



Financial and Administrative Service Department
Purchasing Office
124 W. 8th St., Austin, Texas, 78701

December 8, 2015

110 Percent Inc.
Attn: Jamie Sabbach
PO Box 21541
Boulder, CO 80308

Dear Jamie:

The Austin City Council approved the execution of a contract with your company for Service Delivery Optimization and Use of Cloud Based Tools in accordance with the referenced solicitation.

Responsible Department:	PARD
Department Contact Person:	Beverly Mendez
Department Contact Email Address:	Beverly.Mendez@austintexas.gov
Department Contact Telephone:	512-974-6784
Project Name:	n/a
Contractor Name:	110 Percent Inc.
Contract Number:	NS160000010
Contract Period:	24 months from completion of initial deliverables
Dollar Amount	\$56,290.00
Extension Options:	One 36-month extension option
Requisition Number:	RQM 5600 15112500125
Solicitation Number:	n/a
Agenda Item Number:	n/a
Council Approval Date:	n/a

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact Beverly Mendez, Contract Manager at 512-974-6784.

Sincerely,

Terry Nicholson
Senior Buyer Specialist
Purchasing Office
Financial and Administrative Service Department

cc: B. Mendez, PARD
I. Wilson, PARD
R. Alvidrez, CTM

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
110 PERCENT INC.
FOR
SERVICE DELIVERY OPTIMIZATION AND USE OF CLOUD BASED TOOLS**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and 110 Percent Inc. ("Contractor"), having offices at P.O. Box 21541, Boulder, CO 80308.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.
- 1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Jamie S. Sabbach, Phone: 720-304-2167, Email: jsabbach@110percent.net. The City's Contract Manager for the engagement shall be Beverly Mendez, Phone: 512-974-6784, Email: Beverly.Mendez@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK.

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

SECTION 3. COMPENSATION:

- 3.1 **Contract Amount** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$56,290 for all fees and expenses.
- 3.2 **Invoices**
 - 3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
 - 3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be

processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn.	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

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

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

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

3.3 **Payment**

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

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

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

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

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

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

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

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

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

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

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

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

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Travel Expenses:** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 **Final Payment and Close-Out**

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

3.6.2 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect until the deliverables set forth in the Scope of Work are complete and through the first two years of SDscorecard and PASS cloud based tools subscription. The two year subscription begins once the Scope of Work deliverables are completed.

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

- 4.2 **Right To Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 **Default:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.
- 4.4 **Termination For Cause:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 4.6 **Termination and Suspension of Service:**
- 4.6.1 In the event of termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- 4.6.2 During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- 4.6.3 In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
- 4.6.3.1 10 days after the effective date of termination, if the termination is in accordance with the contract period

4.6.3.2 30 days after the effective date of termination, if the termination is for convenience

4.6.3.3 60 days after the effective date of termination, if the termination is for cause

After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.

4.6.4 The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.

4.6.5 The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

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

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirement applies.

5.1.1 **General Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1.2.1.2 Contractor/Subcontracted Work.

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

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

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

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

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

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

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

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

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

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

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

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

5.2 **Data Location:** The service provider shall provide its services to the City and its end users solely from data centers in the U.S. Storage of City data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store City data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider may provide technical user support only on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this contract.

5.3 **Import and Export of Data:** The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.

5.4 **Equal Opportunity**

5.4.1 **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 B.

Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

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

5.5 Acceptance of Incomplete or Non-Conforming Deliverables:

5.9.1 "Personal Data" means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.

5.9.2 "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv), and employment records held by a covered entity in its role as employer.¹

5.9.3 Data Ownership: The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.

5.9.4 Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

5.9.4.1 The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

5.9.4.2 All data obtained by the service provider in the performance of this contract shall become and remain property of the City.

5.9.4.3 All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.

5.9.4.4 Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.

5.9.4.5 At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.

5.9.4.6 The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

5.9.5 Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

5.9.6 Security: The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.

5.9.7 Security in Compliance with Chapter 521 of the Texas Business and Commerce Code: Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

5.9.8 Security Incident or Data Breach Notification: The service provider shall inform the City of any security incident or data breach.

5.9.8.1 Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

5.9.8.2 Security Incident Reporting Requirements: The service provider shall report a security incident ctminformationsecurity@austintexas.gov or 512-974-HELP immediately as defined in the SLA.

5.9.8.3 Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

5.9.9 Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of service provider.

5.9.9.1 The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

5.9.9.2 The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by

applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive action taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

5.9.9.3 Unless otherwise stipulated, if a data breach is direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

5.9.10 Business Continuity and Disaster Recovery: The service provider shall provide a business continuity and disaster recovery plan upon request and ensure that the City's recovery time objective (RTO) of 99.999% uptime Monday – Friday 7am – 6pm Central Standard Time is met.

5.6 **Delays:**

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

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

5.10.3 Change Control and Advance Notice: The service provider shall give advance notice (to be determined at the contract time and included in the SLA) to the City of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

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

5.7.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest

to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

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

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

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

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

SECTION 6. SERVICE LEVELS

6.1 Responsibilities and Uptime Guarantee: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the service provider. The system shall be available 99.999% uptime Monday – Friday 7am – 6pm Central Standard Time.

6.2 Web Services: The service provider shall use Web services exclusively to interface with the City's data in near real time when possible.

6.3 Encryption of Data at Rest: The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data on a service provider portable device in order to accomplish work as defined in the statement of work.

SECTION 7. MISCELLANEOUS

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

7.2 Workforce

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

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

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

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

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

7.2.4 Subcontractor Disclosure: The service provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the service provider, and who shall be involved in any application development and/or operations.

7.2.5 Background Checks: The service provider shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of a felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The service provider shall promote and maintain an awareness of the importance of securing the City's information among the service provider's employees and agents.

7.2.6 Non-disclosure and Separation of Duties: The service provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.

7.2.7 Right to Remove Individuals: The City shall have the right at any time to require that the service provider remove from interaction with City any service provider representative who the City believes is detrimental to its working relationship with the service provider. The City shall provide the service provider with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential

security violation exists with respect to the request, the service provider shall immediately remove such individual. The service provider shall not assign the person to any aspect of the contract or future work orders without the City's consent.

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

7.4.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation filed by a member against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 **Right To Audit**

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

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

7.5.3 **Contract Audit:** The service provider shall allow the City to audit conformance to the contract terms. The City may perform this audit or contract with a third party at its discretion and at the City's expense.

7.5.4 **Access to Security Logs and Reports:** The service provider shall provide reports to the City in a format as specified in the SLA agreed to by both the service provider and the City. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all City files related to this contract.

7.5.5 **Data Center Audit:** The service provider shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

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

7.7 **Indemnity:**

7.7.1 **Definitions:**

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

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

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

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

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

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

delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Elisa Folco, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

110 Percent Inc.

ATTN: Jamie S. Sabbach, Contract Manager

P.O. Box 21541

Boulder, CO 80308

7.9.1 Notification of Legal Requests: The service provider shall contact the City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the City's data under this contract, or which in any way might reasonably require access to the data of the City. The service provider shall not respond to subpoenas, service of process and other legal requests related to the City without first notifying the City, unless prohibited by law from providing such notice.

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

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

- 7.12 **No Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available,

to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.13 **Gratuities**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14 **Prohibition Against Personal Interest in Contracts**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 **Independent Contractor**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 **Assignment-Delegation**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.17 **Waiver**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18 **Modifications**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19 **Interpretation**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
- 7.20 **Dispute Resolution**

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

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

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

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

7.23 **Holidays:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

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

7.25 **Non-Solicitation:**

7.25.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.25.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.25.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.25.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor

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

7.27 **Incorporation of Documents:** **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

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

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

7.28.2 the Supplemental Purchase Terms and Conditions;

7.28.3 the Standard Purchase Terms and Conditions;

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

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

110 PERCENT INC.

By: 
Signature

Name: JAMIE SABBACH
Printed Name

Title: PRESIDENT

Date: NOVEMBER 10, 2015

CITY OF AUSTIN

By: 
Signature

Name: Elisa Folco
Printed Name

Title: Corporate Contract Administrator

Date: 11/10/2015

List of Exhibits

Exhibit A	Offer
Exhibit B	Non Discrimination Certification



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: _____ DEPT: _____
TO: Purchasing Officer or Designee FROM: _____
BUYER: _____ PHONE: _____

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

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

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

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

- | | |
|--|---|
| <input type="radio"/> a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality | equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits |
| <input type="radio"/> a procurement necessary to preserve or protect the public health or safety of municipality's residents | <input type="radio"/> a purchase of rare books, papers, and other library materials for a public library |
| <input type="radio"/> a procurement necessary because of unforeseen damage to public machinery, equipment, or other property | <input type="radio"/> paving, drainage, street widening and other public improvements, or related matters, if at least one- third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements |
| <input checked="" type="radio"/> a procurement for personal, professional, or planning services | <input type="radio"/> a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters |
| <input type="radio"/> a procurement for work that is performed and paid for by the day as the work progresses | |
| <input type="radio"/> a purchase of land or right-of- way | |
| <input type="radio"/> a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for | |

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

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

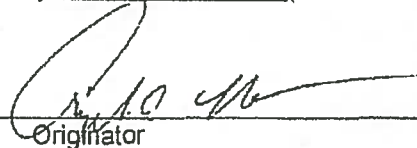
- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source.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

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

110%, Inc. and its strategic alliance partner, ePREepSolutions LLC, will provide PARD with an analysis of park and recreation services, and cost accounting. Jamie Sabbach of 110%, Inc. will act as project manager. Ms. Sabbach has both an educational background and years of experience that establishes her as uniquely and highly qualified to provide these services. She holds multiple degrees and has completed post-graduate work in Public Administration/Parks and Recreation Administration at Indiana University and at the Harvard University Kennedy School of Government. In addition to an extraordinary breathe of experience in working with park and recreation departments and teaching professional development and training programs across the country, Ms. Sabbach is one of just 125 practicing professional and academicians who has been inducted as a Fellow into the American Academy for Park and Recreation Administration. 110%, Inc. is offering PARD a highly competitive discounted subscription to its cloud based management tools, The SDscorecard & PASS. PARD will have access to these tools free of charge for two years after completion of the project, and in year 3, PARD will be provided with an additional three years at a discounted rate.


6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with 110%, Inc.
which will cost approximately \$56,290.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

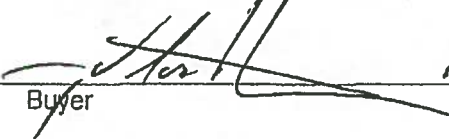

 8/21/15
Originator Date

Approved
Certification

 8/21/15
Department Director or designee Date

 8/24/15
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

 11/16/15 
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013

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

City of Austin, Texas
Human Rights Commission

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

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

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

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

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

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

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

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

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

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

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

Sanctions:

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

Term:

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

Dated this 10th day of NOVEMBER, 2015

CONTRACTOR

Authorized
Signature

Title

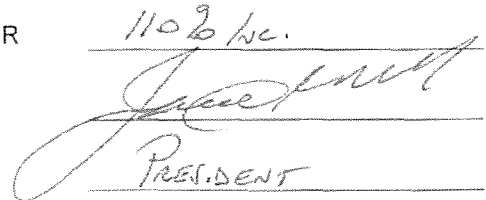
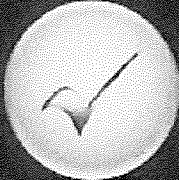
1102 Inc.

PRESIDENT


Exhibit A
Offer



SDscorecard[®]

**a business approach for
public parks & recreation agencies**

for service delivery optimization



**AUSTIN
PARKS &
RECREATION**

Cultural Places, Natural Spaces

**This statement of work proposal is specifically tailored for
consideration of the City of Austin Parks and Recreation
Department in Austin, Texas.**

Revision submitted: July 20th, 2015

110%

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July 20, 2015

Angela Means, Division Manager, Financial Services
City of Austin Parks and Recreation Department
200 S. Lamar Blvd.
Austin, TX 78704
Angela.Means@austintexas.gov



Dear Angela:

We are pleased to submit the following professional services proposal to you for review and consideration. You can be assured that our proposal brings an unparalleled approach to the analysis of park and recreation services, and cost accounting currently sought after by agencies across the U.S.

The statement of work as outlined will be led by 110%, Inc. of Boulder, CO with one of our strategic alliance partner, ePRepSolutions LLC, joining us for the cost accounting portion of this project. Our collective efforts provide this project with substantial experience in public sector leadership and management well as a powerful understanding of professional practice, its challenges, and nuances.

As a skilled consultant, trainer, facilitator and coach, Jamie Sabbach of 110%, Inc. will act as project manager. Jamie continues to help build the capacity of public and not-for-profit organizations across the country assisting them in the self-examination of their own leadership capabilities, in analyzing the operation of their systems, and in guiding them to instill necessary changes leading to organizational resilience.

In the event you have any questions as you assess the quality and relevance of the submitted proposal, please email jsabbach@110percent.net or call 720.304.2167. We look forward to the potential opportunity to work with the City of Austin Parks and Recreation Department.

Respectfully,

Jamie S. Sabbach, M.S., CPRP
110 Percent LLC
P.O. Box 21541
Boulder, CO 80308
720.304.2167
jsabbach@110percent.net

P.O. Box 21541 . Boulder, CO 80308 . 720.304.2167 . info@110percent.net . www.110percent.net



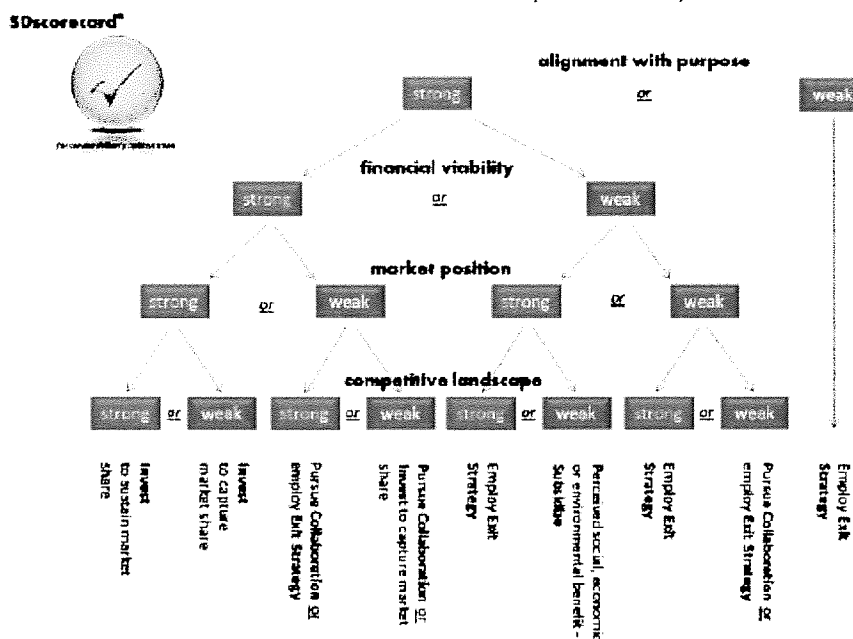
What is the SDscorecard®?

Challenging the long-held notion that agencies should provide "something for everyone", the *SDscorecard®* is a service delivery optimization tool which identifies those services an agency should be in the business of providing and how best to provide those services effectively and efficiently given today's complex conditions.

As part of a methodical service analysis process the *SDscorecard*® leads agencies to delivering higher-quality service in a focused way, reducing wasteful, unnecessary duplication and investing in those services which either meet a community need or provide an opportunity for return on investment.

- ➔ adaptive and agile leadership
- ➔ innovative business practices
- ➔ analytical decision making
- ➔ service design & delivery standards
- ➔ financial management strategies

The *SDscorecard*® filters all services through four criteria: *alignment with organizational purpose; financial viability; market position; and competitive landscape.*



Powerful outcomes and outputs of the process include the identification of critical data, information and strategies including:

- **Tax Use & Revenue Enhancement Strategies**
Invest in services which provide for a revenue enhancement opportunity.



Excess revenues can be redistributed to subsidize "social good" services, or to other services that can provide for further financial return on investment.

Collaborate when the opportunity to eliminate unnecessary duplication of service is present. Collaborative efforts provide for efficient and effective utilization of finite resources.



Exiting a service allows for reallocation of savings to subsidize "social good" services, or to services that can provide for financial return on investment.



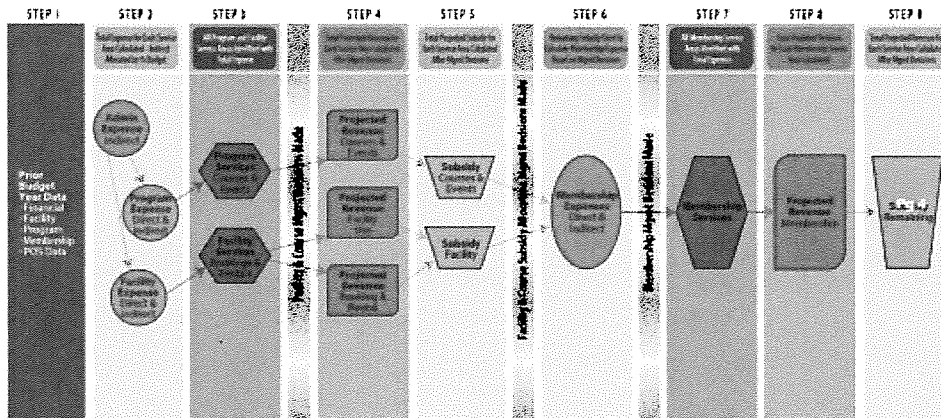
Subsidizing justifies and warrants the use of tax dollars to provide services which contribute to a greater "social good", producing a benefit to a community or constituency.



- **Service Categories** – the development of categories which include like services are important when it comes to justifiable and equitable allocation of subsidy, cost recovery levels, and assignment of budget and general ledger lines to account for a category's fiscal performance.
- **Cost of Doing Business** – the identification of the "cost of doing business" for each service via the application of PASS™, a ground breaking tool which identifies the real cost of doing business (direct and indirect costs). This unique application works with existing budgeting and software programs (i.e., CLASS, Rec Trac) to provide an automated and sophisticated cloud-based cost accounting effort. It ultimately leads to identifying accurate cost recovery and subsidy levels so that cost recovery goals are credible, the establishment of justifiable fees and charges, and improves staff optimization and efficiencies.

ePrepSolutions - Pass Software

Expense Flow Graphic - Identification of Services, Allocation of Expenses to Services, Management Decisions for Services, Projected Revenue & Subsidies of Services



110%
Below its potential

- **Pricing Strategies** –the development of logical and rationale pricing strategies including establishing fees and charges by individual service based upon either cost recovery pricing; market pricing; or competitive pricing.
- **Revenue Generating Opportunities** - identified opportunities to generate additional revenues beyond current practices (e.g., partnerships, collaborations, re-assessment of current pricing methods).

The 110% Approach

The process is a way to integrate staff and business principles in building a pathway to organizational effectiveness. Our job is to enable organizations to think in a way that causes action, to support them in creating new contexts in which improvement, new methods, capacities and standards are a natural occurrence, and to help them in creating and aligning with a shared future.

Our work with client organizations is grounded in 3 guiding principles.

1. Creating a conscious awareness of the conditions that impact an organization's state and culture
2. Building organizational capacity
3. Enhancing accountability

What does the SDscorecard® process include?

110%'s SDscorecard® process is a cost-effective, bundled effort that uses cutting edge methods that lead agencies towards enhanced business acumen and financial resilience.

Client organizations act as co-leads during the process enhancing staff engagement and buy-in. We are a fully invested and committed partner in the process providing coaching, education and expert guidance to support the process and its outputs and outcomes. While we customize each project with client organizations, our approach does include the following modules:

Module 1: Service Analysis

This unique effort is taking the parks and recreation world by storm! **SDscorecard® & PASS™** cloud based management tools allow agencies to analyze all services based upon their real costs, market position and the opportunities that exist, and the competitive landscape. Critical by-products of the analysis

SDscorecard®



are the identification of the true cost to provide each service to the organization and current cost recovery levels

(accounting for all costs of doing business) that ultimately inform a series of financial management strategies and policy development.

Step 1: Kick-off Meeting

The project officially kicks-off via a Project Initiation Meeting with the Division's pre-determined project team. A thorough review of the process will take place at this meeting including the formalization of timeline and details. This will include: approval of the proposed process and tasks; anticipated number and types of meetings and/or

workshops; review of information and data requested of the Division including current planning documents, and other relevant materials that will assist the Consulting Team in the evaluation and assessment of the Division; and expected quality and format of all deliverables. In addition, we will ensure staff optimization and efficiency by determining how best to manage and coordinate workshops and meetings.

Kick off meeting logistics & scheduling

- Active participation from the Department's Project Team
- 1 ½-2 hour Meeting

Step 2: Workshop I - Introduction to the SDscorecard® Process

Workshop I will provide a comprehensive overview of the process including the following.

1. Explanation and detailed description of the SDscorecard® methodology including what the process entails, how it works, and intended results
2. Staff will create the Department's Service Categories (i.e., Non-competitive Activities versus Intro to Gymnastics). [NOTE: The benefits to this approach are two-fold. First, it is inefficient for an agency to determine cost recovery levels by each individual service, and second and most importantly, categorizing by "type of service" or "likeness of service" discourages attempts to determine fees and charges (and therefore) cost recovery decisions based upon special interests or individual values.]
3. A comprehensive review of PASS™ and how its use leads to a thorough evaluation of existing cost of service provision and equitable fees and charges, and how

results can be used to make informed financial decisions moving forward. This also includes an introduction of the data and information needed to begin to "build" PASS™ process.

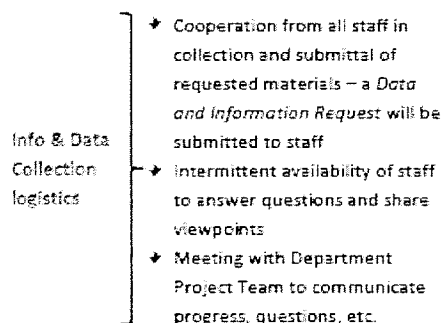
4. A review of staff's roles and responsibilities moving forward.

Workshop I logistics & scheduling

- Workshop(s) space conducive to a positive learning environment (e.g., well-lit, open, chairs and tables for attendees, good acoustics, WiFi)
- Set-up to include: chairs and tables for attendees set-up in a u-shape or herringbone facing front, head table, table for AV
- LCD projector, extension cord, and surge protector (for presentation)
- Five (5) hour workshop (e.g., 9 a.m. – 2 p.m. with breaks including lunch)

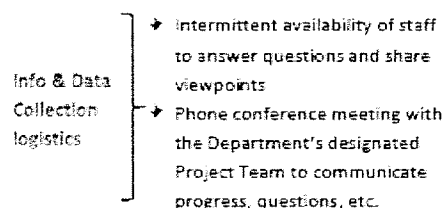
Step 3: Service Information & Data Collection

This phase of the process consists of data and information collection specific to PASS™. The Department will receive a comprehensive and detailed *Data and Information Request document* to guide the collection process. During this phase, the Consulting Team will be available via email and/or phone, in person, and can schedule phone conferencing when deemed appropriate to assist and guide staff as they collect this relevant and critical information.



Step 4: “Cost of Doing Business” Analysis - PASS™

Once all required data and information has been compiled and submitted, the PASS™ development process can begin. While building PASS™ the Consulting Team will remain in regular contact with the Department’s Project Lead to share development updates, to gain clarification as necessary, and to gather further relevant information and data as needed. This communication will be conducted in person, via email and/or phone, and phone conferencing can be scheduled when deemed appropriate.



Step 5: Workshop II

As a result of all work to date, Staff Workshop II will be held. This workshop will include the following.

1. Staff will receive a review of all reports generated through PASS™ and how the data and information can be used to assist

in the analysis of all recreation services (specifically, how the data will inform the assessment of each service’s financial condition and viability, and ultimately, how the data will direct the Division in its efforts to develop appropriate and equitable fees and charges, and realistic cost recovery goals).

2. Staff will receive a refresher of the *SDscorecard®* in order to gain a deeper understanding of what work they will need to complete for the next phases of the process.
3. Staff will provide their professional perspectives of each recreation service’s “public good” or “private good” in order to begin developing the Cost Recovery Model. Essentially, they will make recommendations concerning the “benefit” derived from each service to the community versus the individual user. [Staff input provides strong evidence to support the use (or non-use) of tax dollars to subsidize certain services.]
4. To complement staff perspectives relative to the “public good” versus “private good” of services, a comprehensive review and analysis of current cost recovery levels (based upon existing agency data and the completion of PASS™) will provide baselines for the development of realistic and achievable two-three year cost recovery goals for each Service Category and ultimately, a Cost Recovery Model.

*Optional: In the event the Department should so choose, a series of external stakeholder meetings / workshops can be scheduled to enlist public opinion concerning the “public good” or “private good” of services. This approach provides a complement to staff opinion and creates a comprehensive review of

stakeholder perspectives. [Board and/or Council members will be encouraged to participate in this step of the process per direction from the Project Team or Director.]

**Workshop II
logistics &
scheduling**

- Workshop(s) space conducive to a positive learning environment (e.g., well-lit, open, chairs and tables for attendees, good acoustics, ample electrical outlets for laptops, WiFi)
- Set-up to include: chairs and tables for attendees set-up in a u-shape, head table, table for AV
- LCD projector, extension cord, and surge protector (for presentation)
- Six (6) hour workshop (e.g., 9 a.m. – 3 p.m. with breaks including lunch)

Step 6: Service Information & Data Collection (cont.)

Staff will be asked to collect information and data in response to *SDscorecard®* criteria. Additionally, staff will be directed to utilize various resources as they gather relevant data and information in preparation of completing *SDscorecards®* for each of their services during Step 7. Recommended resources include, but are not limited to the following.

- ✓ Service need and goals
- ✓ Service evaluation and survey reports
- ✓ Registration data - past 3-5 years
- ✓ Current target markets
- ✓ Demographic information and data
- ✓ Known competitors

**Info & Data
Collection
logistics &
scheduling**

- Cooperation from staff in the collection of information and data
- 4-6 weeks for info and data collection

Step 7: Staff Work Session(s)

Facilitated service area work sessions for each service area or unit of the Department (e.g., aquatics, adult sports, seniors) will be held beginning with a brief review of the process to date. Immediately following review, staff will evaluate and assess (with guidance and direction from the Consulting Team) each service in their respective area utilizing all of the data and information compiled as a result of their resource collection efforts in Step 4.

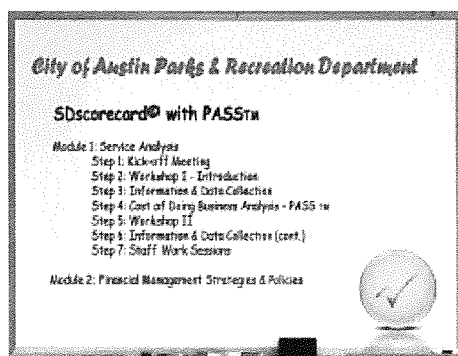
**Info & Data
Collection
logistics &
scheduling**

- Workshop(s) space conducive to a positive learning environment (e.g., well-lit, open, chairs and tables for attendees, good acoustics, ample electrical outlets for laptops)
- Set-up to include: chairs and tables for attendees set-up in a u-shape, head table, table for AV
- Laptops for each service area or unit
- LCD projector, extension cord, and surge protector
- Six (6) hour workshop (e.g., 9 a.m. – 3 p.m. with breaks including lunch)

Module 2: Financial Management Strategies & Policies

The development of comprehensive financial management strategies informed by the completion of Module 1 includes:

1. Current cost recovery/subsidy allocation levels by individual service
2. A useful Cost Recovery Model based upon real-time data and actual performance levels rather than arbitrary benchmarks, and
3. Financial management strategies and policies that will position the agency to immediately address short term financial challenges as well as long term financial interests such as investing in infrastructure (e.g., retained earnings policy).

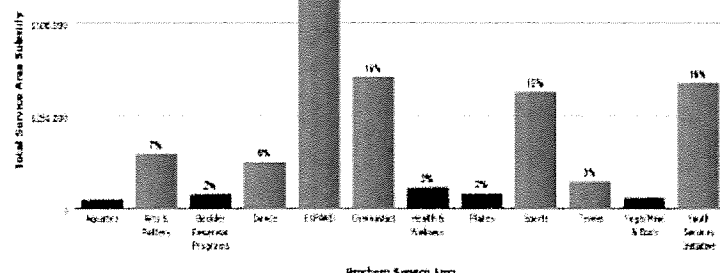


"The SDscorecard® enabled us to create a system that gives us immediate answers to the 'what if's' of the government budget processes: What if our agency is asked to become self-sufficient by 2015? What if health care costs increase by 20%? What if we continue to provide senior lunches for \$1? This process helped us create metrics to answer those questions. It has become our best weapon in budget preparation and negotiation forums by enabling us to provide practical, easy to understand data to support our recommendations to our community and governing boards."

*Lisa Paradis, Director
Brookline MA Recreation Department*

"When taking a business approach to accounting for all costs, assessing our markets and the competition, we were able to see our current service delivery practices in a very different light. This year we saved \$298,000 and generated \$100,000 more than projected. We are a better managed system and are focused on directing resources in a more responsible, justifiable way..."

*Farrell Buller,
former Recreation Manager,
Lakewood CO Arts, Parks & Recreation
Department (current Director, Erie Parks &
Recreation Department)*



Sample results & deliverables

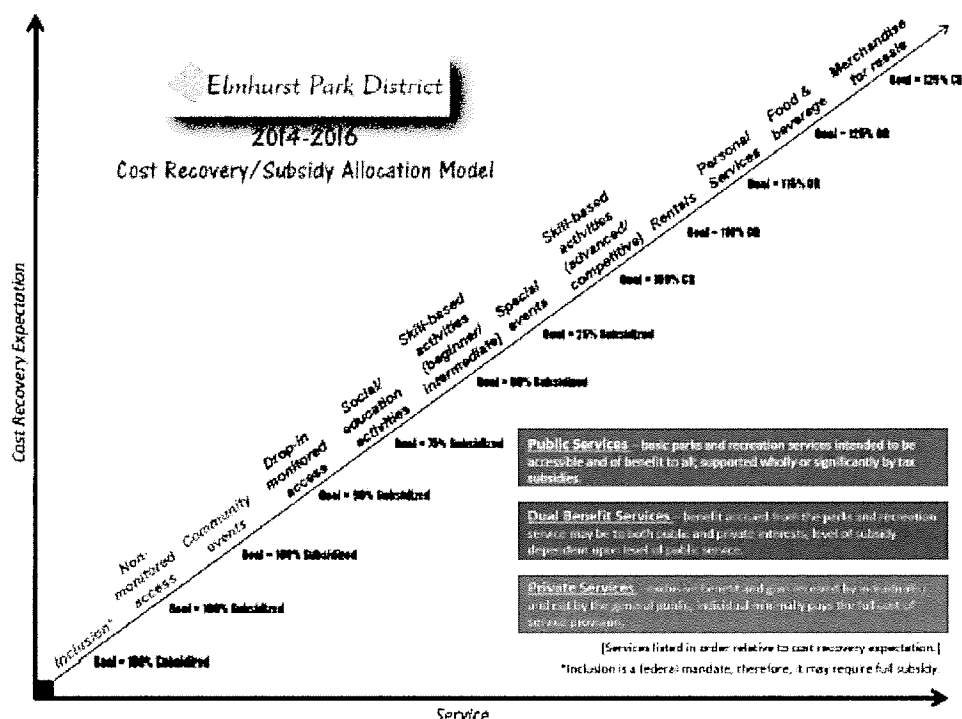
Discharge Service Army Course Summary Report - 50Commsand

[illegible]

2010-2011 Program Funding by Program Type

Program Type	Percentage
Aquatics	4%
Arts & Pottery	7%
Boulder Reserve Programs	2%
Dance	10%
EXPAND	18%
Health & Wellness	7%
Plates	1%
Sports	14%
Tennis	4%
Yoga/Mind & Body	3%
Youth Services Initiative	1%
Gymnastics	10%

Illustration & report
examples - City of
Boulder (CO) Parks and
Recreation Department
2015



Service Area: YOUTH ASP & CAMPS	Alignment w Org Purpose		Financial Viability		Market Position		Other Key Provider Coverage		Recommended Operational Strategy	Pricing Strategy
	Yes	No	Good	Poor	Strong	Weak	High	Low		
DAY CAMPS										
Operation Recreation (School Year)	X		X		X		X		Invest to Sustain Market	Market, Competitive
Operation Recreation (Summer)	X		X		X		X		Invest to Sustain Market	Market, Competitive
Club House (Summer)	X		X		X		X		Invest to Sustain Market	Market, Competitive
Endless Summer Camp	X		X		X			X	Invest to Capture Market	Market, Cost recovery
BEFORE/AFTER SCHOOL										
Kids INC	X		X		X			X	Invest to Capture Market	Market, Cost recovery
Kindergarten Care (Before/After School)	X		X			X	X		Discontinue	N/A
Pre-K Readiness	X		X			X	X		Discontinue	N/A
DROP IN RECREATION										
M.A.S. I.C. in the Parks (Free Drop-in)	X			X	X			X	Social Good	Cost recovery, Market
OUTDOOR CAMPS										
Cougar Camp	X		X		X		X		Invest to Sustain Market	Market, Competitive
Adventure Camp	X		X		X		X		Invest to Sustain Market	Market, Competitive
Base Camp	X		X		X		X		Invest to Sustain Market	Market, Competitive

Service menu example – Bend (OR) Park and Recreation District 2013

Presentation of Results & Deliverables

At the conclusion of the process, a final presentation will be made to staff (and at a scheduled Board or Council meeting at the discretion of the Director) disseminating results of all work completed.

Comprehensive, detailed information will be provided to the Department based upon all project work as identified and confirmed in this proposal and in the Project Kick-off Meeting. Deliverables will include the following items:

1. Analytic reports that articulate and illustrate the "true" cost of service provision for each selected service unit of the Department (indirect and direct costs) as well as accurate subsidy and cost recovery levels by service (as determined by PASS™).
2. A Department Cost Recovery Model (2-3 year) that includes Department service categories and realistic, credible cost recovery (and subsidy allocation) goals based upon current cost recovery levels (as determined by PASS™).
3. Service Menus for those services selected to be analyzed by the Department. These menus will include recommended financial strategies (e.g., invest for expected return, collaborate, exit) as well as recommended pricing strategies (as determined by the SDscorecard®).
4. Assessment tools that will allow staff to evaluate the relevancy and effectiveness of Department services in the future.
5. A two (2) year license agreement for PASS™ and SDscorecard® (cloud based systems).

In a commitment to sustainable practices, an electronic version of the final report will be provided to the Department. Hard copies will be provided for an additional fee, if desired.

Proposed Process Timeline

tasks	month 1	month 2	month 3	month 4	month 5	month 6
Execution of Contract and Agreement						
Module 1: Service Analysis						
Step 1: Kick-off Meeting						
Step 2: Workshop I - Introduction						
Step 3: Information & Data Collection						
Step 4: Cost of Doing Business Analysis - PASS™						
Step 5: Workshop II (& CR Public Input)						
Step 6: Information & Data Collection (cont.)						
Step 7: Staff Work Sessions						
Module 2: Financial Management Strategies & Policies						
Presentation & Summary Report						

Proposed Process Fee

SDscorecard® incl: PASS™		\$56,290
SDscorecard® only	\$940/year (\$95/month)	
PASS™ only	\$11,250/year (\$937.50/month)	
SDscorecard® + PASS™ Bundle	\$13,590/year (\$1132.50/month)	
Discounted rates for multiple years	SDscorecard® + PASS™ Bundle (for 3 years)	\$10,830/year (\$902.50/month)
	SDscorecard® + PASS™ Bundle (for 5 years)	\$7,754/year (\$646.17/month)

NOTE: The first two (2) years of SDscorecard® and PASS™ cloud based tools are included in the cost of this proposal. In the event the agency is interested in continuing use of these tools after the initial year, subsequent years' rates apply per the pricing chart at left.

110%
Active Recovery

Appendix A
Firm Profiles, References, Testimonials & Consultant Bios

110%
Before is possibility.

helping premier agencies tackle today's tough issues...

p.o. box 21741 boulder, colorado 80503 usa@110percent.net info@110percent.net

thought leaders strategy coaches expert consultants

Started in February of 2010 and located in the beautiful outdoor recreation mecca of Boulder, Colorado, 110 Percent helps organizations adapt their way of managing to meet today's dynamic economic and social shifts.

We are proud of the work we are doing and are proud of the reputation we have earned based upon what agencies are saying after having worked with us.

Our cutting edge cost recovery and service delivery models, and our unique approach to strategic action planning are unparalleled. And the *SDscorecard®*, a ground breaking financial management strategy is taking the parks and recreation world by storm!

Our soapbox...

We are in a precarious time...a time in which the value of parks and recreation has been challenged. And a time when the profession is faced with a variety of critical issues such as an incomprehensible amount of deteriorating infrastructure, rapidly changing demographics, and special interests spinning out of control.

There's far too much apathy and complacency around issues that must be tackled head on - and it seems inevitable that those apathetic and complacent agencies which constantly occupy neutral ground will slowly drift into obscurity.

Imaginative, bold, & courageous are the traits that describe the agencies that choose to work with us.

Our belief in the power of possibility...

Breaking the four minute mile barrier was one of many signs that the impossible is possible. Widely held four minute mile equivalents suggesting "it can't be done" inhibit organizations from believing that they are able to "do the impossible". Whether it be trying something unconventional, putting yourself on the line or advocating for an unpopular yet necessary change, isn't it worth the effort to see if the impossible is indeed a possibility?

Some of the agencies we have helped...



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Before is possibility.

Professional References - sampling

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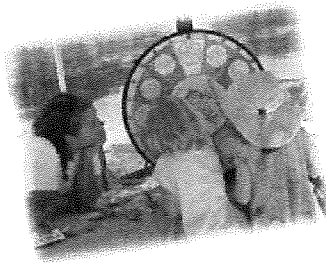
Bend Park and Recreation District, Bend, Oregon

Due to their responsive management, the Bend Park and Recreation District initiated the development of a recreation needs assessment, parks and recreation services analysis, and three year strategic plan for the Bend Park and Recreation District in Bend, Oregon. This project was done in partnership with Heller & Heller, Inc. and Leisure Vision.



Brookline Recreation Department, Brookline, Massachusetts

Development of a cost recovery model for the Town of Brookline Recreation Department in Brookline Massachusetts included a public engagement providing an assessment of community representative perspectives on which recreation services provided the greatest community benefit. The project culminated with the development of a cost recovery model which included the identification of current cost recovery levels and three year cost recovery goals based upon those baselines.



Carol Stream Park District, Carol Stream, Illinois

The Carol Stream Park District, in the midst of building a new 90,000 square foot recreation center, initiated a strategic action planning effort to ensure quality service delivery and long term fiscal health. The project's focus was on the inclusion of all full time staff in the development process and intentional outcomes that included measurable actions and performance outcomes.

Commerce City Parks and Recreation Department, Commerce City, Colorado

Development of a Service Sustainability Model for the Commerce City Parks and Recreation Department included a cost recovery/subsidy allocation model with current cost recovery levels based upon all costs of doing business, and three year cost recovery/subsidy allocation goals.



Fort Collins Recreation, Parks, Libraries and Forestry Department, Fort Collins, Colorado

The City of Fort Collins' interests in a business plan and feasibility study were a responsible, precursory step to an anticipated proposed enhancement /expansion of the City of Fort Collins Senior Center.

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Professional References - sampling (cont.)

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Lexington Recreation Department, Lexington, Massachusetts

The Town of Lexington Massachusetts Recreation Department, in response to a perceived lack of facilities and strong community interests, developed a five year strategic action plan to position themselves to be organizationally and financially resilient moving forward.



Gallaudet University, Washington D.C.

Resulting from state and federal budget reductions, Gallaudet University executed the development of a program analysis and business plan for two community outreach programs for hearing impaired children in the Washington D.C. area

Milwaukee Public Schools – Recreation & Community Services Division, Milwaukee, Wisconsin

After having experienced significant political shifts, strong demographic changes, and financial challenges, the Division initiated the development of a services analysis and strategic action plan to strengthen their position in the MPS system.

Prince George's County – Maryland National Capital Parks and Planning Commission, Prince Georges County, Maryland

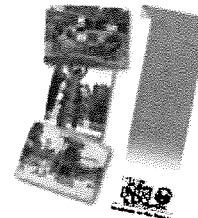
The development of a Commission Vision Plan which included a recreation needs assessment and service analysis created a future road map for the organization.

South Suburban Park and Recreation District, Centennial, Colorado

As the largest parks and recreation district in the state of Colorado with a budget of more than \$50M, and growing community demand, the South Suburban Park and Recreation District found it was in the midst of a paradigm shift. As such the District initiated the development of a three year strategic action plan to create a guide post for future operational decision making.

Spokane Parks and Recreation Department, Spokane, Washington

The City of Spokane Parks and Recreation Department chose to create a "Roadmap to the Future" as a guiding strategy document for their future management decisions. This was a direct result of a significant debt load and limited subsidy which threatened their long term organizational health.



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Client Testimonials

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"I have worked with the 110% team on a number of projects and each one has been better than the last. Their patient guidance, combined with their professional expertise has given us project results that have been incredibly useful in strategic planning for the agency. Working with 110% has inspired confidence in our management team, and has given us the tools to thrive in any economic climate."

Lisa Paradis, Brookline Recreation Department, Brookline, MA ph. 617.730.2136

"You bring a compelling combination of passion and expertise that can stimulate powerful collaborative staff and community teamwork. Following your lead will embark any agency on a thorough and revealing exploration of organizational issues and resolution."

John Henderson, Prince George's County Parks and Recreation, Riverdale, MD ph. 301.699.2407

"110% is the real deal. They have the ability to establish dynamic and interactive relationships with professional staff, elected officials and community residents."

Carolyn Keith, Commerce City Parks and Recreation Department, Commerce City, CO ph. 303.289.3691

"As an attendee at a recent training presentation by Jamie Sabbach, I found her to be a teacher and educator of rare ability. Her knowledge, skill and ability to present appropriate and pertinent information for today's practitioners are stimulating and refreshing. Jamie uses her intelligent and creative approaches to present information so that it is easily understood and retained."

Mike Peterson, Cottonwood Heights Parks and Recreation Department, Cottonwood Hts, UT ph. 801.943.3190

"Jamie is an engaging, high energy speaker, consultant and problem solver. She brings credibility to the many agencies and individuals that have received or plan on seeking her assistance to sort through increasingly difficult public policy issues involving financial management, customer service, cost recovery, community engagement, and capital investment. Jamie has a way of breaking down complex issues and making solutions a little less complicated to implement. She really was in it for us."

Bill Gilmore, Arlington Parks and Recreation Department, Arlington, TX

"Thanks to her diverse professional background, Jamie has outstanding knowledge and skills as a trainer in a broad array of public sector and business topics. She is adept at fully engaging her participants in a manner that ensures learning and retention of information shared."

Cindy Curtis, City of Virginia Beach, Virginia Beach, VA ph. 757.385.4242

"Your work with us had an enormously positive impact on our staff. A month later and they are still talking about cost recovery, pricing and trends. So thank you for an incredible experience that was thought provoking, relevant and engaging – and that will propel us to the next step toward sustaining our parks and recreation system."

Katie Anderson, Redmond Parks and Recreation Department, Redmond, WA ph. 425.556.2334

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Jamie S. Sabbach, M.S. strategy coach & professional speaker

The most important stuff should always come first... Jamie is originally from Chicago, has a Halloween birthday, is a former college jock, enjoys hiking, mountain biking and golf, volunteers for Community Food Share, the American Cancer Society and Little League Baseball, and is a Chicago Cubs and Bears fan!

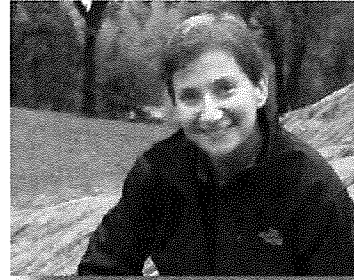
Jamie also founded 110%, inc. in 2010 as a way to make an impact. Located in the recreation mecca of Boulder, Colorado, 110%'s promise is quite simply, *to challenge conventional thinking, to leave an indelible mark, and to change things for the better.*

In Jamie's glory days, she played college softball and later coached at the University of Illinois. After her stint in college athletics, she worked for notable public agencies including the Champaign Park District (IL), the Bloomington Parks and Recreation Department (IN), and the Boulder Parks and Recreation Department (CO). She has been an adjunct faculty member at many universities, an Instructional Assistant Professor at Illinois State University, and continues to contribute to higher education as an affiliate faculty member at Metro State University in Denver, Colorado.

Jamie's past experiences in athletics, as a public parks and recreation professional and as a college instructor have fed her passion to help others enhance their own talents and improve performance. Her current work as a consultant, coach and trainer focuses on enhancing adaptive leadership capabilities and organizational effectiveness. Her inherent ability to mobilize people towards a common purpose allows her to direct dynamic processes leading to impressive results.

Jamie is an active member of the *National Recreation and Park Association* having served in a variety of leadership capacities. She is a past President of the *American Park and Recreation Society*, and in 2008 was inducted as a Fellow into the *American Academy for Park and Recreation Administration* whose membership is limited to 125 practicing professionals and academicians from across the United States.

Jamie has taught more than 200 professional development and training programs for agencies, at various continuing education schools, and at a number of state, regional, national and international conferences since 1996.



Awards/Recognitions

- World Leisure Conference - Selected Presenter, Rimini, Italy, 2012
- International Federation of Park and Recreation Administration - Selected Presenter, Basle, Switzerland, 2012
- American Academy for Park and Recreation Administration President's Award, 2011
- World Leisure Conference - Selected Presenter, Chun Cheon, South Korea, 2010
- American Academy for Park and Recreation Administration, Inducted 2008
- World Leisure Conference - Selected Presenter, Quebec, City, Canada, 2008
- International Federation of Park and Recreation Administration - Selected Presenter, Dublin, Ireland, 2007
- NRPA/APRS President's Recognition, 2002-2003
- City of Bloomington Community Council on Accessibility – Human Services Award, 2000
- NRPA/APRS President's Award, 1999
- NRPA/APRS Young Professional of the Year – Meritorious Service Award, 1998
- National Recreation and Park Association's Professional Fellowship Recipient, 1995
- Illinois Park and Recreation Association's Al Hattendorf Professional of the Year, 1994

Education

Harvard University, Cambridge, Massachusetts
Kennedy School of Government, TAPLD, 2014

Indiana University, Bloomington, Indiana
Post-Graduate coursework, 1998-2000
Public Administration/Parks and Recreation Administration

Eastern Illinois University, Charleston, Illinois
Master of Science Degree, August 1988
Business/Sports Administration

Eastern Illinois University, Charleston, Illinois
Bachelor of Science Degree, May 1986
Physical Education (major), Business



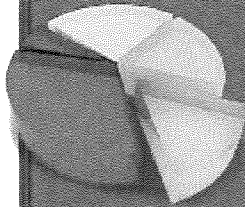
Matthew J. Hickey, M.S.M.
Founder & Managing Member



Matthew J. Hickey has 25 years of operational experience in the parks and recreation industry. As Founder of eRepSolutions, Matthew was the "brawn" behind the development of PASS™. His vast experiences as a parks and recreation professional including his most recent role as a Senior Operations Analysis/Computer Systems Manager for the City of Boulder Parks and Recreation Department in Boulder (CO) provided him the platform from which he was able to create the framework for PASS™.

Matthew's expertise is in analysis of financial, facility and program management data collection and interpretation, the application of registration, membership and Point-of-Sale software and advanced computer office software systems and applications. He has extensive experience in municipal and private facility management; the design and function of parks and recreational facilities and programs, budgeting and accounting; staff supervision; marketing; and business development.

eRepSolutions offers PASS™, a unique and innovative fiscal planning and management process, specific to tracking the real cost of service provision in government, including all direct and indirect costs for federal, state and local parks and recreation organizations. The necessity for such an application has grown exponentially in recent years due to the overall downturn in the United States economy and the resulting stagnation of parks and recreation budgets, as well as increased interest in governmental and non-profit agency accountability.



PASS™ itself gives organizations the platform by which they can understand the true cost of doing business and how they can most effectively and efficiently serve their constituents. Whether determining how best to identify and offer new services or determining how to most responsibly reduce budgets, PASS™ provides organizations a comprehensive approach to financial management.

eRepSolutions