



Amendment No. 4  
of  
Contract No. PA140000018  
for  
OUTREACH SERVICES  
between  
Asian Contractor Association  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. The extension option will be effective October 1, 2017 to September 30, 2018. Zero options remain.
- 2.0 The total Contract amount is increased by \$100,000.00 for the extension option period. The total Contract authorization is recapped below:


Term	Contract Amount for the term	Total Contract Amount
Basic Term: 10/01/13 – 09/30/14	\$100,000.00	\$100,000.00
Amendment No. 1: Option 1 10/01/14 – 09/30/15	\$100,000.00	\$200,000.00
Amendment No. 2: Option 2 10/01/15 – 09/30/16	\$100,000.00	\$300,000.00
Amendment No. 3: Option 3 10/01/16 – 09/30/17	\$100,000.00	\$400,000.00
Amendment No. 4: Option 4 10/01/17 – 09/30/18	\$100,000.00*	\$500,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 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 (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

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

Signature:   
Authorized Representative

Asian Contractor Association  
4201 Ed Bluestein Blvd Ste 2105  
Austin, TX 78721  
Aletta Sung  
[asiancontractor@gmail.com](mailto:asiancontractor@gmail.com)  
512-926-5400

Signature:   
Linell Goodin-Brown  
Contract Management Supervisor II  
City of Austin  
Purchasing Office

9-15-17



Amendment No. 3  
of  
Contract No. PA140000018  
for  
OUTREACH SERVICES  
between  
Asian Contractor Association  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2016, the term for the extension option will be October 1, 2016 to September 30, 2017 and there is one remaining option.
- 2.0 The total Contract amount is increased by \$100,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Contract Amount for the term	Total Contract Amount
Basic Term: 10/01/13 – 09/30/14	\$100,000.00	\$100,000.00
Amendment No. 1: Option 1 10/01/14 – 09/30/15	\$100,000.00	\$200,000.00
Amendment No. 2: Option 2 10/01/15 – 09/30/16	\$100,000.00	\$300,000.00
Amendment No. 3: Option 3 10/01/16 – 09/30/17	\$100,000.00	\$400,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 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 (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

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

Signature: \_\_\_\_\_

Authorized Representative

GEORGE C. CHANG

Asian Contractor Association

4201 Ed Bluestein Blvd Ste 2105

Austin, TX 78721

09/12/2016

Signature: \_\_\_\_\_

Linell Goodin-Brown, Contract Compliance Supervisor

City of Austin

Purchasing Office

9-14-16




Amendment No.2  
of  
Contract No. PA140000018  
for  
OUTREACH SERVICES  
between  
Asian Contractor Association  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2015, the term for the extension option will be October 1, 2015 to September 30, 2016 and there are two remaining options.
- 2.0 The total Contract amount is increased by \$100,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Contract Amount for the term	Total Contract Amount
Basic Term: 10/01/13 – 09/30/14	\$100,000.00	\$100,000.00
Amendment No. 1: Option 1 10/01/14 – 09/30/15	\$100,000.00	\$200,000.00
Amendment No. 2: Option 2 10/01/15 – 09/30/16	\$100,000.00	\$300,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 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 (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

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

Signature:   
Authorized Representative  
GEORGE L. CHANG, EXECUTIVE VICE CHAIRMAN  
Asian Contractor Association  
4201 Ed Bluestein Blvd Ste 2105  
Austin, TX 78721

Signature:   
Joe Barrios, Acting Contract Compliance Supervisor  
City of Austin  
Purchasing Office

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Amendment No.1  
 of  
 Contract No. PA140000018  
 for  
 OUTREACH SERVICES  
 between  
 Asian Contractor Association  
 and the  
 City of Austin

1.0 The City hereby exercises the extension option for the above-referenced contract. Effective October 1, 2014, the term for the extension option will October 1, 2014 to September 30, 2015 and there are three remaining options.

2.0 The total Contract amount is increased by \$100,000.00 for the extension option period. The total Contract authorization is recapped below:

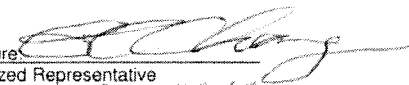
Term	Contract Amount for the term	Total Contract Amount
Basic Term: 10/01/13 – 09/30/14	\$100,000.00	\$100,000.00
Amendment No. 1: Option 1 10/01/14 – 09/30/15	\$100,000.00	\$200,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 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 (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

5.0 All other terms and conditions remain the same.

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

Signature:   
 Authorized Representative  
 GEORGE C. CHANG  
 Asian Contractor Association  
 4201 Ed Bluestein Blvd Ste 2105  
 Austin, TX 78721

Signature:  - 9/24/14  
 Debbie DePaul, Contract Compliance Supervisor  
 City of Austin  
 Purchasing Office

Send 



**Financial and Administrative Service Department  
Purchasing Office**  
721 Barton Springs Road, Austin, Texas, 78704

December 10, 2013,

Asian Contractor Association  
Attn: Aletta Banks  
4201 Ed Bluestein Blvd Ste 2105  
Austin, Texas 78721

Dear Aletta Banks:

The Austin City Council approved the execution of a contract with your company for Outreach Services.

Responsible Department:	Austin Small and Minority Business Resources
Department Contact Person:	Thomas Owens
Department Contact Email Address:	<a href="mailto:Owens.Thomas@austintexas.gov">Owens.Thomas@austintexas.gov</a>
Department Contact Telephone:	512-974-7732
Project Name:	OUTREACH SERVICES
Contractor Name:	Asian Contractor Association (ACA)
Contract Number:	MA 7600 PA140000018
Contract Period:	10/1/2013 – 9/30/2014
Dollar Amount	100,000
Extension Options:	Four- 12 month extension options
Agenda Item Number:	48
Council Approval Date:	10/3/2013

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact Thomas Owens, Contract Manager at 512-974-7732.

Sincerely,

Georgia L. Billela  
Buyer II  
Purchasing Office  
Finance and Administrative Service Department

cc: Debra Dibble  
Sandy Brandt  
Thomas Owens

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
ASIAN CONTRACTOR ASSOCIATION (ACA)  
FOR  
OUTREACH SERVICES FOR INCREASED CERTIFICATIONS & MINORITY PARTICIPATION ON CITY  
PROJECTS**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and the Asian Contractor Association ("Contractor" or "Service Provider"), having offices at 4201 Ed Bluestein Blvd., Ste. 2105, Austin, Texas 78721.

**SECTION 1. PURPOSE, GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Purpose.** The City has adopted a Minority-Owned and Women-Owned Business Enterprise Procurement Program ("MBE/WBE Program" or "Program") managed by the Small and Minority Business Resources Department ("SMBR"). It is the policy of the City to provide equal opportunities to all contractors and vendors, and to redress the past discrimination found in the City's marketplace and in public contracting against minority- and women-owned business enterprises. The City seeks to encourage their full participation in all phases of City procurement activities and to afford them a full and fair opportunity to compete for all City contracts and eligible third party agreements as defined by the City in separate documents adopted by City Council. The purposes and objectives of the MBE/WBE Program and defined in the City's Ordinances, Resolutions and Rules, and as may be subsequently amended, includes but is not limited to the following:

- (1) To ensure that the City is not a passive participant in a discriminatory marketplace.
- (2) To ensure that the Program is narrowly tailored.
- (3) To provide opportunities for all MBEs and WBEs, regardless of trade association affiliation or membership, to broaden and enhance their capacities to do business with the City, and as may be applicable, private entities, in the areas of construction, professional services, commodities and non-professional services.
- (4) To provide opportunities for MBEs and WBEs to serve as contractors and subcontractors and for the supply of goods and services to the City in the area of construction, and
- (5) To administer this program in a manner consistent with applicable federal and state law.

The parties agree this Contract will be performed in a manner to promote the purpose of the Program described in Ordinances, Resolutions and Rules to the fullest extent possible and in compliance with the terms of this Contract.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work, attached as Exhibit "A," and incorporated by reference by all purposes. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services, which shall be signed by both parties in a written amendment. The SMBR Director may allow for substitution of tasks identified in the Scope of Work, so long as the proposed revised work is not determined by the Director to be a lesser amount of work and/or accomplishes the same goal as the task identified in the original Scope of Work. Work shall not be substituted or revised without the prior advance approval of the Director and described in an amendment executed by the parties. Additional compensation shall not be paid for substituted scope of work unless such work is beyond the Scope of Work and agreed to by the parties in a written amendment.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this Contract shall be Aletta Banks, Executive Director; Phone: 512-926-5400; Email: asiancontractor@gmail.com. The City's Contract Manager for the engagement shall be Thomas Owens; 512-974-7732; Email: Thomas.Owens@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this Contract throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City's Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

## **SECTION 2. SCOPE OF WORK**

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

2.2 **Deliverables.** In consideration of the compensation provided in this Contract, the Contractor shall perform and provide the deliverables set forth in the Scope of Work attached hereto as Exhibit "A," satisfactory to the City's Contract Manager and/or SMBR Director. Contractor shall, on a monthly basis, submit written activity reports, as described in the Scope of Work, to the City's Contract Manager. Contractor shall submit activity reports in conjunction with invoices. In addition to performing the deliverables set forth in the Scope of Work, Contractor's obligations shall be to promote the policy and goals of the Program by performing the following duties for any minority or woman owned business:

- (1) Assisting SMBR to inform MBEs and WBEs of City contracting opportunities,
- (2) Providing information and assistance to MBEs, WBEs, and Disadvantaged Business Enterprises (DBEs) relating to City procurement practices and procedures and bid specifications, requirements and prerequisites, and
- (3) Promoting and educating individuals and firms of the benefits and process to become and maintain City certification as an MBE, WBE, and/or DBE.

## **SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid a total not-to-exceed annual amount of \$100,000.00 for all fees and expenses per year, in twelve equal installments of \$8,333.33, upon satisfactory submission of deliverables and a complete invoice as described in section 3.2.

### **Invoices.**

3.2.1 **Invoices shall include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's vendor registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on Contractor's invoice. Invoices received without all

required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Small and Minority Business Resources
Attn:	Thomas Owens
Address:	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767

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

### 3.3 **Payment.**

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

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

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

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

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

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

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

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

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

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

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract during the City's fiscal budget year. 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's decision not to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non- or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City, nor shall the City be liable for any costs incurred after written notice by the City or any economic or consequential damages.



3.5 **Travel Expenses/Reimbursables.** There are no travel, lodging, mileage, per diem or any other expenses or costs permitted in connection with the Contract for which reimbursement may be claimed by the Contractor.

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** Unless otherwise terminated by the parties, this Contract shall be in effect for an initial term of twelve (12) months, beginning October 3, 2013, and may be extended thereafter for up to four (4) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee, and the terms of this Contract.

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

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

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

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

## **SECTION 5. OTHER DELIVERABLES**

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

### **5.1.1 General Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractors/Subcontracted Work

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

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

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

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

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

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

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

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

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage

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

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt; however, the City has permission to forward such documents only in furtherance of this Contract without cost or obtaining prior permission from the Contractor. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

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

## SECTION 6. WARRANTIES

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

## SECTION 7. MISCELLANEOUS

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

7.2 **Right To Audit.**

7.2.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.2.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

### 7.3 **Indemnity.**

#### 7.3.1 Definitions:

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

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

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

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

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

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

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

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

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Asian Contractor Association

ATTN: Aletta Banks

4201 Ed Bluestein Blvd., Suite 2105

Austin, Texas 78727-3427

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

7.7 **Advertising.** The Contractor may advertise or publish, without the City's prior consent, the fact that the City has entered into this Contract.

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

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

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

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

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

7.12 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

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

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

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

7.16 **Dispute Resolution.**

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

7.16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation



expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

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

**7.18 Subcontractors.**

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

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

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

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



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

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

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

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

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

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

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

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

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

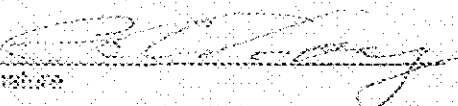
7.23 **Incorporation of Documents.** **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: [www.austintexas.gov/purchase/standard.htm](http://www.austintexas.gov/purchase/standard.htm).

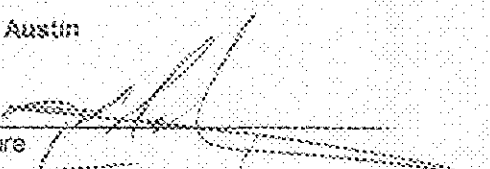
7.24 Effective Date Effective Date means the date this Contract was authorized by City Council, October 3, 2013.

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

ASIAN CONTRACTOR ASSOCIATION (ACA)

City of Austin

By:   
Signature

By:   
Signature

Name: GEORGE C. CHANG  
Printed Name

Name: TERRY N. CARLSON  
Printed Name

Title: ACTING CHAIRMAN

Title: SP. GRADER SPEC.

Date: 11-20-2013

Date: 12/10/13

List of Exhibits

Exhibit A Scope of Work  
Exhibit B Non Discrimination Certification

**Exhibit A**  
**Scope of Work**

**1. Objectives**

- 1.1 Conduct outreach to recruit and inform new or existing minority and women-owned businesses of the benefits of certification with the City's MBE/WBE Procurement Program, thereby increasing the number of City-certified MBE/WBE firms.
- 1.2 Contribute to retaining City MBE/WBE certified firms to help preserve gains in MBE/WBE recruitment by contacting lapsed firms to learn why they did not re-certify, reminding them of the services available, and offering assistance in re-establishing certification.
- 1.3 Inform MBE/WBE firms of City contracting opportunities.
- 1.4 Provide workshops and one-on-one technical assistance to enhance the capacity of firms seeking to contract with the City as a prime contractor or subcontractor.

**2. Organization Specific Services**

- 2.1 Service Provider shall conduct certification outreach activities aimed at increasing the number of firms certified by the City. Certification outreach activities shall include the following:
  - 2.1.1 Contacting a target of twenty-four (24) new/lapsing Asian firms or individuals who wish to establish businesses during the contract period to encourage them to apply for certification. "New firm" is defined as any minority or women owned firm in construction and related industries that is not currently certified and has not been previously certified within the last three (3) years. Form letter, fax, or email, are acceptable methods of making contact with new firms. Service Provider shall direct firms expressing interest in becoming certified to the Certification Division of the Small and Minority Business Resources Department (SMBR), or shall offer firms an opportunity to visit with the Service Provider representative in their office. City Certification staff will provide Service Provider the key information and materials regarding the requirements and process for obtaining certification. Service Provider shall include in its monthly activity report, a list of firms contacted, including their name, address, telephone number, fax, and email address. The report will also specify the results achieved (i.e. referred to City, provided application, declined applying for certifications, reasons for not seeking certification, etc.).
  - 2.1.2 On a quarterly basis, Service Provider shall follow up with Asian firms whose MBE/WBE Certification has expired to encourage them to apply for recertification. At the end of each quarter, the City's Contract Manager will provide a listing of firms whose certification has expired. Service Provider shall contact all firms on the list and refer them to SMBR's Certification Division for recertification assistance. By the end of the following quarter, Service Provider shall include in its monthly activity report, a list of the firms contacted, including their name, address, telephone number, fax, and email address. The report will also specify the results achieved (i.e. referred to City, firm declined recertification, reasons for losing certification, not seeking certification, etc.).
  - 2.1.3 In coordination with the City's Contract Manager, Service Provider shall sponsor a business development networking event for a target of ten (10) Asian firms and individuals who wish to become contractors. Service Provider shall include on the meeting's agenda, information on becoming certified with the City. Service Provider shall provide each participant with a certification application packet provided by SMBR. Service Provider shall submit with its monthly activity report, the event agenda, sign-in sheets, and any handouts distributed to attendees. Service Provider shall include on sign-in sheets, the name, address, telephone number, fax, and email address for each attendee.

2.2 Service Provider shall conduct procurement opportunity outreach activities aimed at increasing minority firm participation on City projects as follows:

2.2.1 Host two (2) networking events with Asian businesses to promote and encourage MBE/WBE firms to bid on key City projects identified by the SMBR Director or City's Contract Manager. Service Provider shall target participation from potential subcontractors; and general contractors/prime bidders, who are bidding on City of Austin projects. Service Provider shall submit the sign-in list of attendees with its monthly activity report. The sign-in list will include attendees' name, address, telephone number, fax, and/or email address for each attendee.

2.2.2 Contact those Asian firms who are listed on Availability Lists for key City projects identified by the SMBR Director or City's Contract Manager and encourage the firms to consider bidding on the projects. The number of projects will not exceed five (5) per year and will not include projects that have contracted with an MBE/WBE outreach coordinator. Service Provider shall include in its monthly activity reports, the name of the projects being bid and the name of the firms, the addresses, telephone numbers, fax and email addresses of the firms on the Availability List that were contacted.

2.2.3 Develop and maintain a directory of all certified Asian firms in construction and related industries that is organized by categories of work performed. Service Provider shall maintain this document in electronic format and update it monthly to reflect any changes in firms. Service Provider shall distribute this document to prime contractors as a resource for increasing the visibility of City-certified Asian firms involved in construction and related industries. Service Provider shall submit with its monthly activity reports, a copy of the initial document and subsequent updates in electronic format and the distribution list including the name, address, telephone number, and fax or email address.

2.3 Service Provider shall provide contractor support services aimed at increasing participation on City projects as indicated below.

Note: Service Provider shall include the following language on its written materials (or written materials of any third party retained by the Service Provider) related to the City's process or procedures: "City rules and regulations change from time to time. Please contact the City for the most up-to-date rules and regulations regarding this topic before relying on this information."

2.3.1 Develop and administer a survey questionnaire to obtain information from certified Asian firms in construction and related industries.

Prior to conducting the survey, Service Provider shall submit the survey questionnaire to the City's Contract Manager for approval. The survey should not duplicate the questions or surveys used during the outreach phase of the City's disparity study. Service Provider shall conduct in-depth interviews with every certified firm to obtain information on technical assistance and training needs; barriers to doing business with the City; bidding on City contracts; and operational development needs. After completion of the survey, Service Provider shall summarize survey findings and recommendations and submit this summary with the next monthly activity report. Service Provider shall complete the survey and report no later than the end of the first quarter (December 31). The Service Provider shall utilize the report for the planning of training and technical assistance during the contract year. Service Provider shall submit a copy of the survey, including a report of findings and recommendations, and implementation plan with its monthly activity report no later than the second quarter (March 31). Service Provider shall also include a listing of survey participants' names, address, email, telephone number in its monthly activity report.

2.3.2 Operate a "Plans Room" to receive and organize plans and specifications regarding construction projects for construction contractors and subcontractors to review, check-out, and use for bidding purposes. Service Provider shall maintain operating hours for the Plans

Room for a minimum of twenty (20) hours per week and publish hours and days of operation on its website. For each of the firms receiving the service, Service Provider shall maintain a log and include in its monthly activity reports, the name of the project(s) reviewed, name of the firm, address, telephone number, fax, and email address.

- 2.3.3 Distribute referral, procurement, project opportunity, and training information to contractors periodically (weekly or monthly depending on the nature of the information). Service Provider shall include in its monthly activity reports, a description of the information provided, name of the firm, address, telephone number, fax, and email address.
  - 2.3.4 Provide technical assistance/consultation to a minimum of twelve (12) unique Asian firms during the annual contract term regarding contracting or subcontracting on City projects in accordance with the City's MBE/WBE program. Service Provider shall include in its monthly activity reports, a description of the provided service, name of the firm, address, telephone number, fax, and email address.
  - 2.3.5 The Service Provider shall publish a quarterly trade association newsletter to be emailed to Asian contractors and interested parties. The newsletter will be specific to the trade association and provide information to contractors, members and potential members that market the services of the organization. Service Provider shall include in its newsletter a message from President, helpful tips, and an update on the Service Provider's activities. Service Provider shall make its newsletter available on its website. Service Provider shall submit a copy of the newsletter with its monthly activity reports.
  - 2.3.6 Maintain and develop web site information. The Service Provider shall publish on its web site information about the trade association and its services, and information of interest and relevance to the construction industry. Service Provider shall include a link to the SMBR website. Further, Service Provider shall select and highlight at least four (4) Asian contractors on this web site. Service Provider shall develop and maintain its website on an ongoing basis.
  - 2.3.7 Service Provider shall distribute materials translated into Chinese and Vietnamese for certification outreach and the promotion of City procurement opportunities to City-certified Asian firms who are working in the construction-related industry. Service Provider shall post the materials in English and the translated language on its website. Service Provider shall also submit this material for publication in at least one community newspaper or publication on a semi-annual (twice per year) basis. Service Provider shall submit with its monthly activity reports, a copy of the translated materials (English and translated versions) and the distribution list including the name, address, telephone number, fax, and email address.
  - 2.3.8 Develop and publish a minimum of three detailed reference documents that provide key information on topics such as: Plan Reading and Estimating; Understanding Bonding; Bidding and Value Engineering; Your Rights and Obligations as a Subcontractor Under Texas Contract Law; Building Permit Process for Contractors and Engineers; City of Austin Procurement Process. Service Provider shall complete a document every four months during the contract year. Each document upon completion will be posted on the ACA website and distributed in electronic format to all Asian contractors in construction and related industries. Service Provider shall include in its monthly activity report, an electronic copy of each document and the distribution list including the name, address, telephone number, and fax or email address in electronic format.
- 2.4 On a semi-annual basis, Service Provider shall participate in a meeting with City Project Managers and SMBR staff to discuss relevant program initiatives, process issues and possible solutions. These meetings will be scheduled for the end of the second quarter (March 2014), and the end of the fourth quarter (September 2014). The results of these meetings will be used by staff to identify possible process improvements.

- 2.5 The Service Provider shall distribute informational brochures and flyers for the monthly SMBR Information Meetings via emails and at the organization's networking or membership events. These informational materials will be provided by SMBR. The Service Provider shall include in its monthly activity reports, information regarding when the materials were distributed and any associated activity.

**Exhibit B**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** 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 and agrees:

- (B) (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. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER 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, veteran status, 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 OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

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

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

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

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

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

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

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

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 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.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, 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 payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 20<sup>th</sup> day of NOVEMBER, 2013

CONTRACTOR

ASIAN CONTRACTOR ASSOCIATION

Authorized  
Signature

[Signature]

Title

ACTING CHAIRMAN





## City of Austin FSD Purchasing Office Certificate of Exemption

DATE: 08/20/2013

DEPT: Small & Minority Business Resources

TO: Purchasing Officer or Designee

FROM: Thomas Owens

BUYER: Yolanda Miller

PHONE: (512) 974-7732

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☒ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
  - cooperative purchasing administered by a regional planning commission established under Chapter 391
  - ☐ services performed by blind or severely disabled persons
  - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
  - ☐ electricity
  - ☐ advertising, other than legal notices
  - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

The Asian Contractor Association (ACA) is very knowledgeable of the MBE/WBE Procurement Program operations and requirements through their regular participation in meetings and events conducted by SMBR and related City departments. They have developed the experience and expertise to successfully assist members of their ethnic group by communicating key information to them in their native languages and translating such information into reference documents that can be used on an ongoing basis. ACA also provides outreach information aimed at increased certifications and more participation on city projects. In addition, they provide one-on-one technical assistance and targeted training to enhance the capacity of their target population.

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

The Asian Contractor Association (ACA) has been in operation for over 10 years and has developed the knowledge and expertise to effectively assist their target population by providing information and outreach for increased certifications and more participation on city projects.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Asian Contractor Association (ACA) which will cost approximately \$ 100,000.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

Thomas J. Owens 9-4-13  
Originator Date

Approved  
Certification

[Signature] 9-4-13  
Department Director or designee Date

Ray Dancy 9/4/13  
Assistant City Manager / General Manager / Date  
or designee (if applicable)

Purchasing Review  
(if applicable)

[Signature] 9/5/13  
Buyer Date Manager Initials

Exemption Authorized  
(if applicable)

[Signature] 09/05/2013  
Purchasing Officer or designee Date

02/26/2013