



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

March 3, 2017

Delib Limited
Mr. Andrew Parkhouse
35 King Street
Bristol, BS14DZ, GB

Dear Mr. Parkhouse:

The City of Austin approved the execution of a contract with your company for Budget Simulator Application and Support in accordance with the referenced solicitation.

Responsible Department:	Financial Services – Budget Office
Department Contact Person:	Katie Stewart
Department Contact Email Address:	katie.lust@austintexas.gov
Department Contact Telephone:	512-974-7887
Project Name:	Budget Simulator Application and Support
Contractor Name:	Delib Limited
Contract Number:	NA170000095
Contract Period:	03/03/17 – 03/02/18
Dollar Amount	\$12,295
Extension Options:	none
Solicitation Type & Number:	Professional Services

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

John Hilbun
Contract Administrator Corporate
City of Austin
Purchasing Office

cc: Katie Stewart, Budget Office

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Delib Limited
For
Budget Simulator Application and Support
MA 7400 NA170000095**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Delib Limited ("Contractor"), having offices at 35 King Street, Bristol, BS14DZ, GB.

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 Andrew Parkhouse, Phone: 0845-638-1848, Email Address: services@delib.net. The City's Contract Manager for the engagement shall be Katie Stewart, (512) 974-7887, Email Address: katie.lust@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.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks:

- 2.2.1 Contractor shall provide a customized version of the Budget Simulator web-based application powered by the Budget Simulator platform for the subscription period specified in Section 4.1.
- 2.2.2 Contractor shall provide comment boxes via the application to collect residents' views on improving services. Contractor shall provide comments to the City upon request.
- 2.2.3 Contractor shall monitor web application to ensure continued availability.
- 2.2.4 Contractor shall provide maintenance as needed to remedy errors in the web application.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor will be paid an amount not-to-exceed \$12,295 for all fees and expenses upon the successful completion of the Scope of Work, as described herein.

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 Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be 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	Budget Office
Attn:	Katie Stewart
Address	301 W. 2 nd Street, 3 rd Floor
City, State, Zip Code	Austin, TX 78701

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 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for a term of twelve (12) months.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary 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 Fraud. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirements apply.

5.1.1 General Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$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 **Professional Liability/Technology Errors and Omissions Insurance.** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any

negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

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

5.2 **Equal Opportunity.**

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

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

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

5.4 **Delays.**

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

5.4.2 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.

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

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

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

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

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

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

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

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

SECTION 7. MISCELLANEOUS

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

7.2 Workforce.

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

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

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

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

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

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

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

7.5 Audits and Records.

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

7.5.2 Records Retention:

7.5.2.1 For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the contract.

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

7.5.2.2.1 requested by a director or an authorized City employee; or

7.5.2.2.2 the contract is completed or terminated.

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

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

7.7 **Indemnity.**

7.7.1 Definitions:

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

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

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

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

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

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect 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: John Hilbun, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Delib Limited

ATTN: Ben Fowkes, Senior Consultant

35 King Street

Bristol, BS1 4DZ, UK

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

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

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

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

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

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor.

The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

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

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

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

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

7.20 **Dispute Resolution.**

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

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

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

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

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

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

7.22 **Subcontractors.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DELIB LIMITED

By: B. Fowkes
Signature

Name: BEN FOWKES
Printed Name

Title: SENIOR CONSULTANT

Date: 20th December 2016

CITY OF AUSTIN

By: John Hilbun
Signature

Name: JOHN HILBUN
Printed Name

Title: CONTRACT ADMINISTRATOR

Date: 03/03/17

List of Exhibits

Exhibit A Delib Limited offer dated December 8, 2016
Exhibit B Non-Discrimination Certification, Section C800

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 _____ day of _____, _____

CONTRACTOR

Authorized
Signature

Title

DELIB LTD
[Signature]
Senior Consultant

SOFTWARE AS A SERVICE AGREEMENT



PARTIES:

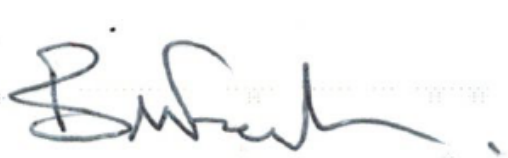
DELIB	DELIB LTD, 35 King Street, Bristol BS1 4DZ, UK
THE CLIENT	CITY OF AUSTIN, 301 W. Second St., Austin, Texas 78701 USA

AGREEMENT DETAILS:

Item	Description	Details		
1.	Product	Budget Simulator Standard Subscription		
2.	Product Specifications	Delib will provide a customised version of the Budget Simulator web-based application, powered by the Budget Simulator platform, for the desired subscription period. The web application will serve as a platform for Austin residents to provide their budget priorities for the upcoming year. The customisation requested by City of Austin is for the addition of comments boxes to collect residents’ views on improving services, which they can provide alongside giving their priorities. Delib is the only vendor that can maintain and provide platform support for the Budget Simulator web application. Delib provides 24/7 monitoring of the web application to ensure continued availability and application maintenance if any errors arise.		
3.	Additional Services	Bespoke development		
4.	Client responsibilities	See Section 4 in Terms & Conditions - Client Obligations Please provide the initial requirements outlined in this article: https://delib.zendesk.com/hc/en-us/articles/203434029-Budget-Simulator-set-up-requirements		
5.	Term	(a) Agreement Commencement Date: The date on which we receive the signed agreement		
		(b) Product Deployment Date: The date upon which we deploy your interim site (5 – 10 working days from the Agreement Commencement Date)		
		(c) First Subscription Period: 12 months from the Agreement Commencement Date;		
		(d) Subscription Period renewals: This Agreement renews annually unless terminated (See Sections 2 and 10 in Terms and Conditions)		
6.	Key Client Contact	Name:	Katie Lust	
		Position:	Budget Analyst Senior	
		Phone:	001 512-974-7887	
		Email:	Katie.Lust@austintexas.gov	
7.	Fees	1 year Budget Simulator Subscription		\$9,495
		Deployment of additional Spanish Budget Simulator		\$1,600
		Bespoke development – edit: button wording, ‘consequences’ wording and comment box wording, inclusive of QA		\$1,200
		TOTAL:		\$12,295
		All amounts are exclusive of VAT.		

Item	Description	Details
8.	Payment method	Payment must be made within 30 days of the date on the invoice, by BACS.

Executed as an agreement on the dates below:

Signed for and on behalf of Delib:	DELIB LTD Company No. 5158056
By its authorised representative:	 <div style="text-align: right;">[Signature]</div>
Name:	Ben Fowkes
Title:	Senior Consultant
Date:	20/12//2016

Signed for and on behalf of the Client:	CITY OF AUSTIN
By its authorised representative:	<div style="text-align: right;">[Signature]</div>
Name:	
Title:	
Date:	

BACKGROUND

- A Delib provides software as a service applications and associated services.
- B The Client wishes to engage Delib to provide those services in accordance with the terms and conditions of this Agreement.

AGREEMENT

1 Definitions

In this Agreement, unless the contrary intention appears:

Act	means the Data Protection Act 1998.
Agreement	means this Agreement and includes the Agreement Details and any schedules and other attachments.
Agreement Commencement Date	means the date specified in Item 5(a) of the Agreement Details.
Business Day	means a day on which banks are open for business in England & Wales, other than a Saturday, Sunday or public holiday.
Confidential Information	<p>means, in relation to a Party, information that is by its nature confidential, or is communicated to the other Party as confidential, or the other Party knows or ought to know is confidential, and includes:</p> <ul style="list-style-type: none">(a) subject to open records requests;(b) all information in any way relating to the Party's business, strategies, marketing practices, finances and customers;(c) in the case of Delib, all technical information in relation to the Product; and(d) in the case of the Client, the Client Data.
Client Data	means information concerning Users provided by the Client to Delib or collected by Delib from User interaction with the Service.
Client Materials	<p>means material (including software, documentation and data) provided by the Client to Delib, or created by Delib on behalf of the Client for the sole purpose of performing its obligations under this Agreement, including:</p> <ul style="list-style-type: none">(a) text, artwork and logos provided by the Client for the purposes of customisation of the Product; and(b) Client Data, <p>but does not include Delib Materials.</p>
Data Controller	as set out in section 1(1) of the Act.
Data Processor	as set out in section 1(1) of the Act.

Delib Materials	means any material (including software, documentation and data) provided by Delib to the Client in the course of Delib performing its obligations under this Agreement, which: <ul style="list-style-type: none">(a) is existing at the Agreement Commencement Date;(b) is produced after the Agreement Commencement Date independently of this Agreement; or(c) consists of improvements or enhancements to the Product or the Services or any other Delib Materials.
Details	means the information set out in the Agreement Details at the head of this Agreement.
Fees	means the fees specified in Item 7 of the Details and any additional fees charged by Delib in accordance with this Agreement or agreed between the Parties from time to time.
Intellectual Property	means patents, copyright, registered and unregistered design rights, registered and unregistered trademarks, rights in know-how and confidential information and all other intellectual and industrial property rights (without limitation) all similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.
Personal Data	as set out in section 1(1) of the Act.
Product	means the product identified in Item 1 of the Details.
RPI	means the All Items Retail Prices Index (as published by the Office for National Statistics).
Services	means services identified in clause 2.1 and any other services in relation to the Product agreed between the Parties from time to time.
Subscription Period	a period of 12 months, unless otherwise specified in the Agreement Details.
Terms of Use	means the current terms of use that govern the use of the Product and the Website.
User	means an individual who interacts with the Product through the Website, and may include the Client's officers, employees, contractors, agents and volunteers.
User Generated Content	means text, images or other materials or content generated or contributed by Users.
Website	means the website at the address specified in Item 4 of the Details.

2 Delib's obligations

2.1 During the Term, Delib will provide the following Services to the Client:

- (a) use of the Product, the Delib Materials and the Website in accordance with this Agreement, commencing on the Product Deployment Date;

- (b) Additional Services identified in Item 3 of the Details; and
- (c) any other Services relating to the Product and agreed in writing from time to time during the Term.

2.2 Delib will use reasonable endeavours to:

- (a) ensure that the Services meet the Target Service Levels specified in Schedule 1 to this Agreement but does not warrant that the Services will be uninterrupted or free of errors; and
- (b) provide the Client with advance notice in respect of planned unavailability of any part of the Services for maintenance purposes.

3 Client's obligations

The Client must:

- (a) fulfil the responsibilities specified in Item 4 of the Details;
- (b) pay Delib the Fees in accordance with Items 7 and 8 of the Details;
- (c) comply with all applicable laws and obtain all necessary approvals, authorisations, licences and permits as they relate to the Client's use of the Services including for example, but without limitation, marketing, consumer, spam and privacy laws;
- (d) use the Services in connection with the Website and in accordance with this Agreement only;
- (e) not, without Delib's consent, allow third parties (other than Users) to use the Product or Services;
- (f) at its own expense, respond to questions and complaints relating to the Client's or Users' use of or interaction with the Product or Services;
- (g) use reasonable endeavours to resolve support issues before escalating them to Delib, including referring to instructions and guidance that Delib has provided to the Client or made available online;
- (h) ensure security measures are in place to keep the Client's own access to the Services secure;
- (i) immediately notify Delib if it experiences security issues such as attempted or actual unauthorised third party access or denial of service attacks in connection with the Services;
- (j) display on the Website any text concerning privacy, Terms of Use, copyright and other issues requested by Delib; and
- (k) always make the Product available to Users in conjunction with the Client's own privacy policy and subject to the Terms of Use.

4 Intellectual Property

- 4.1 Nothing in this Agreement affects either Party's Intellectual Property rights existing prior to the execution of this Agreement.
- 4.2 Delib grants to the Client a worldwide non-exclusive licence for the Term to use the Delib Materials to the extent necessary for the Client to obtain the benefit of the Services as set out in this Agreement.
- 4.3 The Client grants to Delib a worldwide non-exclusive licence for the Term to use, reproduce and, where appropriate, publish any Client Materials and Client Data in

connection with the Agreement, solely to the extent necessary for Delib to perform its obligations under this Agreement.

- 4.4 Subject to clause 4.5, Delib owns all Intellectual Property developed under or incidental to the Services provided during the Term, including any additions or improvements to the Product and the Delib Materials, even where those additions or improvements arise from feedback or suggestions from the Client. This Intellectual Property will vest in Delib on its creation.
- 4.5 The Client owns all Intellectual Property in all Client Materials and Client Data, whether created before or after the Agreement Commencement Date, and Intellectual Property in all Client Materials and Client Data will vest in the Client on its creation.
- 4.6 Each Party assigns to the other Party all Intellectual Property necessary to confirm clauses 4.4 and 4.5 and each Party will execute and deliver to the other Party upon request any documents reasonably necessary to confirm and perfect those rights.
- 4.7 The Client must not amend, alter, copy, distribute, make a derivative work of or otherwise deal with any part of the Delib Materials or the Product in a way inconsistent with Delib's rights as owner of the Intellectual Property in the Delib Materials and the Product.
- 4.8 If any claim is brought against Delib that the Client Materials and/or User Generated Content, or its use by Delib, infringes an intellectual property right of a third party, the Client will at its own expense:
 - (a) settle or defend the claim; and
 - (b) pay any damages or costs finally awarded against Delib as the result of the claim.
- 4.9 If any claim is brought against the Client that the Product, or its proper use by the Client, infringes an intellectual property right of a third party, Delib will at its own expense:
 - (a) settle or defend the claim; and
 - (b) pay any damages or costs finally awarded against the Client as the result of the claim; and
 - (c) fully indemnify the Client in respect of all costs, losses, damages and expenses incurred by the Client in respect of such infringement.

This indemnity will not apply to the extent that any such claim arises out of the inclusion of Client Materials and/or User Generated Content in the Product/Website, any changes made to the Product/Website without Delib's consent or the use of the Product in combination with any other equipment or software not approved by Delib.

5 Warranties and liability

- 5.1 Except for those warranties set out in this Agreement, or implied by law and unable to be lawfully excluded, Delib gives no warranties or guarantees and accepts no liability concerning the Services. Any conditions, rights, warranties or guarantees implied by law are expressly excluded to the extent permitted by law.
- 5.2 Subject to clause 5.3, the Client agrees that:
 - (a) Delib will not be liable to the Client for:
 - (i) any loss, damage, injuries, actions, claims, costs or expenses arising out of the use of or reliance on or purchase of the Services or failure of the Services to provide expected benefits, or inability to use the Services, or use of the Product by Users; or
 - (b) the following types of loss whether direct or indirect:

- (i) loss of profit;
- (ii) loss of goodwill;
- (iii) loss of business;
- (iv) loss of business opportunity;
- (v) loss of anticipated saving;
- (vi) any special, indirect or consequential damage or loss suffered by the other party,

arising or caused in any way whatsoever, including as a result of any Force Majeure Event and whether or not foreseeable; and

- (c) Delib's liability to the Client for all loss, damage, injuries, actions, claims, costs or expenses arising out of this Agreement and caused in any way whatsoever, including negligence or failure to comply with this Agreement, and not otherwise excluded or limited, will be limited in the aggregate to the lesser of:
 - (i) the total Fees paid by the Client to Delib; and
 - (ii) the total Fees paid by the Client to Delib over the previous 12 months, under this Agreement at the time the alleged cause of the liability arises.

5.3 The Client warrants to Delib that it recognises that the product is delivered to a fixed specification and it is up to the Client to ensure the specification will deliver what the Client requires. Delib will have no liability for the Client's unfulfilled expectations.

5.4 The limitations of Delib's liability under this Agreement do not apply:

- (a) to the extent any law provides that any conditions, rights, warranties, guarantees or liabilities are unable to be excluded. Delib's liability under any such conditions, warranties, guarantees or liabilities is limited to, at Delib's option, supplying the Services again or paying the cost of having those Services supplied again; and
- (b) to any liability for death or personal injury resulting from negligence or fraud or fraudulent misrepresentation.

6 Variations to Products and Services

- 6.1 Delib may make reasonable changes to the Product, the Services, the Delib Materials and the Website from time to time, including by adding, updating, changing or removing features. Delib will notify the Client of any material changes.
- 6.2 When Delib provides modified Delib Materials to the Client, the Client must replace (or permit Delib to replace) the Delib Materials being used by the Client as soon as reasonably possible. The functionality of the Product, the Services and the Delib Materials may be affected until the Delib Material is replaced.
- 6.3 Other than as set out in this clause 6, this Agreement may only be altered in writing signed by each Party.

7 Fee increases

- 7.1 Delib will notify the Client in writing of any Fee increase coming into effect in the following Subscription Period no fewer than 60 days prior to the end of any Subscription Period.

8 Confidentiality

- 8.1 Subject to the Texas Public Information Act each Party (the **Recipient**) must keep the Confidential Information of the other Party (the **Disclosing Party**) confidential and use that Confidential Information only for the purpose of performing this Agreement.
- 8.2 The Recipient may disclose the Confidential Information only to the Recipient's officers, employees, contractors and agents who have a need to know for purposes of performing this Agreement and who are aware that the information must be kept confidential.
- 8.3 If this Agreement expires or is terminated for any reason, each Recipient must, at the Disclosing Party's request, return to the Disclosing Party or destroy (and provide evidence of the destruction of) all information provided by the Disclosing Party containing the Confidential Information, together with all copies.
- 8.4 Clauses 8.1 to 8.3 do not apply to the extent the Confidential Information:
- (a) is in the public domain other than as a result of a breach of this Agreement;
 - (b) is independently developed by the Recipient;
 - (c) is disclosed to the Recipient by a third party having the right to do so;
 - (d) is required by law or any securities exchange or regulatory or governmental body to which the Recipient is subject wherever situated to be disclosed: or
 - (e) the Recipient considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on terms protecting the information.
- 8.5 With prior agreement from the Client, Delib may identify the Client and the Website, and provide a brief description of the application of the Product and the Services as an example or case study for marketing purposes.

9 Security

- 9.1 In this clause 9:

Access Credential	means an authentication method, which may be a user name, password, a form of cryptosystem (e.g. a network based security layer, virtual private network, public key infrastructure or similar), a physical method or a biometric or other method.
Delib System	means the Product, the Services, the Delib Materials, the Website, and any server or other information technology system owned or used by Delib or its contractors.

- 9.2 Delib may provide to the Client access (including remote access) to a Delib System. Such access may include provision of an Access Credential.
- 9.3 In relation to each Delib System and Access Credential, the Client must:
- (a) access and use that Delib System and Access Credential only for the purposes of this Agreement, only in a manner authorised under the Agreement and not in any other way;
 - (b) not assist any other person to use a Delib System or Access Credential in an unlawful or unauthorised way;
 - (c) use reasonable security measures to prevent unauthorised access or use of a Delib System or Access Credential by a person;

- (d) inform Delib as soon as reasonably possible upon becoming aware of any unauthorised access to or use of a Delib System or Access Credential and do everything possible to minimise and mitigate the effect of such unauthorised access or use, including preserving evidence and informing appropriate authorities;
- (e) inform Delib as soon as reasonably possible of any security vulnerability, weakness or threat it discovers in a Delib System (or connection to or from it);
- (f) not, and ensure that each of its personnel do not:
 - (i) disclose or provide an Access Credential to any other person; or
 - (ii) load into, download to or from, transmit to or from, post to or from or otherwise make available or introduce to in respect of a Delib System any viruses or other malicious code or material that:
 - A. violates or infringes any right of another person (including their Intellectual Property, privacy and publicity rights);
 - B. is unlawful, threatening, abusive, defamatory, invasive of privacy, vulgar, obscene, profane or which may harass or cause distress or inconvenience to, or incite hatred of, any person; or
 - C. breaches, or would cause Delib to breach any applicable law;
- (g) not use a Delib System in a way that harms or interferes with the use of Delib System by Delib or another person;
- (h) not use a Delib System as a destination linked from any unsolicited bulk messages or unsolicited commercial messages; and
- (i) not use any unauthorised third party software or service to access a Delib System.

9.4 The Client will be deemed to be responsible for every access to or use of a Delib System that is made with an Access Credential provided to the Client, even if such access or use was not made by the Client or its personnel.

10 User Generated Content

10.1 Where User Generated Content is published or otherwise made available via the Product, the Client is responsible for moderating the User Generated Content. Delib shall have no liability to the Client or a third party in relation to User Generated Content.

10.2 Delib may (but is not obliged to) access the Product in use by the Client to remove any User Generated Content for any reason if Delib believes that there is a problem with any such content, or if Delib believes that any moderation policy has been contravened.

SCHEDULE 1 – SERVICE LEVELS

(Clause 2.2)

Contact to report service failure:

Via email: support@delib.net

Via online: <https://delib.zendesk.com>

Via phone: 0845 638 1848

Definitions:	<p>Uptime means time when the Product is available to the Client and the general public, or any other time that is not excluded from the definition of Downtime. The Product's availability is determined by the Product monitoring system.</p> <p>Downtime means time other than Uptime, i.e. when the Product becomes unavailable to the Client and the general public other than because of:</p> <ul style="list-style-type: none"> (a) failure to meet browser/platform requirements; (b) failure by the Client to comply with this Agreement or the Terms of Use; (c) Delib exercising its rights to suspend the Product under this Agreement; (d) planned maintenance notified by Delib in advance; (e) performance of Services by Delib under this Agreement or agreed under a separate Agreement, including testing and quality assurance; (f) user-side connectivity issues; or (g) a Force Majeure Event. <p>Unavailability due to planned maintenance notified by Delib in advance shall not count as Downtime for the purposes of this Agreement. The Client's Authorised Representative will be notified by email at least 24 hours in advance of any planned maintenance.</p>
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Target service availability	
Hours	24 hours, seven days per week.
Target availability	99.95% (maximum 21.5 minutes of Downtime per month)
Measurement period for availability	Calendar months
Failure to meet target availability	If Downtime exceeds the target limit of 21.5 minutes in a calendar month, Delib will provide the Client with a service credit equal to one day's Fees on a pro rata basis (exclusive of VAT, and exclusive of any excess bandwidth or storage charges that have been negotiated) for each full completed hour of downtime. The maximum service credit available in respect of any one month shall not exceed one month's Fees.

Target response times		
Incident level definitions	Critical Error	Non-availability of the Product, any reproducible error, which prevents a user from entering or submitting data, or any error that causes unavoidable or unexpected data loss.
	Non-critical Error	Any error which does not fit the description of a critical error.

Target response times	Level	Response
	Critical Error	<p>(a) Delib will perform a fault diagnostic on any and all Critical Errors as soon as possible - 24 hours per day, 7 days per week, within a maximum response time of 2 hours.</p> <p>(b) Delib aims to resolve Critical Errors to the Product which do not include any data loss within a maximum of one Business Day.</p> <p>(c) Delib aims to resolve Critical Errors to the Product which include data-loss within a maximum of two Business Days.</p> <p>(d) Delib aims to resolve Critical Errors to the hardware or infrastructure within a maximum of 7 days. (This time includes up to 5 days to rebuild from back ups, and 2 days to correct the Product error).</p>
	Non-critical Error	<p>(a) Delib will perform a fault diagnostic on any and all Non-critical Errors within a maximum response time of two working days - Monday to Friday between the hours of 9am and 6.30pm Greenwich Mean Time.</p> <p>(b) Delib aims to resolve Non-critical Errors to the Product within 2 working days of the completion of the fault diagnostic. In some circumstances a fix may require a major Product update which may take longer to schedule in.</p>
Fault diagnostics and workarounds	<p>When the fault diagnostic is complete, Delib will provide an estimate of when the fix will be rolled out to Client sites.</p> <p>Where possible, a workaround will be provided until the permanent fix is available.</p>	

Notes

1. Downtime

The Client will be issued with a Downtime notification every time the Product becomes unavailable and a Downtime report once the cause of the Downtime or non-Downtime unavailability has been established.

2. Monitoring

- (a) Automated monitoring is provided under this Agreement. Automated monitoring notifies Delib of the non-availability of the web Product after a period of 5 minutes.
- (b) Automated monitoring cannot verify that the entire Product is working as expected.
- (c) If the hosting environment is not available, Delib's Disaster Recovery Plan is put into effect.

3. Application Maintenance

- (a) Maintenance time is required to resolve errors within the Product.
- (b) Errors are reported in one of two ways: by alert from Delib's monitoring system or by notification from the Client.
- (c) Once an error has been reported, the error is investigated and classified as a Critical Error or Non-Critical Error.

4. Testing & Quality Assurance (QA)

All changes to the Website, including updates and maintenance, must be followed by rigorous testing and quality assurance. Full test runs take at least half a day, whatever the size of the amendment.



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 11/09/2016

DEPT: Financial Services - Budget Office

TO: Purchasing Officer or Designee

FROM: Katie Stewart

BUYER: Sandy Brandt

PHONE: (512) 974-7887

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

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

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

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

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

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

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

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

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

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

Delib Limited developed a custom web-application tool used in the FY 2016-17 Budget development process. The tool has custom algorithms to determine the impact of citizen's budget funding preferences to their individual combined utility and tax bill.

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).

Delib Limited developed a custom web-application tool used in the FY 2016-17 Budget development process to engage the community on budget priorities for the upcoming year. The vendor met all performance expectations. In addition, the vendor is committed to providing a platform that is accessible with color selections that take in consideration colorblindness, as well as screen-reader capabilities to ensure participants utilizing this technology can participate.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Delib Limited which will cost approximately \$ 15,000.00 (Provide estimate and/or breakdown of cost).

Recommended Certification	 Originator	<u>3/2/17</u> Date	
Approved Certification	 Department Director or designee	<u>3/3/17</u> Date	
	Assistant City Manager / General Manager or designee (if applicable)		Date
Purchasing Review (if applicable)	 Buyer	<u>03/03/17</u> Date	Manager Initials
Exemption Authorized (if applicable)	Purchasing Officer or designee		Date

02/26/2013