

**AMENDMENT NO. TWO TO THE CONTRACT  
BETWEEN THE CITY OF AUSTIN  
AND THE AUSTIN INDEPENDENT BUSINESS ALLIANCE (AIBA)**

This Amendment, No. Two to agreement NA150000155, the IBIZ District Marketing contract ("Amendment"), is made and entered into by and between the City of Austin, Texas (the "City") and the Austin Independent Business Alliance ("AIBA"), the "Parties," for the consideration stated below.

WHEREAS, the City and AIBA entered into a contract for AIBA to provide marketing services for IBIZ Districts ("Agreement");

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. The City exercises its right to extend the Agreement by twelve months from September 1, 2017 under the same terms as the original Agreement which was extended by Amendment No. One.
2. The effective date of this Amendment is September 1, 2017.
3. Except as expressly amended, the Agreement shall remain in full force and effect.

**Austin Independent Business Alliance**

By: 

Date: 7.6.17

**City of Austin**

By: 

Kevin Johns, Director

Economic Development Department

Date: 7-10-2017

Approved as to form:

By: 

Leela Fireside, Assistant City Attorney

**AMENDMENT NO. ONE TO THE CONTRACT  
BETWEEN THE CITY OF AUSTIN AND AUSTIN INDEPENDENT BUSINESS  
ALLIANCE (AIBA)**

This Amendment No. One to agreement NA150000155, the support for local businesses contract ("Amendment") is made and entered into by and between the City of Austin, Texas (the "City") and Austin Independent Business Alliance ("AIBA"), hereinafter sometimes collectively referred to as the "Parties," upon the premises and for the consideration stated herein.

**WHEREAS**, the City and AIBA entered into a contract for AIBA to provide support for local business ("Agreement"); and

**WHEREAS**, AIBA works in conjunction with the Local Economic Council (LEC) to host a local business conference; and

**WHEREAS**, City Council through Resolution No. 20160128-066, required the negotiation of a multi-year contract with LEC for the provision of the local business conference:

**WHEREAS**, the parties wish to amend the scope and cost of the Agreement so it is aligned with the LEC and City agreement and services are not duplicated;

**NOW, THEREFORE**, the Parties agree to amend the Agreement as follows:

1. The Agreement's scope of work and budget will be amended as follows:

	<u>Original</u>	<u>Amended</u>
IBIZ District staff	\$36,000	\$36,000
IBIZ District advertising and programming	\$24,000	\$14,000
Newsletter and Calendar of Events	\$0	Eliminated
Family Business Loan Program referrals	\$2,000	Eliminated
Locallyaustin.org outreach	\$2,000	Eliminated
Armadillo Awards sponsorship	\$5,000	\$5,000
Getting Connected session moderation	<u>\$1,000</u>	<u>Eliminated</u>
Total Contract Amount:	\$70,000	\$55,000

2. The City exercises its right to extend the Agreement by twelve months from September 1, 2016 under the same terms as the Agreement, provided the revised scope of work and budget described in this Amendment shall control.
3. The effective date of this Amendment is September 1, 2016.
4. Except as expressly amended herein, the Agreement shall remain in full force and effect.

Austin Independent Business Alliance

By: 

Date: 8.10.14

City of Austin

By: 

Kevin Johns, Director

Economic Development Department

Date: 09/07/2016

Approved as to form:

By: 

C. Crosby, Assistant City Attorney



## **M E M O R A N D U M**

**City of Austin  
Financial & Administrative Services Department  
Purchasing Office**

**DATE:** September 29, 2015  
**TO:** Memo to File  
**FROM:** Sai Xoomsai Purcell  
**RE:** MA 5500 NA150000155

This agreement was created by Economic Development Department and is administered and maintained by same. There is no procurement function other than the creation of the payment vehicle.

**CONTRACT BETWEEN**  
**THE CITY OF AUSTIN**  
**And**  
**THE AUSTIN INDEPENDENT BUSINESS ALLIANCE (AIBA)**  
**For**  
**PROVIDING SUPPORT FOR LOCAL BUSINESSES**

This Agreement ("Agreement") is dated to be effective September 1, 2015 ("Effective Date"), and is made by and between the City of Austin Economic Development Department ("City" or "EDD"), a home-rule municipality incorporated by the State of Texas, and the Austin Independent Business Alliance ("AIBA" or "Contractor"), having offices at P.O. Box 49545, Austin, Texas 78765.

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

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Background, and Section 3, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the City's Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the Term of this Agreement, 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 Agreement is Rebecca Melancon, Phone: (512) 236-1618. The City's Contract Manager for this Agreement is Vicky Valdez, Small Business Program Division Manager: Phone (512) 974-7620.

**SECTION 2. BACKGROUND.**

- 2.1 **Background:** Small businesses are a vital component of Austin's economy, comprising 94% of Austin's employers and making a significant contribution to local taxes, fees, and utility revenues. The City works to strengthen the local businesses by developing services that help them get started and expand. The Austin Independent Business Alliance (AIBA) contributes to the development of small businesses by establishing Independent Business Investment Zone (IBIZ) Districts, which are associations of merchants within a geographic area that promote the locally-owned, independent businesses within each district. In addition to establishment of IBIZ Districts, AIBA supports their success by conducting marketing activities

to increase public awareness of the IBIZ Districts, both individually and collectively. An IBIZ District is This Agreement will contribute to the success of small businesses by raising public awareness of the existing IBIZ Districts.

Any new IBIZ Districts will be included in all activities and materials outlined in this agreement; listed below are the eight (8) current IBIZ Districts:

- Guadalupe from 29th to 32nd Streets
- East 11th Street from IH-35 to Navasota
- North Loop from Avenue F to Chesterfield
- South First Street from Barton Springs Road to Oltorf
- East Sixth Street from IH-35 to Comal Street
- Burnet Road from 45<sup>th</sup> St. to North Loop
- West Lynn Street from 6<sup>th</sup> Street to 13<sup>th</sup> Street
- Rainey Street from Driskell Street to Holley Street

### **SECTION 3. SCOPE OF WORK.**

#### **3.1 IBIZ Districts**

3.1.1 With thirty (30) days of this contract's execution, AIBA shall deliver to SBP a plan for marketing the IBIZ Districts both individually and collectively during the remaining term of this contract.

3.1.1.1 AIBA shall work with the small business owners participating in the IBIZ Districts to develop the marketing strategy.

3.1.1.2 This marketing strategy shall identify the most effective and affordable methods of marketing IBIZ Districts.

3.1.1.3 SBP shall have five (5) business days to review the plan and provide questions and comments.

3.1.2 AIBA shall implement the marketing plan. Tasks shall include, but are not limited to:

3.1.2.1 Designing advertisements and promotional materials for each district.

3.1.2.2 Placing advertisements in selected advertising venues on the IBIZ Districts' behalf.

3.1.2.3 Managing the production and distribution of promotional materials.

3.1.2.4 Identifying and approaching media sponsors who will communicate information regarding the IBIZ Districts to the public for free or at a reduced cost.

3.1.2.5 Promoting the IBIZ Districts and IBIZ-participating businesses through social media, such as Facebook and Twitter.

3.1.2.6 Coordinating special events that promote districts by attracting the public.

3.1.2.7 Create a multi-page, full-color brochure that promotes all IBIZ districts in a single document.

3.1.3 The logo of the City's Economic Development Department must be incorporated into all advertisements and promotional materials developed under this Agreement unless otherwise indicated by the City.

- 3.1.4 All advertisements or other materials created for public viewing must be reviewed by City's Contract Manager. The City's Contract Manager has five (5) business days to review the material and make any recommendations. Contractor agrees to consider these recommendations in good faith. If AIBA does not receive any recommendations by 5:00pm on the 5th business day, the project shall proceed without comment.
- 3.1.5 IBIZ District satisfaction survey
  - 3.1.5.1 AIBA shall create and administer annual surveys of small business owners who are IBIZ District participants for the purpose of:
    - 3.1.5.1.1 Determining participant satisfaction with the EDD-funded services provided by AIBA, and
    - 3.1.5.1.2 Soliciting suggestions from participants on improving or expanding the services provided to the IBIZ Districts.
  - 3.1.5.2 Within six (6) months of the execution of this contract, AIBA shall submit a draft of the survey questions for EDD's review and comment.
  - 3.1.5.3 The survey shall be conducted and reported to EDD by the end of each 12-month contract term. The survey shall meet the following requirements:
    - 3.1.5.3.1 An overall minimum response rate of 20% shall be achieved.
    - 3.1.5.3.2 A minimum response rate of 10% shall be achieved for each IBIZ District.
    - 3.1.5.3.3 Survey respondents shall be encouraged to voluntarily provide contact information with their survey responses so that EDD staff can confirm samplings of survey responses or follow-up on responses/suggestions as needed.

## 3.2 Monthly newsletter and Calendar of Events

- 3.2.1 AIBA shall conduct outreach to increase subscriptions to its existing monthly AIBA Newsletter.
  - 3.2.1.1 The outreach may consist of, but is not limited to, social media campaigns, advertising or in-person outreach as determined by AIBA.
  - 3.2.1.2 At least one outreach effort shall be conducted per month.
  - 3.2.1.3 The goal shall be to increase the number of newsletter subscribers by 5% per year.
- 3.2.2 AIBA shall include information regarding EDD and its divisions, projects and events in the monthly newsletter. Items submitted for inclusion by EDD must be received by AIBA at least five (5) business days prior to publication.
- 3.2.3 AIBA shall conduct outreach to increase views of its online "Latest From Your Locals" section which includes events and announcements.
  - 3.2.3.1 The outreach may consist of, but is not limited to, social media campaigns, advertising or in-person outreach as determined by AIBA.

3.2.3.2 At least one outreach effort shall be conducted per month.

3.2.3.3 The goal shall be to increase the number of calendar views by 5% per year.

3.2.4 AIBA shall post EDD events in the online calendar of events. Items submitted for posting by EDD must be received by AIBA at least five (5) business days prior to posting.

### 3.3 Locallyaustin.org

3.3.1 AIBA shall conduct outreach to direct local business to the City's online mapping website for small businesses, *locallyaustin.org*. The purpose of *locallyaustin.org* is to provide web-based marketing exposure for businesses that do not have a web presence or wish to gain greater exposure to markets.

3.3.1.1 The outreach may consist of, but is not limited to, social media campaigns, advertising and in-person outreach as determined by AIBA.

3.3.1.2 At least one outreach effort shall be conducted per month.

3.3.1.3 The goal is to promote Locallyaustin.org. AIBA will fulfill this goal by mentioning locallyaustin.org once a month through social media, online or in our newsletter.

### 3.4 Family Business Loan Program

3.4.1 AIBA shall conduct outreach to direct local business to the City's Family Business Loan Program. The purpose of the Family Business Loan Program is to provide low-interest loans to qualified business owners who ready to expand their business and create jobs.

3.4.1.1 The outreach may consist of, but is not limited to, social media campaigns, advertising and in-person outreach as determined by AIBA.

3.4.1.2 At least one outreach effort shall be conducted per month.

3.4.1.3 AIBA shall make a "Good Faith Effort" to refer at least ten (10) qualified businesses to the Family Business Loan Program per contract year.

### 3.5 Armadillo Awards Gold Sponsorship

3.5.1 EDD shall provide Gold Sponsorship for Armadillo Awards, which are held in April as part of Small Business month.

3.5.2 In return for this Gold Sponsorship, AIBA will provide EDD the following:

#### Before the Awards:

- Company name and logo on the event invitation.
- Acknowledgement and logo on [www.IBuyAustin.com](http://www.IBuyAustin.com), which receives more than 600,000 hits per month.
- An AIBA-produced, 1 minute video featuring EDD speaking to the importance of local business.
- Featured as Gold Sponsor on Facebook page, announcement of sponsorship and pre-event notices and 2 exclusive social media announcements about your business through AIBA channels preceding the event.
- Logo included prominently in all advertisements and promotions prior to event.
- Included in press releases about the Armadillo Awards.



- Opportunity to write one article for the AIBA newsletter about why the local business community is important.

#### During the Awards:

- Multi-media sponsor recognition at the event including visual and verbal recognition.
- Tier 2 position for company name and logo on reusable, high quality tote bags to be distributed to attendees.
- Opportunity to distribute marketing materials to attendees in reusable shopping tote.
- Opportunity to display company brochures and information at the event (four foot table).
- Sponsorship signage recognition during Dillo Reception preceding the awards ceremony to include logo.
- Half page advertisement and 150 word business profile in the event program.

#### After the Awards:

- Includes a half page, full color ad in the Spring 2016 *IndieAustin* published in May (15,000 distribution).
- Acknowledgement and logo on [www.IBuyAustin.com](http://www.IBuyAustin.com), which receives more than 600,000 hits per month (this benefit continues through March 2017).
- Featured in 2 exclusive social media announcements about EDD through AIBA channels preceding the event.
- Featured as Gold Sponsor on Facebook event page, announcement of sponsorship and post-event notices.

### 3.5.3 AIBA's monthly report for the month of April shall include:

- 3.5.3.1 The nomination categories that were chosen.
- 3.5.3.2 The number of nominations received in each category.
- 3.5.3.3 The number of votes received.
- 3.5.3.4 The winning businesses in each category.
- 3.5.3.5 A description and attendance at the awards ceremony.
- 3.5.3.6 A comparison of participation/attendance to previous years.
- 3.5.3.7 Any other notable results.

### 3.6 Getting Connected Local Business Session

- 3.6.1 The AIBA Executive Director shall moderate a discussion panel session at a small business event. EDD's Small Business Program shall determine the event and panel topic, but topics shall be selected that align with AIBA's work in the local business community.

## **SECTION 4. COMPENSATION.**

### 4.1 Contract Amount

AIBA will be paid as indicated herein upon successful completion of the scope of work and tasks, as described in this Agreement. In consideration for the services to be performed under this Agreement, the Contractor will be paid an amount not-to-exceed \$70,000.00 for all fees and expenses ("Total Contract Amount").

#### 4.2 Budget

AIBA will be compensated according to the following budget:

3.1 IBIZ District staff	\$36,000
IBIZ District advertising and programming	\$24,000
3.2 Newsletter and Calendar of Events	\$0
3.3 Family Business Loan Program referrals	\$2,000
3.4 Locallyaustin.org outreach	\$2,000
3.5 Armadillo Awards	\$5,000
3.6 Getting Connected session moderation	<u>\$1,000</u>
Total Contract Amount:	<u>\$70,000</u>

IBIZ District staff will be paid in twelve (12) equal monthly installments of \$3,000 for a total not to exceed \$36,000.

#### 4.3 Payment

- 4.3.1 Contractor will submit a monthly invoice for payment, along with appropriate supporting documentation, by the 5th working day following the end of a month. Appropriate supporting documentation shall include:
  - 4.3.1.1 A written report detailing all activities undertaken to carry out the scopes of work outlined in Section 3, and any achievements made toward the goals of the scopes of work.
  - 4.3.1.2 Copies of advertisements and samples of promotional materials or brochures supported by the related invoice from the venue(s) and vendor(s).
- 4.3.2 Invoices shall contain a unique, non-duplicated invoice number, invoice date, the City's department name, the name of the City's Contract Manager, brief description of the services billed, and the correct remittance address. Invoices shall be itemized. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be emailed, along with reports and supporting documents, to: [blake.smith@austintexas.gov](mailto:blake.smith@austintexas.gov)
- 4.3.3 Unless otherwise expressly authorized in the Agreement, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 4.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.
- 4.3.5 All proper invoices received by the City will be paid within 30 calendar days of the City receipt of the invoice(s). If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of one percent (1%) per month 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.

- 4.3.6 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:
- 4.3.6.1 delivery of defective or non-conforming deliverables by the Contractor;
  - 4.3.6.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - 4.3.6.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment, failure of the Contractor to pay Subcontractors, or for labor, materials or equipment
  - 4.3.6.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - 4.3.6.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in this Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - 4.3.6.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - 4.3.6.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 4.3.7 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.
- 4.3.8 Payment will be made by bank draft unless the parties mutually agree to payment by credit card. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- 4.3.9 Non-Appropriation. The awarding or continuation of this Agreement is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 4.3.10 Final Payment and Close-Out. The making and acceptance of final payment will constitute:
- 4.3.10.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Agreement or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

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

## **SECTION 5. TERM AND TERMINATION.**

- 5.1 **Term of Contract.** This Agreement shall consist of an initial twelve (12) month term with two (2) twelve month extension options.
- 5.2 **Right to Assurance.** Whenever one party to the Agreement 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 Agreement.
- 5.3 **Default.** The Contractor shall be in default under the Agreement if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 5.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Agreement 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. 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. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- 5.5 **Termination without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a written notice of termination, the Contractor shall promptly cease all further work pursuant to the Agreement, 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.
- 5.6 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

## **SECTION 6. OTHER DELIVERABLES.**

- 6.1 **Insurance.** The following insurance requirement applies. (Applicable to contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).

6.2 **General Requirements.**

- 6.2.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.
- 6.2.2 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.
- 6.2.3 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.
- 6.2.4 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.
- 6.2.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 6.2.6 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. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 6.2.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / contract number, the City Contract Manager's name, and the Contractor's email address, and shall be mailed to the following address:
- City of Austin  
Economic Development Department  
Attn: Vicky Valdez  
P. O. Box 1088  
Austin, Texas 78767
- 6.2.8 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 Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 6.2.9 If insurance policies are not written for amounts specified in Section 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

- 6.2.10 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.
- 6.2.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement 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.
- 6.2.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
- 6.2.13 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.
- 6.2.14 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 Agreement.
- 6.2.15 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, 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.
- 6.2.15.1 **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.
- Blanket contractual liability coverage for liability assumed under the Agreement and all other contracts related to the project.
  - Independent Contractor's Coverage.
  - Products/Completed Operations Liability for the duration of the warranty period.
  - Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
  - Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
  - The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- 6.2.15.2 **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.

6.2.15.3 **Certificate:** The following statement must be shown on the Certificate of Insurance.

- The City of Austin is an Additional Insured on the general liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability policies.

6.3 **Equal Opportunity.**

6.3.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as **Exhibit A**.

6.3.2 **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.

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

6.5 **Delays.**

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

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

6.6 **Rights to Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be

proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.

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

## **SECTION 7. WARRANTIES.**

- 7.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided the City under this Agreement 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 Agreement, and all applicable Federal, State and local laws, rules or regulations.

## **SECTION 8. MISCELLANEOUS**

- 8.1 **Subcontractors.** 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 Agreement, and shall contain provisions that:

- 8.1.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
- 8.1.2 prohibit the Subcontractor from further subcontracting any portion of the Agreement 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;
- 8.1.3 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 Agreement;
- 8.1.4 require that all Subcontractors obtain and maintain, throughout the term of their Agreement, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- 8.1.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 8.1.6 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 Agreement 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.
- 8.1.7 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.



## 8.2 **Workforce.**

- 8.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
- 8.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
  - 8.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement.
  - 8.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 8.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from contract services, and may not employ such worker again on contract services without the City's prior written consent.

## 8.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

- 8.4.1 disposal of major assets;
- 8.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Agreement;
- 8.4.3 any significant termination or addition of provider contracts;
- 8.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

- 8.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Agreement;
- 8.4.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;
- 8.4.7 known or anticipated sale, merger, or acquisition;
- 8.4.8 known, planned, or anticipated stock sales;
- 8.4.9 any litigation filed by a member against the Contractor; or
- 8.4.10 significant change in market share or product focus.

**8.5 Right To Audit.**

8.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to and the right to audit, examine, or reproduce any and all records of the Contractor related to the performance under this Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment on this Agreement 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.

8.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Agreement.

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

8.7 **Each Party To Assume Liability for Wrongdoing of Its Employees and Agents.** The parties to this Agreement are a local governmental unit of the State of Texas and a qualified charitable nonprofit association. Each party recognizes the unique liabilities, immunities and defenses related to its actions to execute this Agreement. Each party shall be liable for the negligence acts and other wrong doing of its employees, subcontractors and agents and shall assume the expense of any defense or costs.

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

8.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement 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

Economic Development Department

ATTN: Vicky Valdez

Small Business Program Division Manager

P.O. Box 1088

Austin, TX 78767

To the Contractor:

Austin Independent Business Alliance

ATTN: Rebecca Melancon

Executive Director

P.O. Box 49545

Austin, TX 78765

- 8.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, 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.
- 8.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Agreement, except to the extent required by law.
- 8.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Agreement 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.

- 8.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Agreement 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 of Austin with a view toward securing the Agreement 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 Agreement 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.
- 8.14 **Prohibition against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement 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 Agreement voidable by the City.
- 8.15 **Independent Contractor.** The Agreement 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 Agreement does not grant any rights or privileges established for employees of the City.
- 8.16 **Assignment-Delegation.** The Agreement 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 Agreement 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 Agreement 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 Agreement.
- 8.17 **Waiver.** No claim or right arising out of a breach of the Agreement 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 Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 8.18 **Modifications.** The Agreement 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 Agreement.
- 8.19 **Interpretation.** The Agreement 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 Agreement. Although the Agreement 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 Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.20 **Dispute Resolution.**

8.20.1 If a dispute arises out of or relates to the Agreement, 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.

8.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement 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 costs of mediation equally.

8.21 **Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

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

8.21.2 The City of Austin has determined that no goals are appropriate for this Agreement. **Even though no goals have been established for this Agreement, 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.**

8.21.3 If any service is needed to perform the Agreement and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor

does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Agreement; 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.

- 8.22 **Jurisdiction and Venue.** The Agreement 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 Agreement 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.
- 8.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement 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 Agreement from being void should a provision which is the essence of the Agreement be determined to be void.
- 8.24 **Holidays:** The following holidays are observed by the City:

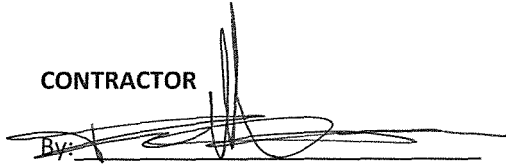
<b><u>Holiday</u></b>	<b><u>Date Observed</u></b>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving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

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

- 8.25 **Survivability of Obligations.** All provisions of the Agreement 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 Agreement.
- 8.26 **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 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.
- 8.27 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Agreement 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: <http://www.ci.austin.tx.us/purchase/standard.htm>.
- 8.28 **Indemnity.** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, APPOINTED OR EMBATED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (INDEMNIFIED PARTIES), AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (CLAIMS), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, (CONTRACTOR PARTIES), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE CONTRACTOR PARTIES IN THIS AGREEMENT OR IN CONTRACTOR'S PROPOSAL, (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CONTRACTOR PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS SECTION INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.
- 8.28.1 City shall give Contractor written notice of a Claim asserted against an Indemnified Party. Contractor shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Contractor of any obligations in this agreement. In no event may Contractor admit liability on the part of an Indemnified Party without the written consent of City Attorney.
- 8.28.2 Maintenance of the insurance required under this Agreement shall not limit Contractor's obligations under this Section. Contractor shall require all Subcontractors to indemnify City as provided in this Section.

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

CONTRACTOR

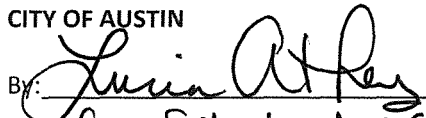
By: 

Name: Rebecca Melancon

Title: Executive Director

Date: 9.28.15

CITY OF AUSTIN

By:   
acting for SUE EDWARDS

Name: Sue Edwards

Title: Assistant City Manager

Date: 9.29.2015

**List of Exhibits**

**Exhibit A      Non Discrimination Certification**



**Exhibit A**  
**City of Austin, Texas**  
**Human Rights Commission**  
**NON-DISCRIMINATION CERTIFICATION**

I hereby certify that our firm conforms to the City Code, Chapter 5-4 as reiterated below:

TITLE 5, Chapter 5-4: Discrimination in Employment by City Contractors. Sec. 5-4-2 Requirements of contractors:

- B (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to insure 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, employment, upgrading, 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 the employees and applicants for employment, notices to be provided by the Austin Human Rights Commission setting forth the provision 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, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which such 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 the policies and provisions of this chapter.
- (6) To cooperate fully with the City and the Austin Human Rights Commission in connection with any investigation or conciliation effort of the Austin Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practice is 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 not engage in any discriminatory employment practice as defined in this chapter.

Dated this 28 day of 9, 2015

Company's Name AIBA

Signature [Signature] Printed Name REBECCA MELANKON

Title EXECUTIVE DIRECTOR

**CONTRACT BETWEEN**  
**THE CITY OF AUSTIN**  
**And**  
**THE AUSTIN INDEPENDENT BUSINESS ALLIANCE (AIBA)**  
**For**  
**PROVIDING SUPPORT FOR LOCAL BUSINESSES**

This Agreement ("Agreement") is dated to be effective September 1, 2015 ("Effective Date"), and is made by and between the City of Austin Economic Development Department ("City" or "EDD"), a home-rule municipality incorporated by the State of Texas, and the Austin Independent Business Alliance ("AIBA" or "Contractor"), having offices at P.O. Box 49545, Austin, Texas 78765.

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

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Background, and Section 3, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the City's Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the Term of this Agreement, 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 Agreement is Rebecca Melancon, Phone: (512) 236-1618. The City's Contract Manager for this Agreement is Vicky Valdez, Small Business Program Division Manager: Phone (512) 974-7620.

**SECTION 2. BACKGROUND.**

- 2.1 **Background:** Small businesses are a vital component of Austin's economy, comprising 94% of Austin's employers and making a significant contribution to local taxes, fees, and utility revenues. The City works to strengthen the local businesses by developing services that help them get started and expand. The Austin Independent Business Alliance (AIBA) contributes to the development of small businesses by establishing Independent Business Investment Zone (IBIZ) Districts, which are associations of merchants within a geographic area that promote the locally-owned, independent businesses within each district. In addition to establishment of IBIZ Districts, AIBA supports their success by conducting marketing activities

to increase public awareness of the IBIZ Districts, both individually and collectively. An IBIZ District is This Agreement will contribute to the success of small businesses by raising public awareness of the existing IBIZ Districts.

Any new IBIZ Districts will be included in all activities and materials outlined in this agreement; listed below are the eight (8) current IBIZ Districts:

- Guadalupe from 29th to 32nd Streets
- East 11th Street from IH-35 to Navasota
- North Loop from Avenue F to Chesterfield
- South First Street from Barton Springs Road to Oltorf
- East Sixth Street from IH-35 to Comal Street
- Burnet Road from 45<sup>th</sup> St. to North Loop
- West Lynn Street from 6<sup>th</sup> Street to 13<sup>th</sup> Street
- Rainey Street from Driskell Street to Holley Street

### **SECTION 3. SCOPE OF WORK.**

#### **3.1 IBIZ Districts**

3.1.1 With thirty (30) days of this contract's execution, AIBA shall deliver to SBP a plan for marketing the IBIZ Districts both individually and collectively during the remaining term of this contract.

3.1.1.1 AIBA shall work with the small business owners participating in the IBIZ Districts to develop the marketing strategy.

3.1.1.2 This marketing strategy shall identify the most effective and affordable methods of marketing IBIZ Districts.

3.1.1.3 SBP shall have five (5) business days to review the plan and provide questions and comments.

3.1.2 AIBA shall implement the marketing plan. Tasks shall include, but are not limited to:

3.1.2.1 Designing advertisements and promotional materials for each district.

3.1.2.2 Placing advertisements in selected advertising venues on the IBIZ Districts' behalf.

3.1.2.3 Managing the production and distribution of promotional materials.

3.1.2.4 Identifying and approaching media sponsors who will communicate information regarding the IBIZ Districts to the public for free or at a reduced cost.

3.1.2.5 Promoting the IBIZ Districts and IBIZ-participating businesses through social media, such as Facebook and Twitter.

3.1.2.6 Coordinating special events that promote districts by attracting the public.

3.1.2.7 Create a multi-page, full-color brochure that promotes all IBIZ districts in a single document.

3.1.3 The logo of the City's Economic Development Department must be incorporated into all advertisements and promotional materials developed under this Agreement unless otherwise indicated by the City.

- 3.1.4 All advertisements or other materials created for public viewing must be reviewed by City's Contract Manager. The City's Contract Manager has five (5) business days to review the material and make any recommendations. Contractor agrees to consider these recommendations in good faith. If AIBA does not receive any recommendations by 5:00pm on the 5th business day, the project shall proceed without comment.
- 3.1.5 IBIZ District satisfaction survey
  - 3.1.5.1 AIBA shall create and administer annual surveys of small business owners who are IBIZ District participants for the purpose of:
    - 3.1.5.1.1 Determining participant satisfaction with the EDD-funded services provided by AIBA, and
    - 3.1.5.1.2 Soliciting suggestions from participants on improving or expanding the services provided to the IBIZ Districts.
  - 3.1.5.2 Within six (6) months of the execution of this contract, AIBA shall submit a draft of the survey questions for EDD's review and comment.
  - 3.1.5.3 The survey shall be conducted and reported to EDD by the end of each 12-month contract term. The survey shall meet the following requirements:
    - 3.1.5.3.1 An overall minimum response rate of 20% shall be achieved.
    - 3.1.5.3.2 A minimum response rate of 10% shall be achieved for each IBIZ District.
    - 3.1.5.3.3 Survey respondents shall be encouraged to voluntarily provide contact information with their survey responses so that EDD staff can confirm samplings of survey responses or follow-up on responses/suggestions as needed.

## 3.2 Monthly newsletter and Calendar of Events

- 3.2.1 AIBA shall conduct outreach to increase subscriptions to its existing monthly AIBA Newsletter.
  - 3.2.1.1 The outreach may consist of, but is not limited to, social media campaigns, advertising or in-person outreach as determined by AIBA.
  - 3.2.1.2 At least one outreach effort shall be conducted per month.
  - 3.2.1.3 The goal shall be to increase the number of newsletter subscribers by 5% per year.
- 3.2.2 AIBA shall include information regarding EDD and its divisions, projects and events in the monthly newsletter. Items submitted for inclusion by EDD must be received by AIBA at least five (5) business days prior to publication.
- 3.2.3 AIBA shall conduct outreach to increase views of its online "Latest From Your Locals" section which includes events and announcements.
  - 3.2.3.1 The outreach may consist of, but is not limited to, social media campaigns, advertising or in-person outreach as determined by AIBA.

3.2.3.2 At least one outreach effort shall be conducted per month.

3.2.3.3 The goal shall be to increase the number of calendar views by 5% per year.

3.2.4 AIBA shall post EDD events in the online calendar of events. Items submitted for posting by EDD must be received by AIBA at least five (5) business days prior to posting.

### 3.3 Locallyaustin.org

3.3.1 AIBA shall conduct outreach to direct local business to the City's online mapping website for small businesses, *locallyaustin.org*. The purpose of *locallyaustin.org* is to provide web-based marketing exposure for businesses that do not have a web presence or wish to gain greater exposure to markets.

3.3.1.1 The outreach may consist of, but is not limited to, social media campaigns, advertising and in-person outreach as determined by AIBA.

3.3.1.2 At least one outreach effort shall be conducted per month.

3.3.1.3 The goal is to promote Locallyaustin.org. AIBA will fulfill this goal by mentioning locallyaustin.org once a month through social media, online or in our newsletter.

### 3.4 Family Business Loan Program

3.4.1 AIBA shall conduct outreach to direct local business to the City's Family Business Loan Program. The purpose of the Family Business Loan Program is to provide low-interest loans to qualified business owners who ready to expand their business and create jobs.

3.4.1.1 The outreach may consist of, but is not limited to, social media campaigns, advertising and in-person outreach as determined by AIBA.

3.4.1.2 At least one outreach effort shall be conducted per month.

3.4.1.3 AIBA shall make a "Good Faith Effort" to refer at least ten (10) qualified businesses to the Family Business Loan Program per contract year.

### 3.5 Armadillo Awards Gold Sponsorship

3.5.1 EDD shall provide Gold Sponsorship for Armadillo Awards, which are held in April as part of Small Business month.

3.5.2 In return for this Gold Sponsorship, AIBA will provide EDD the following:

#### Before the Awards:

- Company name and logo on the event invitation.
- Acknowledgement and logo on [www.IBuyAustin.com](http://www.IBuyAustin.com), which receives more than 600,000 hits per month.
- An AIBA-produced, 1 minute video featuring EDD speaking to the importance of local business.
- Featured as Gold Sponsor on Facebook page, announcement of sponsorship and pre-event notices and 2 exclusive social media announcements about your business through AIBA channels preceding the event.
- Logo included prominently in all advertisements and promotions prior to event.
- Included in press releases about the Armadillo Awards.

- Opportunity to write one article for the AIBA newsletter about why the local business community is important.

#### During the Awards:

- Multi-media sponsor recognition at the event including visual and verbal recognition.
- Tier 2 position for company name and logo on reusable, high quality tote bags to be distributed to attendees.
- Opportunity to distribute marketing materials to attendees in reusable shopping tote.
- Opportunity to display company brochures and information at the event (four foot table).
- Sponsorship signage recognition during Dillo Reception preceding the awards ceremony to include logo.
- Half page advertisement and 150 word business profile in the event program.

#### After the Awards:

- Includes a half page, full color ad in the Spring 2016 *IndieAustin* published in May (15,000 distribution).
- Acknowledgement and logo on [www.IBuyAustin.com](http://www.IBuyAustin.com), which receives more than 600,000 hits per month (this benefit continues through March 2017).
- Featured in 2 exclusive social media announcements about EDD through AIBA channels preceding the event.
- Featured as Gold Sponsor on Facebook event page, announcement of sponsorship and post-event notices.

### 3.5.3 AIBA's monthly report for the month of April shall include:

- 3.5.3.1 The nomination categories that were chosen.
- 3.5.3.2 The number of nominations received in each category.
- 3.5.3.3 The number of votes received.
- 3.5.3.4 The winning businesses in each category.
- 3.5.3.5 A description and attendance at the awards ceremony.
- 3.5.3.6 A comparison of participation/attendance to previous years.
- 3.5.3.7 Any other notable results.

### 3.6 Getting Connected Local Business Session

- 3.6.1 The AIBA Executive Director shall moderate a discussion panel session at a small business event. EDD's Small Business Program shall determine the event and panel topic, but topics shall be selected that align with AIBA's work in the local business community.

## **SECTION 4. COMPENSATION.**

### 4.1 Contract Amount

AIBA will be paid as indicated herein upon successful completion of the scope of work and tasks, as described in this Agreement. In consideration for the services to be performed under this Agreement, the Contractor will be paid an amount not-to-exceed \$70,000.00 for all fees and expenses ("Total Contract Amount").

4.2 Budget

AIBA will be compensated according to the following budget:

3.1 IBIZ District staff	\$36,000
IBIZ District advertising and programming	\$24,000
3.2 Newsletter and Calendar of Events	\$0
3.3 Family Business Loan Program referrals	\$2,000
3.4 Locallyaustin.org outreach	\$2,000
3.5 Armadillo Awards	\$5,000
3.6 Getting Connected session moderation	<u>\$1,000</u>
Total Contract Amount:	<u>\$70,000</u>

IBIZ District staff will be paid in twelve (12) equal monthly installments of \$3,000 for a total not to exceed \$36,000.

4.3 Payment

- 4.3.1 Contractor will submit a monthly invoice for payment, along with appropriate supporting documentation, by the 5th working day following the end of a month. Appropriate supporting documentation shall include:
  - 4.3.1.1 A written report detailing all activities undertaken to carry out the scopes of work outlined in Section 3, and any achievements made toward the goals of the scopes of work.
  - 4.3.1.2 Copies of advertisements and samples of promotional materials or brochures supported by the related invoice from the venue(s) and vendor(s).
- 4.3.2 Invoices shall contain a unique, non-duplicated invoice number, invoice date, the City's department name, the name of the City's Contract Manager, brief description of the services billed, and the correct remittance address. Invoices shall be itemized. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be emailed, along with reports and supporting documents, to: [blake.smith@austintexas.gov](mailto:blake.smith@austintexas.gov)
- 4.3.3 Unless otherwise expressly authorized in the Agreement, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 4.3.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.
- 4.3.5 All proper invoices received by the City will be paid within 30 calendar days of the City receipt of the invoice(s). If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of one percent (1%) per month 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.

- 4.3.6 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:
  - 4.3.6.1 delivery of defective or non-conforming deliverables by the Contractor;
  - 4.3.6.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - 4.3.6.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment, failure of the Contractor to pay Subcontractors, or for labor, materials or equipment
  - 4.3.6.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - 4.3.6.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in this Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - 4.3.6.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - 4.3.6.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 4.3.7 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.
- 4.3.8 Payment will be made by bank draft unless the parties mutually agree to payment by credit card. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- 4.3.9 Non-Appropriation. The awarding or continuation of this Agreement is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 4.3.10 Final Payment and Close-Out. The making and acceptance of final payment will constitute:
  - 4.3.10.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Agreement or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and



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

## **SECTION 5. TERM AND TERMINATION.**

- 5.1 **Term of Contract.** This Agreement shall consist of an initial twelve (12) month term with two (2) twelve month extension options.
- 5.2 **Right to Assurance.** Whenever one party to the Agreement 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 Agreement.
- 5.3 **Default.** The Contractor shall be in default under the Agreement if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 5.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Agreement 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. 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. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- 5.5 **Termination without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a written notice of termination, the Contractor shall promptly cease all further work pursuant to the Agreement, 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.
- 5.6 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

## **SECTION 6. OTHER DELIVERABLES.**

- 6.1 **Insurance.** The following insurance requirement applies. (Applicable to contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).

6.2 **General Requirements.**

- 6.2.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.
- 6.2.2 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.
- 6.2.3 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.
- 6.2.4 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.
- 6.2.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 6.2.6 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. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 6.2.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / contract number, the City Contract Manager's name, and the Contractor's email address, and shall be mailed to the following address:
- City of Austin  
Economic Development Department  
Attn: Vicky Valdez  
P. O. Box 1088  
Austin, Texas 78767
- 6.2.8 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 Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 6.2.9 If insurance policies are not written for amounts specified in Section 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

- 6.2.10 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.
- 6.2.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement 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.
- 6.2.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
- 6.2.13 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.
- 6.2.14 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 Agreement.
- 6.2.15 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, 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.
- 6.2.15.1 **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.
- Blanket contractual liability coverage for liability assumed under the Agreement and all other contracts related to the project.
  - Independent Contractor's Coverage.
  - Products/Completed Operations Liability for the duration of the warranty period.
  - Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
  - Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
  - The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- 6.2.15.2 **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.

6.2.15.3 **Certificate:** The following statement must be shown on the Certificate of Insurance.

- The City of Austin is an Additional Insured on the general liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability policies.

6.3 **Equal Opportunity.**

6.3.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as **Exhibit A**.

6.3.2 **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.

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

6.5 **Delays.**

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

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

6.6 **Rights to Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be

proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Open Records Act, Chapter 552, Texas Government Code.

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

## **SECTION 7. WARRANTIES.**

- 7.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided the City under this Agreement 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 Agreement, and all applicable Federal, State and local laws, rules or regulations.

## **SECTION 8. MISCELLANEOUS**

- 8.1 **Subcontractors.** 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 Agreement, and shall contain provisions that:

- 8.1.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
- 8.1.2 prohibit the Subcontractor from further subcontracting any portion of the Agreement 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;
- 8.1.3 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 Agreement;
- 8.1.4 require that all Subcontractors obtain and maintain, throughout the term of their Agreement, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- 8.1.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 8.1.6 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 Agreement 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.
- 8.1.7 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.

## 8.2 **Workforce.**

- 8.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
- 8.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:
  - 8.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement.
  - 8.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 8.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from contract services, and may not employ such worker again on contract services without the City's prior written consent.

## 8.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

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

- 8.4.1 disposal of major assets;
- 8.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Agreement;
- 8.4.3 any significant termination or addition of provider contracts;
- 8.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

- 8.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Agreement;
- 8.4.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;
- 8.4.7 known or anticipated sale, merger, or acquisition;
- 8.4.8 known, planned, or anticipated stock sales;
- 8.4.9 any litigation filed by a member against the Contractor; or
- 8.4.10 significant change in market share or product focus.

8.5 **Right To Audit.**

8.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to and the right to audit, examine, or reproduce any and all records of the Contractor related to the performance under this Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment on this Agreement 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.

8.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Agreement.

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

8.7 **Each Party To Assume Liability for Wrongdoing of Its Employees and Agents.** The parties to this Agreement are a local governmental unit of the State of Texas and a qualified charitable nonprofit association. Each party recognizes the unique liabilities, immunities and defenses related to its actions to execute this Agreement. Each party shall be liable for the negligence acts and other wrong doing of its employees, subcontractors and agents and shall assume the expense of any defense or costs.

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

8.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement 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

Economic Development Department

ATTN: Vicky Valdez

Small Business Program Division Manager

P.O. Box 1088

Austin, TX 78767

To the Contractor:

Austin Independent Business Alliance

ATTN: Rebecca Melancon

Executive Director

P.O. Box 49545

Austin, TX 78765

- 8.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, 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.
- 8.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Agreement, except to the extent required by law.
- 8.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Agreement 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.



- 8.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Agreement 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 of Austin with a view toward securing the Agreement 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 Agreement 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.
- 8.14 **Prohibition against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Agreement 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 Agreement voidable by the City.
- 8.15 **Independent Contractor.** The Agreement 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 Agreement does not grant any rights or privileges established for employees of the City.
- 8.16 **Assignment-Delegation.** The Agreement 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 Agreement 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 Agreement 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 Agreement.
- 8.17 **Waiver.** No claim or right arising out of a breach of the Agreement 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 Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 8.18 **Modifications.** The Agreement 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 Agreement.
- 8.19 **Interpretation.** The Agreement 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 Agreement. Although the Agreement 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 Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.20 **Dispute Resolution.**

8.20.1 If a dispute arises out of or relates to the Agreement, 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.

8.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement 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 costs of mediation equally.

8.21 **Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

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

8.21.2 The City of Austin has determined that no goals are appropriate for this Agreement. **Even though no goals have been established for this Agreement, 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.**

8.21.3 If any service is needed to perform the Agreement and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor

does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Agreement; 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.

- 8.22 **Jurisdiction and Venue.** The Agreement 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 Agreement 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.
- 8.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement 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 Agreement from being void should a provision which is the essence of the Agreement be determined to be void.
- 8.24 **Holidays:** The following holidays are observed by the City:

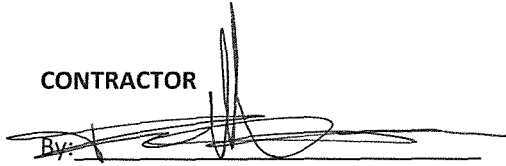
<b><u>Holiday</u></b>	<b><u>Date Observed</u></b>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving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

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

- 8.25 **Survivability of Obligations.** All provisions of the Agreement 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 Agreement.
- 8.26 **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 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.
- 8.27 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Agreement 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: <http://www.ci.austin.tx.us/purchase/standard.htm>.
- 8.28 **Indemnity.** CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, APPOINTED OR EMBATED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (INDEMNIFIED PARTIES), AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (CLAIMS), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, (CONTRACTOR PARTIES), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE CONTRACTOR PARTIES IN THIS AGREEMENT OR IN CONTRACTOR'S PROPOSAL, (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CONTRACTOR PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS SECTION INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.
- 8.28.1 City shall give Contractor written notice of a Claim asserted against an Indemnified Party. Contractor shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Contractor of any obligations in this agreement. In no event may Contractor admit liability on the part of an Indemnified Party without the written consent of City Attorney.
- 8.28.2 Maintenance of the insurance required under this Agreement shall not limit Contractor's obligations under this Section. Contractor shall require all Subcontractors to indemnify City as provided in this Section.

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

CONTRACTOR

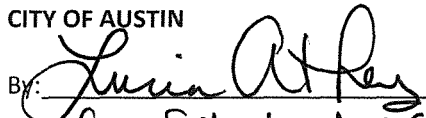
By: 

Name: Rebecca Melancon

Title: Executive Director

Date: 9.28.15

CITY OF AUSTIN

By:   
acting for SUE EDWARDS

Name: Sue Edwards

Title: Assistant City Manager

Date: 9.29.2015

**List of Exhibits**

**Exhibit A      Non Discrimination Certification**