

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
GovHR USA LLC
For
Recruitment of Austin Public Library Director
MA PA170000040**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and GovHR USA LLC ("Consultant"), having offices at 630 Dundee Road, Suite 130, Northbrook, IL 60062.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Consultant.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Consultant is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Consultant.** The Consultant shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Consultant to perform services beyond those stated in the Scope of Work, the Consultant and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

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

1.4 **Designation of Key Personnel.** The Consultant's Contract Manager for this engagement shall be Heidi Voorhees, Phone: (847) 380-3243, Email Address: hvoorhees@govhrusa.com. The City's Contract Manager for the engagement shall be Cindy Henson, Phone: (512) 974-9304, Email Address: Cindy.Henson@austintexas.gov. The City and the Consultant resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Consultant 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 Consultant 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 **Consultant's Obligations.** The Consultant shall fully and timely provide all deliverables described herein and in the Consultant'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 **Objective.** The objective of the work to be performed hereunder is to identify and recruit a diverse pool of candidates to fill the Austin Public Library Director's position for the City of Austin. All applicants should have a well-rounded knowledge of municipal government and working with the mayor, council and city manager form of government. Qualified candidates should have experience with financial functions, including budgeting, purchasing and accounting. Council-Manager form of government experience or knowledge is preferable. Specific emphasis in developing the applicant pool shall be placed on searching for qualified minority and female candidates.

2.3 **Tasks.** In order to accomplish the work described herein, the Consultant shall perform those tasks listed below, as detailed in Exhibit A, Consultant's Proposal.

The Consultant shall:

2.3.1 Phase I – Position Assessment, Position Announcement and Brochure Development

- Conduct one-on-one interviews with elected officials, staff and the public to develop the Recruitment Brochure. This document outlines the expectations that the City Council and Library Commission have for the next Austin Public Library Director, providing Consultant with

the information needed for targeted recruitment. During this process, Consultant will assist City with establishing the salary for the position, if requested, by conducting a salary survey of comparable communities.

- Draft a Position Announcement.
- Submit the Recruitment Brochure for City's review and approval.
- Coordinate with City to develop a Recruitment Timetable.

2.3.2 Phase II – Advertising, Candidate Recruitment and Outreach

- Place a Position Announcement in appropriate professional online publications. In addition to public sector publications and websites, outreach will include LinkedIn and other private sector resources.
- Develop a database of potential candidates from across the country unique to the position and to the City of Austin, focusing on the leadership and management skills identified in Phase I as well as size of organization, and experience in addressing challenges and opportunities outlined in Phase I. This database can range from several hundred to thousands of names depending on the parameters established for the outreach. Outreach will be done in person, and through e-mail and telephone contacts.

2.3.3 Phase III – Candidate Evaluation and Screening

- Review and evaluate candidates' credentials considering the criteria outlined in the Recruitment Brochure.
- Interview candidates by Skype or Facetime to fully grasp their qualifications, experience and interpersonal skills. The interviews shall include asking specific questions about their experiences and skill sets as well as asking questions specific to the position. Consultant shall ask follow up questions and probe specific areas. Utilizing Skype or Facetime will permit Consultant to assess each candidate's verbal skills and their level of energy for and interest in the position.
- Alternatively, at City's option, Consultant may conduct one-way video interviews where finalist candidates answer interview questions on their own time. A link to each candidate video would then be emailed to City for review.
- Perform formal and informal reference checks and media, internet and social media searches on each candidate to further verify candidates' abilities, work ethic, management and leadership skills, analytical skills, interpersonal skills, ability to interact with the media, and any areas identified for improvement.
- Acknowledge receipt of all resumes and handle all contacts and inquiries from candidates.

2.3.4 Phase IV – Presentation of Recommended Candidates

- Prepare a Recruitment Report that presents the credentials of those candidates most qualified for the position. City will advise Consultant of the number of reports needed for the individuals involved in this phase of the recruitment and selection process. Consultant shall provide a binder which contains the candidate's cover letter and résumé. Consultant shall also supply a "mini" résumé for each candidate, so that their credentials are presented in a uniform way. Consultant shall submit to City a log of all candidates who applied for this position. All the résumés received shall be available for City's review, if requested.
- Meet with City to review the Recruitment Report and expand upon the information provided. The report will arrive two to three business days in advance of the meeting, giving City the opportunity to fully review it. In addition to the written report, Consultant shall be available to discuss the candidates, review their Skype/Facetime interviews and provide excerpts from the reference checks conducted on the individuals.

2.3.5 Phase V –Interviewing Process

- Finalize the interview process, including the discussion of any specific components City may deem appropriate, such as requiring a writing sample or oral presentation from candidates.
- Submit the first and second round interview questions for City's review and comment. Consultant shall provide City with interview books that include the credentials each candidate submitted, a set of questions with room for interviewers to make notes, and evaluation sheets to assist interviewers in assessing the candidate's skills and abilities.

- Assist City in developing an interview schedule for the candidates, coordinating travel and accommodations. In addition to a structured interview with the City, the schedule will incorporate a tour of the Austin Public Library facilities and interviews with senior staff, if the City so desires.
- Contact additional references, verify educational credentials, and perform criminal court, credit, motor vehicle and records checks on candidates selected for interview.
- Prepare interview books for second-round interview candidates.
- Assign personnel to be present for all interviews, serving as facilitators or resources as required by City.

2.3.6 Phase VI – Appointment of Candidate

- Collaborate with City as may be requested regarding salary and benefit negotiations and drafting of an employment agreement, if appropriate.
- Notify all applicants of the final appointment, providing professional background information on the successful candidate.

2.4 **Consultant's Estimated Timeline for Recruitment Process**

2.4.1 One to Two Weeks after contract execution –

- Onsite interviews of City officials and staff
- Development and approval of recruitment brochure
- Deliverable: Recruitment Brochure

2.4.2 Three to Eight Weeks after contract execution –

- Placement of position announcements
- Identification of initial candidates
- Performance of candidate screening, interview and evaluation

2.4.3 Nine Weeks after contract execution –

- Recommendation of qualified candidates to City
- Deliverable: Recruitment Report

2.4.4 Ten Weeks after contract execution –

- Selection of final candidates by City
- Running of background and reference checks
- Preparation of interview books
- Deliverable: interview books including suggested questions and evaluation sheets

2.4.5 Eleven to Twelve Weeks after contract execution –

- Interview of finalist candidates
- Naming of successful candidate by City
- Offer, negotiation and acceptance by final candidate
- Announcement of appointment

2.5 **Progress Reports.** The Consultant shall provide email reports to the City's Contract Manager once every week. The emails shall include the updated timeline, number of candidates identified, search strategies and associated yields, as well as such other information as may be requested by the City. The reports shall also summarize all significant activities undertaken during the reporting period, progress made toward completing the project objectives, and any significant problems encountered.

2.6 **Additional Expenses.** No additional professional fee would be incurred should the City not make a selection from the initial group of recommended candidates and request additional candidates be developed for

interview consideration. However, additional reimbursable expenses may be incurred by Consultant should Consultant be required to travel to Austin beyond the planned three visits.

2.7 Consultant Guarantee. Upon appointment of a candidate, Consultant provides the following guarantee: should the selected and appointed candidate, either at the request of the City or the employee's own determination, leave the employ of the City within the first 24 months after appointment, Consultant shall, if desired by City, conduct another search for only the cost of expenses and announcements. Such a search will be conducted if City requests it within six months of the employee's departure. In addition, in accordance with Consultant's policy as well as established ethics in the executive search industry, Consultant shall not actively recruit the placed employees for a period of five years following City's appointment.

2.8 Optional 360° Evaluation. Consultant provides as an optional service a 360° performance evaluation for the appointed Director of Libraries at approximately six months into his or her employment. This evaluation will include seeking feedback from elected officials and department directors, along with any other individuals or groups the City feels would be relevant and beneficial. This input will be obtained on a confidential basis with the individual source of comments known only to Consultant. If City elects to request this service, Consultant shall submit a proposal per the provisions of Paragraph 1.2 herein.

SECTION 3. COMPENSATION

3.1 Contract Amount. The Consultant will be paid as indicated herein. In consideration for the services to be performed under this Contract, the Consultant will be paid an amount not-to-exceed \$23,000 for all fees and expenses. This amount is summarized below.

<u>Description</u>	<u>Cost</u>
Recruitment Fee	\$14,500
Recruitment Expenses: Expenses include consultant travel, postage/shipping, telephone, support services, candidate due diligence efforts, copying, etc. City will be invoiced only for actual cost.	\$6,000
Advertising: *Advertising costs over \$2,500 will be incurred only with City approval. If advertising expense is less than \$2,500, City will be invoiced only for actual cost.	\$2,500*
Not-to-Exceed Total	\$23,000**

** This fee does not include travel and accommodations for candidates interviewed. Recruitment brochures are produced as electronic files. Printed brochures can be provided, if requested, for an additional cost of \$900.

The above summary is predicated upon three Consultant visits to Austin; the first for the recruitment brochure interview process; the second to present recommended candidates; and the third for the candidate interview process. Any additional Consultant visits requested by the City may result in an increase to travel expenses, which will then be invoiced to the City.

Three partial payments will be made by City to Consultant as follows, subject to the provisions of Paragraphs 3.2 and 3.3 herein:

<u>Description</u>	<u>Timing of Consultant's Invoices</u>
One-third of the Recruitment Fee	Following contract execution
One-third of the Recruitment Fee plus expenses incurred to date	Following Consultant's recommendation of candidates

One-third of the Recruitment Fee plus all remaining expenses	Following City's announcement of appointment
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All expenses, including the costs for printing the Recruitment Brochure, shall be itemized in detail.

3.2 **Invoices.**

3.2.1 **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 Consultant's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Consultant's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Consultant's invoice. Invoices received without all required information cannot be processed and will be returned to the Consultant. Invoices shall be mailed to the below address:

	City of Austin
Department	Human Resources
Attn:	Accounts Payable
Address	P. O. Box 1088
City, State, Zip Code	Austin, TX 78767

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

3.2.3 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 off set the entire payment or part of any payment otherwise due the Consultant to such extent as may be necessary on account of:

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

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

3.3.3.3 failure of the Consultant to pay Subconsultants, or for labor, materials or equipment;

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

3.3.3.5 reasonable evidence that the Consultant'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 Consultant to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Consultant 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 Consultant 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 Consultant. The City shall provide the Consultant 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 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Consultant within the Contract amount.

3.5.1 **Administrative.** The Consultant will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, advertising, printing and binding, postage, express delivery and report processing.

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

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

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

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Consultant, 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 Consultant to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Consultant's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Consultant 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 become effective on the date executed by the City ("Effective Date") and shall remain in effect for a term of up to 24 months or until the City terminates the Contract.

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

4.3 **Default.** The Consultant shall be in default under the Contract if the Consultant (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 Consultant's Offer, or in any report or deliverable required to be submitted by Consultant to the City.

4.4 **Termination For Cause.** In the event of a default by the Consultant, 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 Consultant, 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 Consultant on probation for a specified period of time within which the Consultant 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 Consultant has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Consultant, the City may suspend or debar the Consultant in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Consultant from the City's vendor list for up to five (5) years and any Offer submitted by the Consultant 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 Consultant'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 Consultant 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 Consultant, 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 Consultant on any Offer or in any report or deliverable required to be submitted by the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant hereunder and shall not be construed to be a limitation of liability on the part of the Consultant.

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

5.1.1.6 The Consultant's and all Subconsultants' 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 Consultant, 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 Consultant 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 Consultant.

5.1.1.12 The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant.

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 Consultant/Subcontracted Work.

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

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

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

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

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

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

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

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

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.** The Consultant shall provide coverage, at a minimum limit of \$500,000 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, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **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 Consultant, or Consultant'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 Consultant'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 Consultant, or Consultant'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 Consultant 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 Consultant.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Consultant 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 Consultant shall negotiate an equitable adjustment for costs incurred by the Consultant in the Contract price and execute an amendment to the Contract. The Consultant 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 Consultant 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 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Consultant agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Consultant agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

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

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

5.6 **Rights to Proposal and Contractual Material.** All material submitted by the Consultant to the City shall become property of the City upon receipt. Any portions of such material claimed by the Consultant 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.

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

6.1.2 The Consultant 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 Consultant, or otherwise recover, any amounts paid for items in excess of the Consultant's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Consultant 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 Consultant 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 Consultant 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 Consultant. The City shall endeavor to give the Consultant written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Consultant 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 Consultant, and purchase conforming services from other sources. In such event, the Consultant 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 Workforce.

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

7.1.2 The Consultant, its employees, Subconsultants, and Subconsultant'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:

7.1.2.1 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

7.1.2.2 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.

7.1.3 If the City or the City's representative notifies the Consultant 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 Consultant shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.2 **Compliance with Health, Safety, and Environmental Regulations.** The Consultant, its Subconsultants, 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 Consultant 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 Consultant's obligations under this paragraph.

7.3 **Significant Event.** The Consultant 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 Consultant's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.3.1 disposal of major assets;

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

7.3.3 any significant termination or addition of provider contracts;

7.3.4 the Consultant'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;

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

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

7.3.7 known or anticipated sale, merger, or acquisition;

7.3.8 known, planned or anticipated stock sales;

7.3.9 any litigation against the Consultant; or

7.3.10 significant change in market share or product focus.

7.4 **Audits and Records.**

7.4.1 The Consultant 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 Consultant related to the performance under this Contract. The Consultant 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 Consultant are resolved, whichever is longer. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.

7.4.2 Records Retention:

7.4.2.1 Consultant is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Consultant in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.

7.4.2.2 All Records are the property of the City. The Consultant 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 requested by the City.

7.4.3 The Consultant shall include sections 7.5.1 and 7.5.2 above in all Subconsultant agreements entered into in connection with this Contract.

7.5 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Consultant 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 Consultant will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Consultant shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.6 **Indemnity.**

7.6.1 Definitions:

7.6.1.1 "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:

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

7.6.1.1.2 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 Consultant, the Consultant's Subconsultants, and third parties),

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

7.6.2 **THE CONSULTANT 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 CONSULTANT, OR THE CONSULTANT'S AGENTS, EMPLOYEES OR SUBCONSULTANTS, IN THE PERFORMANCE OF THE CONSULTANT'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONSULTANT (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.7 **Claims.** If any claim, demand, suit, or other action is asserted against the Consultant which arises under or concerns the Contract, or which could have a material adverse effect on the Consultant's ability to perform thereunder, the Consultant shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Consultant. 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.

7.8 **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 Consultant shall be addressed as follows:

To the City:

To the Consultant:

City of Austin, Purchasing Office

GovHR USA LLC

ATTN: Roger Stricklin, Contract Management Specialist IV

ATTN: Heidi Voorhees, President

P O Box 1088

630 Dundee Road, Suite 130

Austin, TX 78767

Northbrook, IL 60062

7.9 **Confidentiality.** In order to provide the deliverables to the City, Consultant 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"). Consultant 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 Consultant (including its employees, Subconsultants, 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 Consultant promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant 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.

7.10 **Advertising.** The Consultant 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.

7.11 **No Contingent Fees.** The Consultant 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 Consultant 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 Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.12 **Gratuities.** The City may, by written notice to the Consultant, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Consultant or any agent or representative of the Consultant 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 Consultant in providing such gratuities.

7.13 **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 Consultant shall render the Contract voidable by the City.

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

7.15 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Consultant 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 Consultant without the prior written consent of the City. Any attempted assignment or delegation by the Consultant 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.

7.16 **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 Consultant 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.

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

7.18 **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.

7.19 **Dispute Resolution.**

7.19.1 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.

7.19.2 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 Consultant 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 Consultant 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.

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

7.20.1 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.

7.20.2 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 Consultant 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.**

7.20.3 If any service is needed to perform the Contract and the Consultant does not perform the service with its own workforce or if supplies or materials are required and the Consultant does not have the supplies or

materials in its inventory, the Consultant 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 Consultant 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.

7.21 Subconsultants.

7.21.1 If the Consultant identified Subconsultants in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Consultant 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 Consultant shall not initially employ any Subconsultant except as provided in the Consultant's Plan. The Consultant shall not substitute any Subconsultant 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 Subconsultant shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subconsultant. If a Plan has been approved, the Consultant 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.

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

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

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

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

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

7.21.2.5 require that the Subconsultant indemnify and hold the City harmless to the same extent as the Consultant is required to indemnify the City.

7.21.3 The Consultant shall be fully responsible to the City for all acts and omissions of the Subconsultants just as the Consultant is responsible for the Consultant's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subconsultant any contractual relationship between the City and any such Subconsultant, 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 Subconsultant except as may otherwise be required by law.

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

7.22 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.

7.23 **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.

7.24 **Holidays.** The following holidays are observed by the City:

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

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

7.25 **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.

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

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

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

7.28.1 the Supplemental Purchase Terms and Conditions;

7.28.2 the Standard Purchase Terms and Conditions;

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

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

GOVHR USA LLC

By: Heidi Voorhees
Signature

Name: Heidi Voorhees
Printed Name

Title: President

Date: 4/28/17

CITY OF AUSTIN

By: Roger Stricklin
Signature

Name: Roger Stricklin
Printed Name

Title: Contract Management Specialist II

Date: 2-1-17

List of Exhibits

Exhibit A	Consultant's Proposal (the "Offer")
Exhibit B	Non Discrimination and Non-Retaliation Certification, Section 0800



March 17, 2017

Mr. Rodney Crain
Talent Acquisition Manager
City of Austin
124 W. 8th Street
Austin, TX 78701

Dear Mr. Crain:

Thank you for the opportunity to provide you with a proposal for the Director of Libraries recruitment and selection process for the City of Austin. GovHR USA ("GovHR") prides itself on a tailored, personal approach to executive recruitment and selection, able to adapt to your specific requirements for the position.

Qualifications and Experience

GovHR is a public management consulting firm serving municipal clients and other public sector entities on a national basis. Our headquarters offices are in Northbrook, Illinois. We are a certified Female Business Enterprise in the State of Illinois, and work exclusively in the public sector. GovHR offers customized executive recruitment services and completes other management studies and consulting projects for communities. Please note the following key qualifications of our firm:

- Since our establishment in 2009, our consultants have conducted hundreds of recruitments in 24 states, with an increase in business of at least 30% each year. Twenty-eight (28%) of our clients are repeat clients, the best indicator of satisfaction with our services.
- Surveys of our clients show that 94% rate their overall experience with our firm as *Outstanding*, and indicate that they plan to use our services or highly recommend us in the future.
- Our state of the art processes, including extensive use of social media for candidate outreach and skype interviews with potential finalist candidates, ensure a successful recruitment for your organization.
- Our high quality, thorough Recruitment Brochure reflects the knowledge we will have about your community and your organization, and will provide important information to potential candidates.
- We provide a two-year guarantee for our recruitments. Less than 1% of our clients have had to invoke the guarantee.
- The firm has a total of twenty-two consultants, both generalists and specialists (public safety, public works, finance, parks, etc.), who are based in Arizona, Florida, Illinois, Indiana, Michigan, and Wisconsin, as well as five reference specialists and eight support staff.

Our consultants are experienced executive recruiters who have conducted over 600 recruitments, working with cities, counties, special districts and other governmental entities of all sizes throughout the

EXHIBIT A
CONSULTANT'S PROPOSAL

country. In addition, we have held leadership positions within local government, giving us an understanding of the complexities and challenges facing today's public sector leaders.

GovHR is led by Heidi Voorhees, President, and Joellen Earl, Chief Executive Officer. Ms. Voorhees previously spent 8 years with the nationally recognized public sector consulting firm, The PAR Group, and was President of The PAR Group from 2006 – 2009. Ms. Voorhees has conducted more than 240 recruitments in her management consulting career, with many of her clients repeat clients, attesting to the high quality of work performed for them. In addition to her 12 years of executive recruitment and management consulting experience, Ms. Voorhees has 19 years of local government leadership and management service, with ten years as the Village Manager for the Village of Wilmette. Ms. Earl is a seasoned manager, with expertise in public sector human resources management. She has held positions from Human Resources Director and Administrative Services Director to Assistant Town Manager and Assistant County Manager. Ms. Earl has worked in forms of government ranging from Open Town Meeting to Council-Manager and has supervised all municipal and county departments ranging from Public Safety and Public Works to Mental Health and Social Services.

Consultant Assigned

GovHR President Heidi Voorhees will be responsible for your recruitment and selection process. Her biography is attached to this Proposal, and her contact information is:

Heidi Voorhees
President
GovHR USA LLC
630 Dundee Road, Suite 130
Northbrook, IL 60062
Telephone: (847) 380-3243
Facsimile 866.401.3100
hvoorhees@govhrusa.com

A complete list of GovHR's clients is available on our website at www.govhrusa.com

Scope of Work

A typical recruitment and selection process takes approximately 175 hours to conduct. At least 50 hours of this time is administrative, including advertisement placement, reference interviews, and due diligence on candidates. We believe our experience and ability to professionally administer your recruitment will provide you with a diverse pool of highly qualified candidates for your position. GovHR clients are informed of the progress of a recruitment throughout the entire process. We are always available by mobile phone or email should you have a question or need information about the recruitment.

GovHR suggests the following approach to your recruitment, subject to your requests for modification:

Phase I – Position Assessment, Position Announcement and Brochure Development

Phase I will include the following steps:

- One-on-one interviews will be conducted with elected officials, staff and the public to develop our Recruitment Brochure. This important document outlines the expectations that the City Council and Library Board have for its next Director of Libraries, providing us with the information we need to target our recruitment. During this process, we will assist you with establishing the salary for the position by conducting a salary survey of comparable communities, if requested.
- Development of a **Position Announcement**.

EXHIBIT A
CONSULTANT'S PROPOSAL

- Development of a detailed **Recruitment Brochure** for your review and approval.
- Agreement on a detailed **Recruitment Timetable** – a typical recruitment takes 90 days from the time you sign the contract until you are ready to appoint the finalist candidate.

Phase II – Advertising, Candidate Recruitment and Outreach

We make extensive use of social media as well as traditional outreach methods to ensure a diverse and highly qualified pool of candidates. In addition, our website is well known in the local government industry – we typically have 5,000 visits to our website each month. Finally, we develop a database customized to your recruitment and can do an email blast to thousands of potential candidates.

Phase II will include the following steps:

- Placement of the Position Announcement in appropriate professional online publications. In addition to public sector publications and websites, outreach will include LinkedIn and other private sector resources. We can provide the City with a list of where we intend to place the position announcement, if requested.
- The development of a database of potential candidates from across the country unique to the position and to the City of Austin, focusing on the leadership and management skills identified in Phase I as well as size of organization, and experience in addressing challenges and opportunities also outlined in Phase I. This database can range from several hundred to thousands of names depending on the parameters established for the outreach. Outreach will be done in person, and through e-mail and telephone contacts. GovHR consultants have extensive knowledge of the municipal government industry and will personally identify and contact potential candidates. With more than 600 collective years of municipal and consulting experience among our consultants, we often have inside knowledge about candidates.

Phase III – Candidate Evaluation and Screening

Phase III will include the following steps:

- Review and evaluation of candidates' credentials considering the criteria outlined in the Recruitment Brochure.

Candidates will be interviewed by skype or facetime to fully grasp their qualifications, experience and interpersonal skills. The interviews include asking specific questions about their experiences and skill sets as well as asking questions specific to the Position. We will ask follow up questions and probe specific areas. By utilizing skype or facetime we will have an assessment of their verbal skills and their level of energy for and interest in the position.

Optional: One-way video Interview where finalist candidates answer interview questions on their own time. It's convenient for them and incredibly insightful for you. A link to each candidate video can be emailed to you for your review.

- Formal and informal references and an internet/social media search of each candidate will be conducted to further verify candidates' abilities, work ethic, management and leadership skills, analytical skills, interpersonal skills, ability to interact with the media, and any areas identified for improvement.

EXHIBIT A
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- All résumés will be acknowledged and contacts and inquiries from candidates will be personally handled by GovHR, ensuring that the City's process is professional and well regarded by all who participate.

Phase IV – Presentation of Recommended Candidates

Phase IV will include the following steps:

- GovHR will prepare a Recruitment Report that presents the credentials of those candidates most qualified for the position. You will advise us of the number of reports you will need for the individuals involved in this phase of the recruitment and selection process. We provide a binder which contains the candidate's cover letter and résumé. In addition, we prepare a "mini" résumé for each candidate, so that each candidate's credentials are presented in a uniform way. GovHR will provide you with a log of all candidates who applied. You may also review all the résumés, if requested.
- GovHR will meet with you on-site to review the Recruitment Report and expand upon the information provided. The report will arrive two to three days in advance of the meeting, giving you the opportunity to fully review it. In addition to the written report, we will spend 2 to 3 hours discussing the candidates by reviewing their skype interviews and providing excerpts from the references we will have conducted on the individuals.

Phase V –Interviewing Process

Phase V will include the following steps:

- After the Recruitment Report is presented, the Interviewing Process will be finalized including the discussion of any specific components you deem appropriate, such as a writing sample or oral presentation.
- GovHR will develop the first and second round interview questions for your review and comment. GovHR will provide you with interview books that include the credentials each candidate submits, a set of questions with room for interviewers to make notes, and evaluation sheets to assist interviewers in assessing the candidate's skills and abilities.
- GovHR will work with you to develop an interview schedule for the candidates, coordinating travel and accommodations. In addition to a structured interview with the City, the schedule will incorporate a tour of the Austin Library facilities and interviews with senior staff, if the City so desires.
- Once candidates for interview are selected, additional references will be contacted, along with verification of educational credentials, criminal court, credit, and motor vehicle and records checks.
- GovHR recommends a two-step interviewing process with (typically) five or six candidates interviewed in the first round. Following this round, we strongly suggest that two or three candidates are selected for second round interviews. Again, we will prepare a second round of interview questions and an evaluation sheet.
- GovHR consultants will be present for all the interviews, serving as a resource and facilitator.

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Phase VI – Appointment of Candidate

- GovHR will assist you as much as you request with the salary and benefit negotiations and drafting of an employment agreement, if appropriate.
- GovHR will notify all applicants of the final appointment, providing professional background information on the successful candidate.

Philosophy

Executive search is an important decision-making process for a community and our primary goal is to help our client to make a good decision. Our firm's executive recruitment philosophy embraces a professional process of integrity, trust, and respect toward all parties involved, and complete commitment toward meeting the expressed needs and desires of our client. All of our services are handled by principals of the firm who have established and well-regarded reputations in the search field, as well as actual operating experience in the public management fields in which they now consult. Each has impeccable professional credentials and unblemished personal reputations. Keeping both our client and prospective candidates informed on the status of the recruitment on a regular basis is also an important part of our recruitment process. Our work is carried out in an open manner with particular attention given toward seeking out critical factors of a client's organization and governance, and utilizing such information respectfully and discreetly in seeking out candidates who truly have the ability to meet the expectations and needs of the client—working strenuously in developing a fully qualified, “best match” candidate pool for client consideration. Our process includes assistance in the critical final interview and selection phases of the recruitment, and availability to both client and candidate for months following the appointment. Our process was developed and refined over the years to meet the special, and often unique, needs and circumstances facing our local government, public management, and related not-for-profit clients.

Optional 360° Evaluation

As a service to the City of Austin, we offer the option to provide you with a proposal for a 360° performance evaluation for the appointed Director of Libraries at about six months into his or her employment. This evaluation will include seeking feedback from both Elected Officials and Department Directors, along with any other constituent the City feels would be relevant and beneficial. This input will be obtained on a confidential basis with comments known only to the consultant. If you are interested in this option, GovHR USA will prepare a proposal for this service.

Recruitment Schedule

A detailed recruitment schedule will be provided in Phase I. The recruitment and selection process typically takes 90 days from the time the contract is signed until the candidate is appointed. We can work with you on a shorter process, should you so desire.

Our typical recruitment process includes the following milestones and deliverables:

➤ Weeks 1 - 2	On-site interviews of City officials and staff, development and approval of recruitment brochure Deliverable: recruitment brochure
➤ Weeks 3 - 8	Placement of professional announcements; candidate identification, screening, interview and evaluation by consultant
➤ Week 9	Consultant recommendation to the City of qualified candidates

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	Deliverable: recruitment report
➤ Week 10	Selection of candidate finalists by the City; additional background and reference checks, report preparation and presentation Deliverable: interview reports including suggested questions and evaluation sheets
➤ Weeks 11-12	Interviews of selected finalist candidates; City Council/ Library Board recommendation of final candidate; negotiation, offer, acceptance and appointment

Summary of Costs	Price
Recruitment Fee:	\$14,500
Recruitment Expenses: (not to exceed) ➤ Expenses include consultant travel, postage/shipping, telephone, support services, candidate due diligence efforts. copying etc.	6,000
Advertising: *Advertising costs over \$2,500 will be placed only with client approval. If less than \$2,500, Client is billed only for actual cost.	2,500*
Total:	\$23,000**

**This fee does not include travel and accommodations for candidates interviewed. Recruitment brochures are produced as electronic files. Printed brochures can be provided, if requested, for an additional cost of \$900.

The above cost proposal is predicated upon three consultant visits to Austin; the first for the recruitment brochure interview process; the second to present recommended candidates; and the third for the candidate interview process. Any additional consultant visits requested by the City may result in an increase in the travel expenses and those expenses will be billed to the Client.

Payment for Fees and Services

Professional fees and expenses will be invoiced as follows:

1st Payment: 1/3 of the Recruitment Fee (invoice sent upon acceptance of our proposal).

2nd Payment: 1/3 of the Recruitment Fee and expenses incurred to date (invoice sent following the recommendation of candidates).

Final Payment: 1/3 of the Recruitment Fee and all remaining expenses (invoice sent after recruitment is completed).

EXHIBIT A CONSULTANT'S PROPOSAL

Recruitment expenses and the costs for printing the Recruitment Brochure will be itemized in detail. Payment of invoices is due within thirty (30) days of receipt (unless the client advises that its normal payment procedures require 60 days.)

GovHR Guarantee

It is the policy of GovHR to assist our clients until an acceptable candidate is appointed to the position. Therefore, no additional professional fee would be incurred should the Client not make a selection from the initial group of recommended candidates and request additional candidates be developed for interview consideration. Additional reimbursable expenses may be incurred should the situation require consultant travel to Austin beyond the planned three visits.

Upon appointment of a candidate, GovHR provides the following guarantee: should the selected and appointed candidate, at the request of the City or the employee's own determination, leave the employ of the City within the first 24 months of appointment, we will, if desired, conduct another search for the cost of expenses and announcements only, if requested to do so within six months of the employee's departure.

In addition, in accordance with the policy of our firm as well as established ethics in the executive search industry, we will not actively recruit the placed employees for a period of five years.

Why Choose GovHR?

We ask you to consider the following as you deliberate:

- We are a leader in the field of local government recruitment and selection with experience in more than 24 states, in communities ranging in population from 1,000 to 1,000,000. More than 28% of our clients are repeat clients showing a high level of satisfaction with our work. We encourage you to call any of our previous clients.
- We are committed to bringing a diverse pool of candidates to your recruitment process. We network extensively with state, city and county management associations, attending more than 20 state and national conferences each year. In addition, we support and attend the meetings of Women Leading Government, the International Hispanic Network, the California Network of Asian Public Administrators, and the National Forum for Black Public Administrators.
- We conduct comprehensive due diligence on candidates. Before we recommend a candidate to you, we will have interviewed them via Skype, conducted reference calls, and media and social media searches. Our knowledge of local government ensures that we can ask probing questions that will verify their expertise.
- We are your partners in this important process. You are welcome to review all the resumes we receive and we will share our honest assessment of the candidates.
- Our goal is your complete satisfaction. We are committed to working with you until you find the candidate that is the best fit for your position.

We believe we have provided you with a comprehensive proposal; however, if you would like a service that you do not see in our proposal, please let us know. We can most likely accommodate your request.

This proposal will remain in effect for a period of six months from the date of the proposal. We look forward to working with you on this recruitment and selection process!

EXHIBIT A
CONSULTANT'S PROPOSAL

Sincerely,



Heidi J. Voorhees
President
GovHR USA

Attachment: Consultant Biography

ACCEPTED BY THE CITY OF AUSTIN, TEXAS

BY: _____

TITLE: _____

CONSULTANT BIOGRAPHY

Heidi J. Voorhees
President, GovHR USA

Ms. Voorhees has extensive experience in both executive search and general management consulting assignments. She has led more than 240 recruitments for local government entities across the country and takes pride in facilitating a tailored, thorough process that gives elected and appointed officials the tools they need to make critical personnel decisions. Her clients have included Austin, Texas; Lake County Illinois; Evanston, Illinois; Ferguson, Missouri; Fayetteville, North Carolina; and clients in Arizona, Rhode Island, Pennsylvania and Wisconsin.

In addition to her 15 years of executive recruitment and management consulting experience, she has 19 years of local government leadership and management service, with the Villages of Wilmette and Schaumburg, Illinois, and the City of Kansas City, Missouri.

From 1990 to 2001, Ms. Voorhees served as the Village Manager for Wilmette, Illinois, one of Chicagoland's notable residential suburbs located on the shore of Lake Michigan. During her tenure, Ms. Voorhees focused on delivering high quality services and responsiveness to a recognized interactive community, streamlining administrative and management functions and team building throughout the organization that employed 200 individuals. Under her leadership, the organization developed a collaborative budget process, formalized its long-range capital improvement program, and developed budget and financial policies that led to the achievement of a AAA bond rating for the community.

Since leaving the Village of Wilmette in 2001, Ms. Voorhees has been an Adjunct Instructor for the Center for Public Safety located on the campus of Northwestern University. She also instructs law enforcement executives in the Executive Management Program on management, community relations, and organizational culture. Ms. Voorhees has also been an Instructor for the Northwestern University Master's Degree Program in Public Policy and Administration. She is a frequent speaker on recruitment and selection issues and has conducted training programs for the Illinois City and County Management Association, the Ohio City and County Management Association, the American Public Works Association – Chicago Metro Chapter, the Illinois Association of Municipal Management Assistants, the Northern Illinois University Civic Leadership Program, and the Great Lakes Leadership Academy.

Ms. Voorhees holds a Master's Degree in Public Affairs from the School of Public and Environmental Affairs at Indiana University where she was a fellow in the Eli Lilly State and Local Government Fellowship Program. Ms. Voorhees was recognized as the distinguished Alumnus for the School in 1998. She also has a Bachelor of Science degree in Political Science from Illinois State University.

Ms. Voorhees has served on the Boards of Directors of numerous professional associations including the Chicago Metropolitan Managers' Association and the Illinois City and County Management Association. For two years, she was the Illinois representative to the ICMA University, the professional development arm of the International City and County Management Association. In 1999, she was selected to participate in the Leadership Greater Chicago Program and has been an active Rotarian for 26 years.

EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Consultant, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Consultant in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all Subconsultants having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Consultant adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

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

The Consultant 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.

The Consultant agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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.

Consultant agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Consultant 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 Consultant's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Consultant's policy, but will also supersede the Consultant's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONSULTANT SHALL PROVIDE THE CITY A COPY OF THE CONSULTANT'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONSULTANT FOR ALL PURPOSES WILL BE CONSIDERED THE CONSULTANT'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

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

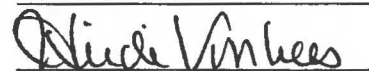
Term:

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

Dated this 28 day of April, 2017

CONSULTANT
Authorized
Signature

Heidi Voorhees



Title

President



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/17/2017

DEPT: Human Resources - Employment Services

TO: Purchasing Officer or Designee

FROM: Cindy Henson

BUYER: Roger Stricklin

PHONE: (512) 974-1727

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

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

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

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

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

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

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

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

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

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

The Human Resources Department has identified GovHR USA to conduct the professional search for the Director Libraries for the City of Austin. The president of this firm, Heidi Voorhees, has conducted a number of successful executive searches for the City of Austin over the past ten years. She has extensive experience and a proven track record with Assistant City Manager Bert Lumbreras recruiting high quality candidates for his service group.

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).

GovHR USA provides comprehensive executive recruitment, human resources and management consulting services for public sector and not-for-profit clients. Comprised of Voorhees Associates and GovTemps USA, GovHR has a seasoned team of executive recruiters, human resource consultants, management consultants, staffing specialists and professional development experts. Owners Heidi Voorhees and Joellen Earl each have more than 25 years experience in leadership positions in the public sector as well as extensive consulting and recruiting experience in the public sector.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with GovHR USA which will cost approximately \$ 23,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Cindy Trueman
Originator

3-20-17
Date

Don 3/24/17

Approved
Certification

Joellen Earl
Department Director or designee

3-27-17
Date

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

Purchasing Review
(if applicable)

P. [Signature]
Buyer

Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013