 972-0442 /(512) 972-0274
Invoice Address	awlicensing@austintexas.gov

Department	Austin Public Library
Contract Monitor/ Point of Contact	Jorge Valle
Email Address	Jorge.Valle@austintexas.gov
Phone Number	(512) 974-7432
Invoice Address	Lib.AP@AustinTexas.Gov

Department	Aviation Department
Contract Monitor/ Point of Contact	Chris Bulak
Email Address	Chris.Bulak@abia.org
Phone Number	512-530-6380
Invoice Address	ABIA.Invoices@austintexas.gov ATTN: Accounts Payable 3600 Presidential blvd ste 411 Austin, TX 78719

Department	Emergency Medical Services Department (EMS)
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Contract Monitor/ Point of Contact	William Alderete
Email Address	William.Alderete@austintexas.gov
Phone Number	(512) 978-0485
Invoice Address	EMSAP@austintexas.gov

For questions regarding your invoice/payment please contact specific Department Contract Monitor listed above.

1.4 Additional Terms and Conditions.

The below terms have been added to the contract terms section included in this solicitation as required by the State of Texas and are hereby incorporated:

1.4.1 Pursuant to Texas Government Code Chapter 2274, the Contractor certifies that if we have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of any City contract, that we are not owned by or the majority of stock or other ownership interest of our firm is not held or controlled by:

- 1.1 individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
- 1.2 company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
- 1.3 headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

1.4.2 Pursuant to Texas Government Code Chapter 2274, the Contractor certifies that, if we have 10 or more full-time employees: (1) we do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the resulting contract against a firearm entity or firearm trade association.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

BLUEBEAM, INC.

Mary Santoro

Printed Name of Authorized Person

DocuSigned by:


Signature

VP, Global Sales

Title:

13-Sep-2021

Date:

CITY OF AUSTIN

Sai Xoomsai Purcell

Printed Name of Authorized Person

DocuSigned by:


Signature

Procurement Manager

Title:

13-Sep-2021

Date:

**CITY OF AUSTIN
TERMS AND CONDITIONS**

The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1 GENERAL

1.1 TERM OF CONTRACT:

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee and mutual agreement by Contractor, the Contract may be extended beyond the initial term.

1.2 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order, a written request by the City to purchase the products or services of the Contractor under the terms and conditions of this Contract, after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor'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 vendor.
- C. Federal excise taxes, State taxes, or City sales taxes will not be included in the Invoiced amount once the City furnishes a tax exemption certificate to Contractor.

1.3 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Invoice, whichever is later.
- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §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 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. Notice is hereby given of Article VIII, §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.
- E. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- F. 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

**CITY OF AUSTIN
TERMS AND CONDITIONS**

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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation. Contractor has no obligation to continue providing Deliverables or services and may discontinue services for which it is not paid if funds due which are not appropriated as provided herein by City without penalty or liability of any kind.

1.4 FINAL PAYMENT AND CLOSE OUT:

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

1.5 AUDITS AND RECORDS:

- A. 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 billing accuracy of this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three 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.

1.6 DEFAULT:

Either party shall be in default under the Contract if it (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) comply with the laws and regulations to which each is specifically and individually subject in its conduct of business or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States; or (d) knowingly makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.7 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party 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 defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Except as otherwise provided in Exhibit C, in addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses,

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incurred by the party as a result of default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. Should such default be the result of a violation of law, either party may suspend performance with a Stop Work Notice until such default is cured.

1.8 ATTORNEY'S FEES:

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.9 TERMINATION WITHOUT CAUSE:

Except as otherwise provided in Exhibit C, The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 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.

1.10 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City as soon as practicable to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.11 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 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. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.12 CONFIDENTIALITY:

The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use,

CITY OF AUSTIN TERMS AND CONDITIONS

disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of 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 a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information 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 in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to promptly notify City to the extent legally permissible of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are 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.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby except as other provided in the attached End User Agreement. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

1.13 TEXAS PUBLIC INFORMATION ACT:

- A. Any materials submitted by Contractor must be clearly marked as proprietary. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the

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expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

- i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
 - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.14 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.

1.15 ADVERTISING:

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

1.16 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.

1.17 GRATUITIES:

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that material gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin 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.

1.18 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 as determined by the City. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee of the City 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

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voidable by City. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

1.19 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.

1.20 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure 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 either party without the prior written consent of the other party. Any attempted assignment or delegation contrary to this Section 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.

1.21 WAIVER:

The claim or right arising out of a breach of the Contract cannot 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.

1.22 MODIFICATIONS:

The Contract can be modified or amended only in writing and signed by both parties. Notwithstanding the foregoing, changes made by Contractor to its online Privacy Policy and Studio terms and conditions to comply with changes in law or regulation affecting the same shall modify this Agreement without the need for such writing. City shall not be subject to voluntary updates to such terms and conditions unless Contractor provides notice to the City and City does not terminate the Agreement within sixty (60) days of this notice.

1.23 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.

1.24 DISPUTE RESOLUTION:

A. 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 14 calendar days after receipt of

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the request or such later period as agreed by the parties. Each party shall include, at a minimum, one 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 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.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 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 consider 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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 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.

1.25 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, 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.

1.26 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.

1.27 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

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President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
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.

1.28 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.

1.29 NON-DEBARMENT CERTIFICATION:

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently 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 Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

1.30 EQUAL OPPORTUNITY:

- A. **Equal Employment Opportunity:** Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, or U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be compliant with laws, including non-discrimination laws and regulations.
- B. **Non-Retaliation:** 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.
- C. **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

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not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

1.31 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any “company” for goods or services unless the following verification is included in this Contract.

- A. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a “company”, then the Contractor verifies that he:
 - i. does not “boycott Israel”; and
 - ii. will not “boycott Israel” during the term of this Contract.
- C. The Contractor’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.32 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

Contractor does not refer, sponsor, or promote LGBTQ+ conversion therapy.

1.33 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. 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 hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and 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
- iii. The Contractor’s insurance coverage shall be written by companies authorized to do business in the State of Texas that have an A.M. Best rating of B+VII or better.
- iv. 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.

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- v. If insurance policies are not written for amounts specified in Section B., Specific Insurance 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.
 - vi. 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.
 - vii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
 - viii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
 - ix. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall 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 \$500,000 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 Day's 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 \$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, 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.
- 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

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to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

2 SERVICES WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. 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:
 - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. 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.
- C. If the City or the City's representative notifies the Contractor in writing detailing a failure in performance that any services provided by its employees in providing Support and Maintenance are wholly insufficient, it may request that Contractor not assign such employees in support of this Agreement.

2.2 DATA SECURITY:

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information as detailed in Exhibit C. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

- A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:

"Authorized Persons" means (i) the Contractor's employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

"Highly Sensitive Personal Information" means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

"Personal Information" means information provided to the Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information. Notwithstanding the foregoing,

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Bluebeam's Software and Services are designed to hold and process the Licensee Content and Personal Information as defined in Exhibit C. Bluebeam is not responsible for storage of Personal Information or Customer Content beyond its specified parameters in Section 16 and elsewhere within Exhibit C, EULA.

"Security Breach" means (i) any act or omission that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons, or by the City should the Contractor have access to the City's systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Persons or a breach or alleged breach of this Contract relating to such privacy and data security practices.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

B. Standard of Care

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
- iv. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - a. Not create, collect, receive, access, or use Personal Information in violation of law;
 - b. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor's own purposes or for the benefit of anyone other than the City, in each case, without the City's prior written consent; and
 - c. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City's prior written consent.
- v. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives as defined in Exhibit C and further detailed by Vendor's Privacy Policy found at <https://www.bluebeam.com/legal/privacy-policy>.
- vi. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.

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- vii. Without limiting the Contractor's obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology ("NIST") Cybersecurity Framework and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.
 - viii. N/A
 - ix. At a minimum, the Contractor's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored on any media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of the Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.
 - x. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. Upon the City's written request, the Contractor shall promptly identify for the City, in writing, all Authorized Employees as of the date of such request.
- C. Security Breach Procedures:
- i. The Contractor shall:
 - a. Provide the City with the name and contact information for an employee of the Contractor who shall serve as the City's primary security contact and shall be available to assist the City 24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach;
 - b. Notify the City of a Security Breach as soon as practicable, but no later than 24 hours after the Contractor has confirmed such breach; and
 - c. Notify the City of any Security Breaches by telephone at 512-974-4357 and email at PICK APPROPRIATE ONE cybersecurity@austintexas.gov
 - ii. Immediately following the Contractor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to reasonably cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) facilitating interviews with the Contractor's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant

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records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.

- iii. The Contractor shall, at its own expense, use commercially reasonable efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with privacy rights, laws, regulations, and standards applicable to it and its business. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation to the extent such breach is caused by negligence or breach of its obligations under this Agreement.
- iv. The Contractor agrees that it shall not inform any uninterested parties (the City main goal is to protect information going to public) of any Security Breach without first obtaining the City's prior written consent.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- vi. The Contractor agrees to reasonably cooperate, at its own expense if negligent or in breach of its obligations, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

D. Oversight of Security Compliance

Upon the City's written request to confirm the Contractor's compliance with this Contract, as well as applicable laws, and regulations which specifically regulate the Contractor's business, Contractor shall reasonably cooperate to demonstrate such compliance and share results of its internal controls and audits under a mutually agreement non-disclosure agreement.

In addition, upon the City's written request, the Contractor shall provide the City with the results of audits performed by or on behalf of the Contractor, at its request, that assesses the effectiveness of the Contractor's information security program as relevant to the security and confidentiality of Personal Information shared during the course of this Contract.

- i. **Return or Destruction of Personal Information.** At any time during the term of this Contract, at the City's written request or upon the termination or expiration of this Contract for any reason, the Contractor shall, and shall instruct all Authorized Persons to, promptly return to the City all copies, whether in written, electronic, or other form or media, of Personal Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the City that such Personal Information has been returned to the City or disposed of securely. The Contractor shall comply with all directions provided by the City with respect to the return or disposal of Personal Information.
- ii. **Equitable Relief.** The Contractor acknowledges that any breach of its covenants or obligations set forth in this Section may cause the City irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the City is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the City may be entitled at law or in equity. Such remedies shall not be deemed

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to be exclusive but shall be in addition to all other remedies available at law or in equity, notwithstanding to any exclusions or limitations in this Contract to the contrary.

- iii. **Material Breach.** The Contractor's failure to comply with any of the provisions of this Section is a material breach of this Contract. In such event, the City may terminate the Contract effective immediately upon written notice to the Contractor without further liability or obligation to the Contractor.

EXHIBIT A - END-USER LICENSE AGREEMENT**Bluebeam® Revu®**

IMPORTANT—READ CAREFULLY PRIOR TO USING THE SOFTWARE: THIS END-USER LICENSE AGREEMENT (THE "EULA") IS A LEGAL AGREEMENT BETWEEN YOU ("YOU" OR "LICENSEE") AND BLUEBEAM, INC. ("BLUEBEAM") FOR USE OF THE BLUEBEAM REVU® SOFTWARE APPLICATION (THE "SOFTWARE") AND THE RELATED USER GUIDES AND SPECIFICATIONS MADE AVAILABLE BY BLUEBEAM FOR ONLY THAT VERSION OF THE SOFTWARE LICENSED BY LICENSEE HEREUNDER (THE "DOCUMENTATION").

BY ACCESSING, DOWNLOADING, INSTALLING, COPYING OR OTHERWISE USING ALL OR ANY PORTION OF THE SOFTWARE, LICENSEE AGREES TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL OR OTHERWISE USE THE SOFTWARE. YOU AGREE THAT YOUR USE OF THE SOFTWARE REPRESENTS YOUR ACKNOWLEDGEMENT THAT YOU HAVE READ THIS EULA, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS.

IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS EULA, IN WHICH CASE THE TERM "LICENSEE" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, DO NOT INSTALL OR OTHERWISE USE THE SOFTWARE.

1. Single User License.

- a. Subject to Licensee's continuous compliance with this EULA and payment of the applicable license fees ("License Fees"), Bluebeam grants Licensee a limited, non-exclusive, personal, non-sublicensable, non-transferable right and license to download, install and use one (1) copy of the Software (a "Seat") on one (1) personal computer that is in the possession of or otherwise under the control of Licensee (a "Device") for use by one (1) end-user (a "Licensed User") in accordance with the terms of this EULA. If Licensee is an organization, company, entity, partnership or other non-natural person, Licensed Users are limited to employees or duly authorized agents or independent contractors of Licensee.
- b. Even though copies of the Software may be provided on media of different formats, copies of the Software on different media formats do not constitute multiple licenses of the Software.
- c. Licensee may only use the Software in connection with the internal conduct of Licensee's business.
- d. Certain features of or functionality available in connection with the Software (collectively the "Optional Features") may be subject to additional terms and conditions, such as Maintenance subscriptions in accordance with Addendum A, Enterprise License subscriptions in accordance with Addendum B, Open License subscription in accordance with Addendum C, and Studio Terms of Use in accordance with the terms published at www.bluebeam.com/legal/terms-of-use/studio.
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iii. Pursuant to Section 8; and

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ENTERPRISE LICENSE SUBSCRIPTION ADDENDUM B

1. **Enterprise License Subscription.** Upon timely payment of the ELS Fee, Bluebeam agrees to provide Licensee with one (1) Enterprise License Key. Licensee agrees to use the Enterprise License Key to assign, un-assign and re-assign Seats between Licensee's Devices and Licensed Users provided the Single User

Ratio is maintained at all times. This Enterprise License is valid for one (1) year commencing on the ELS Start Date unless otherwise set forth in Licensee's Order Form or other signed written agreement by and between Bluebeam and Licensee. Bluebeam will invalidate Licensee's Enterprise License Key if Licensee fails to pay the ELS Fee as agreed.

2. **Payment Terms.** The ELS Fee must be paid in advance of the commencement of the Enterprise License subscription and each ELS Renewal Date or as otherwise set forth in a signed written agreement by and between Bluebeam and Licensee. The ELS Fee is non-transferable. The ELS Fee is refundable only within the first thirty (30) days after its payment. After the first thirty (30) days the ELS Fee is non-refundable.
3. **Enterprise License Subscription Requirements:**
 - a. **Maintenance.** Licensee is required to secure and maintain a Maintenance subscription to be eligible to license an Enterprise License Key. If Licensee's Maintenance subscription terminates, for any reason, the Enterprise License subscription shall simultaneously terminate. Licensee's license to use the Software shall continue without the benefits of the Maintenance subscription and Enterprise License subscription. Licensee shall have thirty (30) days to unregister the Software from all Devices and re-register non-Enterprise License versions of the Software. Failure to unregister and re-register non-enterprise License versions shall be deemed a material breach of this EULA and grounds for immediate termination.
 - b. **Upgrades.** Upon release of an Upgrade, Licensee is required to unregister the Software from all Devices and re-register the Upgrade. Provided Licensee has not unregistered the Software but has already downloaded the Upgrade and Licensee fails to unregister the Software for a period of thirty (30) days, Bluebeam shall invoice Licensee for the then-current full retail price of the Software (not the discounted Upgrade price). Licensee agrees to pay such invoice within ten (10) days of the receipt thereof.
 - c. **Confidentiality of Enterprise License Key.** It is Licensee's sole responsibility to maintain the confidentiality and integrity of the Enterprise License Key. Provided the confidentiality is breached or Licensee suspects it is breached, Licensee will notify Bluebeam immediately so that the Enterprise License Key can be disabled and a new Enterprise License Key assigned to Licensee.
4. **Enterprise License Subscription Management.**
 - a. **Non-Compliance with Single User Ratio.** If at any time Licensee assigns Seats to a number of Devices and/or Licensed Users in excess of five percent (5%) of the total number of licensed Seats (the "Overage Allowance"), Licensee will be prohibited from assigning a Seat to a new Device until the overage has been corrected by Licensee or additional Seats have been licensed by Licensee. For purposes of clarification only, if Licensee has licensed twenty (20) seats, Licensee may exceed the Single User Ratio by one (1) Device or Licensed User (but not both) for a period of up to but not exceeding thirty (30) days. If at any time Licensee's Single User Ratio exceeds the Overage Allowance for a period of thirty (30) days, Bluebeam reserves the right to unregister the number of Devices as is required to obtain compliance with the Single User Ratio.
 - b. **Automatic Seat Release.** Licensee's Devices periodically communicate with Bluebeam's license server over the internet to validate the Single User Ratio and monitor the Overage Allowance. After fifteen (15) days without a communication from Licensee's Device, the license server will automatically release the Seat from the Device. All Inactive Seats will remain unassigned until such time as the earlier of (i) the Seat is affirmatively assigned to a Device by Licensee, or (ii) the previously assigned Device communicates with the Bluebeam's license server and re-engages the Seat.
 - c. **Gateway Access.** Promptly following the ELS Start Date, Bluebeam will issue Licensee's Enterprise License Key and grant Licensee access to the Gateway. Licensee is required to create and maintain a password to access the Gateway. It is Licensee sole responsibility to keep such password confidential and to prevent the unauthorized use of Licensee's password. In the event the password is forgotten or compromised, Licensee must contact Bluebeam immediately.
5. **Term and Termination.**
 - a. **Term.** The Enterprise License Key is valid for one (1) year commencing on the ELS Start Date unless otherwise set forth in Licensee's Order Form or other signed written agreement by and between Bluebeam and Licensee.

- b. Termination by Licensee. Licensee may terminate the Enterprise License subscription at any time upon providing thirty (30) days prior written notice to Bluebeam. Bluebeam will not refund any portion of the ELS Fee unless notice of termination is received by Bluebeam within thirty (30) days of the ELS Start Date.
- c. Termination by Bluebeam. Bluebeam may terminate the Enterprise License subscription at any time upon providing Licensee with thirty (30) days prior written notice. Provided Bluebeam terminates Licensee's Enterprise License subscription, Bluebeam will refund Licensee the pro-rata portion (calculated on a per month basis) of the ELS Fee applicable to the terminated portion of the subscription period.
- d. Automatic Termination. If Licensee's Single User Ratio exceeds the Overage Allowance for a period of sixty (60) days, Bluebeam reserves the right to terminate this Addendum and revoke the Enterprise License Key.

6. **Definitions**. All capitalized terms used herein but not defined shall have the meanings set forth in the EULA.

- a. "Enterprise License" means an optional, annual, add-on subscription service available that allows Licensee to use an Enterprise License Key to manage Licensee's Seat assignments to Licensed Users and Devices.
- b. "Enterprise License Key" means a unique identifier assigned by Bluebeam to Licensee that allows Licensee to access the Gateway and manage the Seats assigned to Licensee's Licensed Users and Devices.
- c. "ELS Fee" means the annual per Seat fee in effect on the date the Enterprise License Key is licensed and/or renewed, as applicable, that Licensee pays to secure or renew its annual Enterprise License subscription.
- d. "ELS Renewal Date" means each annual anniversary of the ELS Start Date.
- e. "ELS Start Date" means the later of (i) the date on Licensee's purchase order or (ii) the Enterprise License subscription activation date; or (iii) the Maintenance Start Date.
- f. "Gateway" means Bluebeam's online portal accessible via the internet that allows Licensee to view and manage Licensee's Seat to Device to Licensed User assignments.
- g. "Inactive Seat" means a Seat assigned to a Device that has not connected to the internet for a period of fifteen (15) days.
- h. "Single User Ratio" means ratio established in Section 1 of the EULA, by which Licensee may install and use one (1) Seat of the Software on one (1) Device for use by one (1) Licensed User.

OPEN LICENSE SUBSCRIPTION ADDENDUM C

1. **Open License Subscription**. Upon timely payment of the OL Fee, Bluebeam grants Licensee a limited, non-exclusive, personal, non-sublicenseable, non-transferable right and license to one (1) OL Key to access and use Bluebeam's cloud-based authorization system to distribute the OL Seats among Licensee's Licensed Users.
 - a. Modification of Single User Ratio. Notwithstanding anything to the contrary in the EULA and provided Licensee's Open License subscription remains current, the Software may be installed on an unlimited number of Devices provided that at no time shall the number of Licensed Users exceed the number of licensed OL Seats.
 - b. Gateway Access. Bluebeam will grant Licensee access to the Gateway to manage the OL Key and OL Seat assignments and reassignments.
 - c. Confidentiality of OL Key. It is Licensee's sole responsibility to maintain the confidentiality and integrity of the OL Key. Provided the confidentiality is breached or Licensee suspects it is breached, Licensee will notify Bluebeam immediately so that the OL Key can be disabled and a new OL Key assigned to Licensee.
 - d. Licensed OL Seats and New OL Seats. Licensee may add New OL Seats to Licensee's Open License subscription at any time during the Term upon payment of a pro-rated portion of the OL Fee (determined based on the number of months remaining in the then current annual subscription term). Licensee may only reduce the number of OL Seats once each annual period upon written notice to Bluebeam at least fifteen (15) days prior to the OL Renewal Date.
2. **Payment Terms**. The OL Fee must be paid in advance of the commencement of the Open License subscription and each OL Renewal Date or as otherwise agreed by and between Bluebeam and Licensee.

The OL Fee is non-transferable. The OL Fee is refundable only within the first thirty (30) days after its payment. After the first thirty (30) days the OL Fee is non-refundable.

3. **Term and Termination:**

a. **Term.** The Open License subscription and OL Key is valid for one (1) year commencing on the OL Start Date unless otherwise set forth in Licensee's Order Form or other signed written agreement by and between Bluebeam and Licensee.

b. **Termination by Licensee.** Licensee may terminate the Open License subscription at any time upon providing thirty (30) days prior written notice to Bluebeam. Bluebeam will not refund any portion of the OL Fee unless notice of termination is received by Bluebeam within thirty (30) days of the OL Start Date.

c. **Termination by Bluebeam.** Bluebeam may terminate the Open License subscription at any time upon providing Licensee with thirty (30) days prior written notice. Provided Bluebeam terminates Licensee's Open License subscription, Bluebeam will refund Licensee the pro-rata portion (calculated on a per month basis) of the OL Fee applicable to the terminated portion of the subscription period.

4. **Definitions.** All capitalized terms used herein but not defined shall have the meanings set forth in the EULA.

a. **"Open License"** means an optional, annual, add-on subscription service that allows Licensee to use an OL Key to manage Licensee's OL Seat assignments to Licensed Users.

b. **"OL Key"** means a unique identifier assigned by Bluebeam to Licensee that allows Licensee to (a) install the Software; and (b) assign, release, reassign and/or revoke OL Seats to and/or from Licensed Users.

c. **"OL Fee"** means the annual per Seat fee in effect on the date the OL Key is licensed and/or renewed, as applicable, that Licensee pays to secure or renew its annual Open License subscription.

d. **"OL Key"** means the open license key that allows Licensee to access the Gateway and administer the OL Seats.

e. **"OL Renewal Date"** means each annual anniversary of the OL Start Date.

f. **"OL Start Date"** means the later of (i) the date on Licensee's purchase order or (ii) the Open License subscription activation date.

g. **"OL Seats"** means the number of Seats licensed by Licensee according to the terms of this Open License subscription as set forth in one or more license certificates issued by Bluebeam.

h. **"New OL Seats"** means any additional OL Seats licensed by Licensee during the Term and added to Licensee's Open License subscription.

i. **"Gateway"** means Bluebeam's online portal accessible via the internet that allows Licensee to view and manage Licensee's OL Seat to Device to Licensed User assignments.

j. **"Single User Ratio"** means ratio established in Section 1 of the EULA, by which Licensee may install and use one (1) Seat of the Software on one (1) Device for use by one (1) Licensed User.



Solicitation INSTRUCTIONS

Solicitation No.
RFP 5000 PAX3165

1 REQUEST FOR PROPOSALS

- 1.1 Invitation.** The City of Austin invites all Responsible Offerors to submit Proposals to provide the goods and/or services described in this Solicitation.
- 1.2 Documents.** This Request for Proposals ("RFP" or "Solicitation") is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 Process.** The process described in this RFP is the Competitive Sealed Proposals process. This process is procedurally compliant with the competitive proposal processes prescribed by Texas Local Government Code Ch. 252 and Ch. 271.
- 1.4 Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.5 Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.6 Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

2 PUBLICATION AND NOTICES

- 2.1 Publication.** This Solicitation was published in the City's financial services website, Austin Finance Online, as of the Published date displayed in the Solicitation Cover Sheet section.
- 2.2 Email Notices.** On the Solicitation's Published date, email notices regarding this Solicitation were issued to all vendors registered in Austin Finance Online, that had previously selected the NIGP Codes displayed in the Solicitation Cover Sheet section. All subsequent email notices regarding this Solicitation will be limited to those vendors or other persons that subscribe to this Solicitation in Austin Finance Online.
- 2.3 Newspaper Notices.** If applicable, one or more notices of this Solicitation were published in the newspaper as required by statute.
- 2.4 Third-Party Notices.** Austin Finance Online is the only source of official notices regarding this Solicitation. Prospective Offerors shall not rely on any notices concerning this Solicitation received from sources other than Austin Finance Online.

3 COMMUNICATIONS AND MEETINGS

- 3.1 Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office's main line at (512) 974-2500 and request assistance from any member of the Purchasing Office's management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.

- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.
- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. (https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 4 OFFER PREPARATION**
- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer, a Technical Offer, and an Offer and Certifications submittal.
- 4.2 Alternate Offers.** Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.
- 4.3 Exceptions.** Offerors shall indicate if they take exception to any portions of the Solicitation in their Proposal. Any exceptions included in the Proposal may negatively impact the City's evaluation of the Proposal or may cause the City to reject the Proposal entirely.

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- 4.4 Proposal Acceptance Period.** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal
- 4.5 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. Offerors seeking to keep any portions of their Offer confidential shall mark each such portion as "Proprietary". The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General's Office of the State of Texas, of any Proposal contents marked as "Proprietary". A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- 4.6 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.
- 4.7 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.** If the solicitation includes an MBE/WBE Program Compliance Plan or Offeror intends to subcontract, the Offeror 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 Subcontractor Utilization Plan as approved by the City (the "Plan").

5 OFFER SUBMISSION

Offers in response to this Solicitation may be submitted using one of the following methods.

- 5.1 Electronic Offers.** Electronic Offers (electronic documents) shall be submitted to the City of Austin using the Solicitation's eResponse function, available through the City's online financial system, Austin Finance Online. To submit Electronic Offers using the eResponse function, Offeror's must first be registered as a vendor with the City of Austin in Austin Finance Online. See [Instructions, Submitting Offers in Austin Finance Online](#).
- 5.1.1 Due Date and Time for Electronic Offers.** Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.
- 5.1.2 Withdrawing Electronic Offers.** Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation's Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.
- 5.1.3 Late Electronic Offers.** The Solicitation's eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation's Due Date and Time.
- 5.1.4 Opening Electronic Offers.** The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation's eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.
- 5.2 Hardcopy Offers.** Hardcopy Offers (physical documents including paper and flash drives) must be returned in a sealed envelope and shall be delivered to the City of Austin's Purchasing Office at one of the following addresses, depending on the delivery method:

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: [Insert Solicitation Number] P.O. Box 1088	City of Austin, Municipal Building Purchasing Office Response to Solicitation: [Insert Solicitation Number] 124 W 8 th Street, Rm 310

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Austin, Texas 78767-8845	Austin, Texas 78701 Reception Phone: (512) 974-2500
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5.2.1 Due Date and Time for Hardcopy Offers. Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.

5.2.2 Withdrawing Hardcopy Offers. See below for changes due to the COVID-19 pandemic.

5.2.3 Late Hardcopy Offers. All Hardcopy Offers received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Offer's late receipt at the designated location.

5.2.4 Opening Hardcopy Offers. The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one is in attendance at the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.

5.3 Special procedures due to 2020 COVID-19 Pandemic.

5.3.1 Confirmation of Submittals – Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Offers when they are received or able to verify receipt of Hardcopy Offers or provide signature confirmation of Offers delivered by common carriers.

5.3.2 Withdrawing Hardcopy Offers – Hardcopy Offers may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Offerors must send emails to withdraw Offers to the following email address: PurchasingAdmin@austintexas.gov

5.3.3 Solicitation Openings - Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: https://www.austintexas.gov/financeonline/afo_content.cfm?s=66.

When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Offers aloud and will referring the public to the Solicitation's eResponse section to view the remaining Electronic Offers.

6 OFFER EVALUATION

6.1 Basis of Competition. The City may compare Offers based on groups or categories and will choose the basis of competition that best meets the City's needs for the resulting contracts. The basis of competition for each RFP will be described in section 11, Evaluation of Offers below.

6.2 Minimum Responsiveness. Proposals are Minimally Responsive when they include all of the Submittals listed in this Solicitation, completed and with sufficient detail in each to evaluate the Proposal in accordance with the Solicitation's Instructions. Proposals that are not Minimally Responsive may be deemed non-responsive and rejected.

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- 6.3 Responsibility.** An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance and positive compliance history with all City ordinances. An Offer may be rejected if an Offeror is determined to not be responsible.
- 6.4 Clarifications.** Any time after the opening of Proposals, the City may contact Offerors to ask questions about their Proposal's contents in order to better understand these contents as-written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Proposal's contents. Clarifications are not to be confused with Discussions as described herein.
- 6.5 Evaluation.** Proposals that are Minimally Responsive will be evaluated based on the Evaluation Factors listed in Section 11.1 of the Solicitation Instructions. Evaluation Factors correspond to their specified Submittals and shall indicate their respective weighting next to each. Proposal submittals not identified as Evaluation Factors will be evaluated on a pass / fail basis in accordance with the Solicitation's Instructions and any further instructions within each Solicitation. Although minimum responses are required in all Submittals, the Submittals identified as Evaluation Factors will be used to differentiate the Proposals and to identify which Proposal(s) represent the Best Value to the City. The City's evaluation may be made without Clarifications or Discussions with Offerors. Proposals should, therefore, include the Offeror's most favorable terms.
- 6.6 Discussions and Proposal Revisions.** After completing initial evaluations, the City may enter into Discussions (communications which may include negotiations and feedback about the Proposal submitted) with one or more Offerors submitting the highest rated Proposal(s). Following the completion of Discussions, the City may request Proposal revisions from these Offerors. The City may seek multiple rounds of Discussions and Proposal revisions as deemed necessary by the City. The City may revise its initial evaluations depending on the contents of any Proposal revisions received following these Discussions.
- 6.7 Interviews/Presentations.** The City may require that one or more Offeror submitting the highest rated Proposals participate in interviews and/or presentations.

7 CONTRACT AWARD AND EXECUTION

- 7.1 Award Determination.** City staff will recommend Contract award to the Offeror(s) submitting the highest rated Proposal(s) based on the Evaluation Factors set forth in this Solicitation. The Award Determination will be published to Austin Finance Online and notice will be sent to all Offerors subscribed to the Solicitation.
- 7.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the Offeror(s) submitting the next highest rated Proposal(s).
- 7.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

8 ADMINISTRATIVE MATTERS

- 8.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the execution of the contract.
- 8.2 Debriefings.** Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer (including City's evaluation of the Offer) in response to the Solicitation will be discussed.
- 8.3 Reservations.** The City reserves the right to: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation due date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an

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Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject any or all Offers; (ix) procure any goods or services included in this Solicitation by other means; (x) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xi) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.

8.4 Protests. The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.

8.4.1 Protest regarding the Solicitation (Pre-Submittal Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days prior to the due date and time for proposals. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.

8.4.2 Protests regarding the evaluation of Proposals. Any protest regarding the evaluation of Proposals by the City shall be filed with the City no later than five (5) days after the notification of award recommendation is posted on Austin Finance Online, or notification that the protestor's status as a Offeror has changed, such as notification that an Offer has been found to be non-responsive or an Offeror has been found to be non-responsible. Any protest filed after such date which raises issues regarding the evaluation will not be considered. Offerors may only protest the evaluation of their Proposal.

8.4.3 Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.

8.4.4 You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.

8.4.5 Your protest shall be concise and presented logically and factually to help with the City's review.

8.4.6 When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.

8.4.7 The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are: representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

8.4.8 A decision will usually be made within fifteen (15) calendar days after the hearing.

8.4.9 The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.

8.4.10 When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.

8.5 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed

on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

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

9 DEFINITIONS

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.

"Addendum" means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.

"Best Offer" means the best evaluated Offer in response to a Request for Proposals or Request for Qualifications/Statements.

"Best Offeror" means the Offeror submitting the Best Offer.

"City" means the City of Austin, a Texas home-rule municipal corporation.

"Offer" means a complete signed response to a Solicitation including, but not limited to, a Request for Proposals.

"Offeror" means a person, firm, or entity that submits an Offer in response to this Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.

"Proposal" means a complete, properly signed Offer to a Request for Proposals.

"Proposer" means a person, firm, or entity that submits an Offer in response to a Request for Proposals.

"Purchasing Office" refers to the Purchasing Office in the Financial Services Department of the City.

"Purchasing Officer" means the director of the Purchasing Office and the principle recipient of procurement authority from the City Manager.

"Request for Proposals" means all documents utilized for soliciting Proposals.

"Responsible Offeror" means the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.

"Responsive" means meeting all the requirements of a Solicitation.

"Solicitation" means this Request for Proposals or RFP.

10. PROPOSAL SUBMITTALS

10.1 Authorized Negotiator: Include name, address, email, and telephone number of a person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

10.2 Contract Manager: Provide the name, phone number, and email address of the Contract Manager to liaise between Contractor and City's personnel.

**CITY OF
AUSTIN****Solicitation
INSTRUCTIONS****Solicitation No.
RFP 5000 PAX3165**

- 10.3 Compliance to Requirements:** Acceptance to City's Terms and Conditions. Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal. Proposer must submit End-User License Agreement and/or Software Support/Maintenance Agreements as applicable with Proposal to be reviewed by the City.
- 10.4 Price Submittal:** Whichever Offeror offers the City the most competitive price will be awarded the maximum amount of points. Remaining points will be distributed on a pro-rated basis. Proposer must complete and submit Price Submittal Sheet which will be used for price comparison purposes. If pricing is not submitted on Design Price Submittal Sheet, then the Offeror may be deemed nonresponsive. For information purposes only, Contractor may submit additional Price sheet to be reviewed by the City.
- 10.5 Local Business Presence:** The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. The Local Business Presence form in the Offer and Certifications section must be completed to be considered for Local Business Presence. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Any Offers with subcontracting not indicating specific percentages or dollar amounts will not receive Local Business Presence points for subcontracting.
- 10.6 Service-Disabled Veteran Business Enterprise ("SDVBE"):** Pursuant to the interim Service-Disabled Veteran Business Enterprise (SDVBE) Program, Offerors submitting proposals in response to a Request for Proposals shall receive a three point (3 percent) preference if the Offeror, at the same time the proposal is submitted, is certified by the State of Texas, Comptroller of Public Accounts as a Historically Underutilized Business and is a Service-Disabled Veteran Business Enterprise. This preference does not apply to subcontractors. To receive this preference, Offerors shall complete the enclosed Section 0840 Service-Disabled Veterans Business Enterprise Preference Form, in accordance with the Additional Solicitation Instructions included therein.

11. Evaluation of Offers**11.1 Evaluation Factors**

RFP Evaluation Factors		Maximum Points
Price Submittal Sheet		67
Compliance to Requirements		20
Local Business Presence		10
Team’s Local Business Presence	Points Awarded	
Local business presence of 90% to 100%	10	
Local business presence of 75% to 89%	8	
Local business presence of 50% to 74%	6	
Local business presence of 25% to 49%	4	
Local presence of between 1 and 24%	2	
No local presence	0	
Service-Disabled Veteran Business Enterprise		3

Total	100
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11.2 Interviews and/or presentations, Optional. The City will score proposals on the basis of the criteria listed above. The City may select a “short list” of Proposers based on those scores. “Short-listed” Proposers may be invited for presentations, demonstrations, or discussions with the City. The City reserves the right to re-score “short-listed” proposals as a result, and to make award recommendations on that basis.



SCOPE OF WORK

Solicitation No.
RFP 5000 PAX3165

1 PURPOSE

The City of Austin requests proposals from firm able to provide various types of Bluebeam software licenses including Bluebeam Studio Prime licenses, Enterprise licenses, Perpetual licenses, Open licenses, and Bluebeam Revu software maintenance/support to City staff to enable them to successfully use Bluebeam.

Additional licenses purchased through this contract will be provided at rates provided within the pricing sheet.

2 TERM OF CONTRACT

This Contract shall remain in effect for 36 months or the City terminates the Contract.

3 ONGOING VENDOR SUPPORT AND MAINTENANCE

Contractor shall provide ongoing product and services notifications via email. If the Vendor has knowledge of any changes in the products or services provided which arise under or are related to the current contract, and that could have a material adverse effect on the City portfolio plan, the Contractor shall give written notice thereof to City within thirty (30) days of said discovery.

4 CONTRACTOR RESPONSIBILITIES

The following describes the responsibilities of the vendor for the goods and services.

- 4.1 Contractor shall designate a single Point of Contact as the primary Engagement contact to liaise between Contractor and City's personnel.
- 4.2 Contractor shall provide prompt and timely responses to inquiries, requests and projects.
- 4.3 Contractor shall provide and fulfill all orders, including, but not limited to support, new purchases, or any other related product and service.
- 4.4 Contractor shall provide a clearly defined escalation path within their organization and provide updates as needed.
- 4.5 Contractor shall provide separate portals for the different departments in the city so that the separate departments can manage their licenses separately.

5 DESIGNATION OF KEY PERSONNEL AND SPECIFIC INVOICE REQUIREMENTS:

- 5.1 The City's key personnel and invoice addresses are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
City Contract Manager	Deanna Davidson	(512) 974-1382	Deanna.Davidson@austintexas.gov
City Contract Administrator, Procurement Specialist	Brett Hardy	(512) 978-1525	Brett.Hardy@austintexas.gov

- 5.2 Invoices should be emailed to departments at the applicable Email address listed below.

Department	Development Services Department
Contract Monitor/Point of Contact	David Rodriguez
Email Address	David.Rodriguez2@austintexas.gov

Phone Number	(512) 974-1639
Invoice Address	dsdfinance@austintexas.gov

Department	Austin Fire Department
Contract Monitor/ Point of Contact	Karen Bitzer
Email Address	Karen.Bitzer@austintexas.gov
Phone Number	(512) 974-4131
Invoice Address	FIREAcctsPayable@austintexas.gov

Department	Watershed Protection Department
Contract Monitor/ Point of Contact	Josephine Archer
Email Address	Josephine.Archer@austintexas.gov
Phone Number	(512) 974-9735
Invoice Address	WPDInvoices@austintexas.gov

Department	Austin Transportation Department
Contract Monitor/ Point of Contact	Dan Valbracht
Email Address	Dan.Valbracht@austintexas.gov
Phone Number	(512) 974-7901
Invoice Address	ATDAccountsPayable@austintexas.gov

Department	Austin Energy
Contract Monitor/ Point of Contact	Knox Pitzer/Kyle Markovits
Email Address	Knox.Pitzer@austinenergy.com Contractor-MarkovitsKy@austinenergy.com
Phone Number	(512) 322-6459/ (512) 322-6798
Invoice Address	aeitvendor_assetmanagement@austinenergy.com

Department	Austin Water
Contract Monitor/ Point of Contact	Jason Kelly / Brian Courtney
Email Address	Jason.Kelly@austintexas.gov Brian.Courtney@austintexas.gov
Phone Number	(512) 972-0442 /(512) 972-0274
Invoice Address	awlicensing@austintexas.gov

Department	Austin Public Library
Contract Monitor/ Point of Contact	Jorge Valle
Email Address	Jorge.Valle@austintexas.gov
Phone Number	(512) 974-7432
Invoice Address	Lib.AP@AustinTexas.Gov

Department	Aviation Department
Contract Monitor/ Point of Contact	Chris Bulak
Email Address	Chris.Bulak@abia.org
Phone Number	512-530-6380

Invoice Address	ABIA.Invoices@austintexas.gov ATTN: Accounts Payable 3600 Presidential blvd ste 411 Austin, TX 78719
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Department	Emergency Medical Services Department (EMS)
Contract Monitor/ Point of Contact	William Alderete
Email Address	William.Alderete@austintexas.gov
Phone Number	(512) 978-0485
Invoice Address	EMSAP@austintexas.gov

For questions regarding your invoice/payment please contact specific Department Contract Monitor listed above.



Offer and Certifications
Exhibit B

Solicitation No.
RFP 5000 PAX3165

SUBMITTAL CONTENTS

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CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165

OFFER CERTIFICATION

Instructions. Offerors shall complete and sign the Offer Certification section of this section as indicated. Offerors shall not complete any portions of the Acceptance section below. Submittals with incomplete and/or unsigned Offer Certification are not considered to be Offers and will be rejected as nonresponsive.

Company Name: **Bluebeam**

Company Address: 443 S. Raymond Ave.

City, State, Zip: Pasadena, CA 91105

Company's Austin Finance Online Vendor Registration No. **V00000956196**Company's Officer or Authorized Representative: **Roger Piskulick**Title of Officer or Authorized Representative: **CFO**Email: **rpiskulick@bluebeam.com**Offeror's Phone: **Phone**
866-496-2140Offeror's Signature  _____
F4AFF046DBB345A...Date: **Date Signed** 25-May-2021

OFFER: The above signed, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Offeror, by submitting and signing below, acknowledges that he/she has received and read the entire document packet including all revisions, and addenda and agrees to be bound by the terms therein.

ACCEPTANCE BY THE CITY

For City Staff only. The City will complete and sign this section only if the City accepts the Offer.

Contract Number: _____

Printed Name of City's Authorized Procurement Staff: _____

Title of City's Authorized Procurement Staff: _____

Signature: _____

Date: _____

Email: _____

Phone: _____

ACCEPTANCE: The Offer is hereby accepted. Contractor is now bound to sell the materials or services specified in the Contract.

**CITY OF
AUSTIN****Offer and Certifications****Solicitation No.
RFP 5000 PAX3165****NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

OFFEROR HEREBY CERTIFIES

Offeror has read the following and will comply with Austin City Code, Sec. 5-4-2.

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 Non-Discrimination and Non-Retaliation Policy set forth below.

**CITY OF
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Offer and Certifications

**Solicitation No.
RFP 5000 PAX3165**

MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY

1. 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.
2. 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.
3. 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.
4. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and nonretaliation 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.
5. UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NONDISCRIMINATION 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.
6. Contractor agrees 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.
7. The Contractor agrees that this 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.

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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165

SUSPENSION AND DEBARMENT CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

OFFEROR HEREBY CERTIFIES

Offeror has **NOT** been debarred from contracting with the City of Austin, any other local governments or states, or the US federal government.

Suspended or Debarred Offerors. The City finds that offerors, including any subcontractors that may be included in the Offer, that are suspended or debarred from contracting with the US federal government, any state or local government, as of the submission date of their offer, are not sufficiently responsible to contract with the City. The City may reject and set aside any offer, or terminate for cause any contract resulting from an offer, in which the offeror falsely certified they were not suspended or debarred when in fact they were.

CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165**NON-COLLUSION AND NON-CONFLICT OF INTEREST CERTIFICATION**

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

OFFEROR HEREBY CERTIFIES

Offeror has **NOT** engaged in collusion and is not aware of any conflicts of interests as described below.

Offeror. The term "Offeror", as used in this document, includes the individual or business entity submitting the Offer. For the purpose of this Affidavit, an Offeror includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and any person or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

Anti-Collusion Statement. Offeror has not in any way directly or indirectly:

- a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
- b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.

Preparation of Solicitation and Contract Documents. Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

Participation in Decision Making Process. Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.

Present Knowledge. Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.

City Code. As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.

CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165

Chapter 176 Conflict of Interest Disclosure. In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:

- a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income; Section 0810, Non-Collusion, 1 Revised 12/22/15 Non-Conflict of Interest, and Anti-Lobbying Certification;
- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
- c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165**ANTI-LOBBYING CERTIFICATION**

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

OFFEROR HEREBY CERTIFIES

Offeror has and will continue to comply with the City's Anti-Lobbying Ordinance, Chapter 2-7, Article 6.

Applicability. This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement.

No Lobbying Period. The No-Lobbying Period begins on the date this Solicitation was initially published and continues through the earlier of (i) 60-days following Council authorization of any contracts resulting from this Solicitation, (ii) the date the last resulting contract is signed, (iii) the date this Solicitation is cancelled.

Prohibited Communications. During the No Lobbying Period, Respondents to this Solicitation or their Agents, shall not make prohibited communications to City officials or City employees.

Ordinance. https://www.austintexas.gov/financeonline/afo_content.cfm?s=15&p=145

Rules. https://www.austintexas.gov/financeonline/afo_content.cfm?s=16&p=77

CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165**NONRESIDENT BIDDER AND MANUFACTURING CERTIFICATION**

Instruction. Offerors shall read and checking the applicable boxes in response to both certifications below.

☐ **YES** ☒ **NO**
(Check One)

OFFEROR HEREBY CERTIFIES

Offeror **IS (YES)** or **IS NOT (NO)** a Nonresident Bidder in accordance with Texas Government Code Ch. 2252.002.

If "Yes" is checked, provide the name of the state where
Nonresident Bidder's Principle Place of Business is located.

California
(State)

☐ **YES** ☒ **NO**
(Check One)

OFFEROR HEREBY CERTIFIES

Offer **INCLUDES (YES)** or **DOES NOT INCLUDE (NO)** Equipment, Supplies and/or Materials in accordance with Texas Government Code Ch. 2252.002

If "YES" is checked, provide the name of the State where majority
of the Equipment, Supplies and/or Materials were manufactured

Click or tap here to enter text.

(State)

Reciprocal Preference. In accordance with Texas Government Code Ch. 2252.002 (see below), the City must apply a reciprocal preference to a Nonresident Bidder's offer, consistent with the applicable preference granted by the state of the Nonresident Bidder's principal place of business. The City will also apply a reciprocal preference to a Resident Bidder or Nonresident Bidder's offer, consistent with the applicable preference granted by the state where the majority of the equipment, supplies and/or materials were manufactured.

Resident bidder. An Offeror whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

Nonresident Bidder. An Offeror that is not a Resident Bidder.

Statute: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm>

CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165

LOCAL PRESENCE CERTIFICATION – OPTIONAL

Instruction. Offerors wishing to claim Local Presence shall read and acknowledge this certification by checking the applicable box and providing the physical address below.

OFFEROR HEREBY CERTIFIES

Offeror's **HEADQUARTERS** or a **BRANCH OFFICE** is within the Austin Corporate City Limits.

☐ **HEADQUARTERS**
☐ **BRANCH OFFICE**
(Check One)

Offeror's Physical Address.

(Physical Address of Offeror's Headquarters or Branch Office)

Do you employ anyone at the location checked above who is a resident of the City of Austin?

☐ **Yes**
☒ **No**
(Check One)

Benefit to the City. In accordance with Resolution, 20140807-113, Council has determined that contracts awarded to local companies that provide employment to Austin residents is an economic benefit.

Local Presence. Offerors may claim Local Presence if at least one (1) of the following are located within the Austin Corporate City Limits, employing residents of Austin.

1. Headquarters; or
2. Branch office.

Austin Corporate City Limits. The City of Austin's Full Purpose Jurisdiction, not including the City's Extraterritorial Jurisdiction.

Headquarters. The Offeror's administrative center where most of the company's important functions and full responsibility for managing and coordinating the business activities of the firm are located.

Branch Office. A company office other than the Offeror's headquarters, that has been in place for at least five (5) years.

CITY OF
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Offer and Certifications

Solicitation No.
RFP 5000 PAX3165**SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE PREFERENCE****Offeror Name**

Bluebeam, Inc.

Additional Solicitation Instructions.

- ☒ By checking this box, Offeror states they are NOT a certified Service-Disabled Veteran Business Enterprise seeking to claim preference points under the City of Austin's SDVBE Program.
- Offerors seeking to claim the Service-Disabled Veteran Business Enterprise (SDVBE) preference shall be certified under one of the two following scenarios. Offerors shall check one of the following boxes, input the data in the applicable table below and include this completed form in their Proposal.

- ☐ HUB/SV. Offeror is certified as a Service-Disabled Veteran (SV) Historically Underutilized Business (HUB) by the Texas State Comptroller of Public Accounts.

Texas State HUB/SV Certification	
13-Digit Vendor ID (VID)	
HUB/SV Issue Date	
HUB/SV Expiration Date	

- ☐ HUB/OTHER + Federal SDVOSB. Offeror is certified by the Texas State Comptroller of Public Accounts as a Historically Underutilized Business in a HUB Eligibility Category other than Service-Disabled Veteran (SV) AND is verified by the US Veterans Administration as a Service-Disabled Veteran-Owned Small Business (SDVOSB). Texas HUB Eligibility Categories: HUB/BL (Black), HUB/AS (Asian), HUB/HI (Hispanic), HUB/AI (Native American), or HUB/WO (Women Owned).

Texas State HUB/OTHER Certification	
13-Digit Vendor ID (VID)	
HUB Eligibility Category	
HUB Issue Date	
HUB Expiration Date	

Federal SDVOSB Verification	
9-Digit DUNS	
SDVOSB Issue Date	
SDVOSB Expiration Date	

- Offeror Identity. The Offeror submitting the Proposal shall be the same entity that is certified by the Texas State Comptroller of Public Accounts, AND if applicable as verified by the US Veterans Administration.
- Certification Status. Offeror's certification(s) must be active on or before the Solicitation's due date for Proposals and shall not expire prior to the award and execution of any resulting contract.
- Confirmation of Certification(s). Upon receipt of this completed form, the City will confirm the Offeror's certification(s): State: <https://mycpa.cpa.state.tx.us/tpasscmbsearch>. Federal: <https://www.vip.vetbiz.va.gov/> The City will direct any questions concerning an Offeror's State or Federal certification status to the Offeror's contact person as designated on the Offer Form of their Proposal.
- Misrepresentation. If the City determines that the Offeror requesting this preference is not certified by the State or Federal government if applicable, the Offeror will not receive the preference points. If the City determines that this misrepresentation was intentional, the City may also find the Offeror not responsible and

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may report the Offeror to the Texas State Comptroller of Public Accounts or if applicable to the US Veterans Administration. If the misrepresentation is discovered after contract award, the City reserves the right to void the contract.

Offeror Name
Bluebeam, Inc.

Additional Solicitation Instructions.

7. ☒ By checking this box, Offeror states they are NOT a certified Service-Disabled Veteran Business Enterprise seeking to claim preference points under the City of Austin’s SDVBE Program.
8. Offerors seeking to claim the Service-Disabled Veteran Business Enterprise (SDVBE) preference shall be certified **under one of the two following scenarios**. Offerors shall check one of the following boxes, input the data in the applicable table below and include this completed form in their Proposal.
- ☐ **HUB/SV**. Offeror is certified as a Service-Disabled Veteran (SV) Historically Underutilized Business (HUB) by the Texas State Comptroller of Public Accounts.

Texas State HUB/SV Certification	
13-Digit Vendor ID (VID)	
HUB/SV Issue Date	
HUB/SV Expiration Date	

- ☐ **HUB/OTHER + Federal SDVOSB**. Offeror is certified by the Texas State Comptroller of Public Accounts as a Historically Underutilized Business in a HUB Eligibility Category other than Service-Disabled Veteran (SV) AND is verified by the US Veterans Administration as a Service-Disabled Veteran-Owned Small Business (SDVOSB). **Texas HUB Eligibility Categories:** HUB/BL (Black), HUB/AS (Asian), HUB/HI (Hispanic), HUB/AI (Native American), or HUB/WO (Women Owned).

Texas State HUB/OTHER Certification	
13-Digit Vendor ID (VID)	
HUB Eligibility Category	
HUB Issue Date	
HUB Expiration Date	

Federal SDVOSB Verification	
9-Digit DUNS	
SDVOSB Issue Date	
SDVOSB Expiration Date	

9. **Offeror Identity**. The Offeror submitting the Proposal shall be the same entity that is certified by the Texas State Comptroller of Public Accounts, AND if applicable as verified by the US Veterans Administration.
10. **Certification Status**. Offeror’s certification(s) must be active on or before the Solicitation’s due date for Proposals and shall not expire prior to the award and execution of any resulting contract.

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11. Confirmation of Certification(s). Upon receipt of this completed form, the City will confirm the Offeror's certification(s): State: <https://mycpa.cpa.state.tx.us/tpasscmbsearch>. Federal: <https://www.vip.vetbiz.va.gov/> The City will direct any questions concerning an Offeror's State or Federal certification status to the Offeror's contact person as designated on the Offer Form of their Proposal.
12. Misrepresentation. If the City determines that the Offeror requesting this preference is not certified by the State or Federal government if applicable, the Offeror will not receive the preference points. If the City determines that this misrepresentation was intentional, the City may also find the Offeror not responsible and may report the Offeror to the Texas State Comptroller of Public Accounts or if applicable to the US Veterans Administration. If the misrepresentation is discovered after contract award, the City reserves the right to void the contract.

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SUBCONTRACTING UTILIZATION FORM

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
 b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☒ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name			
City Vendor ID Code			
Physical Address			
City, State Zip			
Phone Number		Email Address	
Is the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		
Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed Subcontracting/Sub-Consulting Utilization Form , and if applicable my completed Subcontracting/Sub-Consulting Utilization Plan , shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the Request For Change form to add any Subcontractor(s) to the Project Manager or the Contract			

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Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City’s M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City’s M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Name and Title of Authorized Representative (Print or Type)

Signature/Date

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SUBCONTRACTING UTILIZATION PLAN

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL of the following CHECK BOXES MUST be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.**

☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.

☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods

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and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

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Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

Reviewing Counselor_____
Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

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Director/Assistant Director or Designee	Date
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