



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

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

**DATE:** August 24, 2017  
**TO:** Memo to File  
**FROM:** Liz Lock, Procurement Specialist II  
**RE:** MA 5500 PA170000073

This Master Agreement Contract was created and administered by EDD. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Master Agreement Contract other the creation of the payment mechanism for accounting purposes.

**CONTRACT BY AND BETWEEN**  
**THE CITY OF AUSTIN**  
**AND**  
**COMMUNITY INITIATIVES DEVELOPMENT CORP.**

**THIS AGREEMENT** made this June 27, 2017 by and between the CITY OF AUSTIN, a home-rule city and Texas municipal corporation, ("the City") and COMMUNITY INITIATIVES DEVELOPMENT CORP., a Pennsylvania corporation registered to do business in the state of Texas, ("CIDC").

**WITNESSETH**

**WHEREAS**, the City desires to stimulate economic and mixed use development in the City of Austin in order to create new jobs, expand the tax base, redevelop certain areas of the City, and maximize the amount of governmental assistance it receives; and

**WHEREAS**, the City desires to engage CIDC to render certain technical advice and assistance in connection with such undertakings of the City; and

**WHEREAS**, CIDC can assist the City in developing programs, finding developers and identifying and funding the projects that will further the City's economic development goals;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**I. SPECIFIC TERMS AND CONDITIONS**

A. Scope of Services: CIDC shall perform all the necessary services under this Contract in connection with and respecting, but not limited to, the following:

1. Assist in the planning, implementation and financing of economic development initiatives and projects, US HUD Fund Section 108 for balance of the \$5 million and creating 143 jobs with 29 being created from July 2017 through July 2018 calendar year of this contract.
2. Assist in maximizing governmental grants and loans for the City consistent with Texas law, other applicable laws, and the City Manager's requirements regarding departmental applications for grants.
3. Assist in identifying developers for certain redevelopment and small business projects to the extent these services are not duplicated by other contractors with the City.
4. Assist in structuring economic development projects using public and private financial sources to the extent these services are not duplicated by other contractors, including the City's financial advisor. These sources must be procured and managed in compliance with State law and other applicable laws.

Within the above listed scope of services, CIDC, at the direction of the City, shall perform and carry out duties and procedures by using its best efforts, which shall include, but not be limited to, the following:

1. Assist in planning for economic development projects. — Which ones?
2. Assist in the financing of public facilities for the City. — Which ones?
3. At the request of the City, assist in attracting users of economic development projects and developers of such projects to the City. ?
4. To make the City aware of both private and public grant opportunities. oh

The City shall furnish reasonable technical data required by CIDC.

**B. Compensation:** Compensation shall be paid when the City receives a requisition for payment from CIDC specifying that it has performed the work under this Contract in connection with the Contract, and that it is entitled to receive the amount requisitioned under the terms of the Contract. These requisitions for payment will not be paid unless the City has verified that the work has been performed.

The City agrees to pay and CIDC agrees to accept as full payment for the work and services performed pursuant to this Agreement, an amount not to exceed Fifty Five Thousand Dollars (\$55,000.00), to be billed on an hourly basis not to exceed Four Thousand Five Hundred Eighty Three Four Dollars and Thirty-Three Cents per month unless otherwise agreed to in writing by the City. Monthly charges in excess of the monthly cap may be carried forward for the term of the contract and billed in any months in which the monthly cap is not reached if the City has verified that the work has been performed. At the end of the contract year, any outstanding carried forward charges will be billed to the City up to, but not exceeding the authorized Contract amount of \$55,000.00. The hourly fees shall be as follows:

Personnel	Billing Rates
1. President	\$210.00 per hour
2. Managing Director	\$200.00 per hour
3. Associates	\$100.00 per hour
4. Administrative Assistant	\$80.00 per hour

**C. Time of Performance:**

1. The services of CIDC will commence effective June 27, 2017, and shall be undertaken and completed in such sequences as to assure their expeditious completion with respect to the purposes of this Contract, but in any event, all the services required shall be completed within 365 consecutive days from the date of this Contract.

2. Either the City or CIDC may cancel this Contract at any time, with or without cause and without penalty, before the expiration of its term by giving the other party written notice of such cancellation at least five days prior to the date of cancellation.
  3. Should this Contract be canceled prior to its expiration date, compensation shall be paid to CIDC pro rated to the effective date of cancellation provided the City has verified that the work has been performed.
- D. Contact Person: CIDC's contact person for this Contract will be William Loewenstein.

## **II. GENERAL TERMS AND CONDITIONS**

1. All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made. CIDC acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.
2. 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. CIDC acknowledges that if it takes action, directly or indirectly, that results in a violation of this provision, the City at its sole discretion may void this Contract.
3. CIDC 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 CIDC related to the performance under this Contract. CIDC shall retain all such records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of CIDC are resolved, whichever is longer. CIDC agrees to refund to the City any overpayments disclosed by any such audit. CIDC shall include this requirement in any subcontractor agreements entered into in connection with this Contract.
4. Open Records: CIDC acknowledges that City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act or Act). Under the Public Information Act, this agreement, and documents related to this Contract, which are in City's possession, or to which City has access, are presumed to be public and the City may release these records to the public unless an exception described in the Act applies to a document.
5. Confidentiality: CIDC may require access to certain of City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the deliverables to the City. CIDC acknowledges and agrees that the Confidential Information is the

valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure City and its licensors. CIDC (including its employees, subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of a court or other governmental authority with proper jurisdiction. In all cases, CIDC agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective order. CIDC agrees to use protective measures no less stringent than CIDC uses in its business to protect its own most valuable information. In all circumstances, CIDC'S protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

6. CIDC may not assign any of its rights or obligations under this agreement to a third party without prior written approval of the City.
7. Any notice or statement required to be delivered pursuant to this Agreement must be in writing and shall be deemed delivered by actual delivery, by facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**CIDC**

Community Initiatives Development Corporation  
Attn: William Loewenstein  
15375 Blue Fish Circle  
Lakewood Ranch, FL 34202  
Phone: (941)756-5700  
[billloewenstein@icloud.com](mailto:billloewenstein@icloud.com)

**CITY**

Director  
Economic Development Department  
301 West 2<sup>nd</sup> Street, Suite 2030  
Austin, Texas 78701  
(P.O. Box 1088, Austin, Texas 78767)  
Phone: (512) 974-7802

7. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for, nor against any party.
8. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Travis County, Texas.

9. If a dispute arises between the parties regarding performance under this agreement, which the parties are unable to resolve through negotiation, the parties agree that the dispute will be submitted for mediation before any suit is filed. If the mediation does not successfully resolve the dispute, each party is free to pursue other remedies available to them.
10. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this agreement shall not be affected. It is also the intention of the parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
11. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
12. It is acknowledged and agreed by the parties that the terms of this agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with CIDC or its performance under this agreement.
13. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.
14. 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. Upon execution of this Agreement, Consultant shall execute and file with the City a current Non-Discrimination Certification as shown in Exhibit B. 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.
15. 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.
16. INDEMNITY: CIDC SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (INDEMNIFIED PARTIES), AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (CLAIMS), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY CIDC ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, (CIDC PARTIES), (B) A FALSE REPRESENTATION



OR WARRANTY MADE BY THE CIDC PARTIES IN THIS AGREEMENT OR IN CIDC'S PROPOSAL, (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CIDC PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. [ENTITY]'S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.

**IN WITNESS WHEREOF**, the City and CIDC have executed this Contract as of the last date signed by the parties below.

**City of Austin**

By: \_\_\_\_\_

DATE: 8/22/17

**Community Initiatives Development Corporation**

By: \_\_\_\_\_

DATE: 6/15/17

**Approved as to Form:**

*Leela Fireside*  
Leela Fireside, Assistant City Attorney

DATE: 6/12/17

## **Directions for Completing**

### **FSD Purchasing Office Certification of Exemption Form**

*(The following steps must be completed prior to forwarding form to Purchasing)*

1. Enter date of request in MM/DD/YYYY format
2. Enter Purchasing Buyers name
3. Enter Department requesting exemption
4. Enter Originator of certification
5. Enter phone number of Originator
6. Select one of the exemptions that that apply to this procurement
7. Complete the Exemption Form providing any additional information required for the chosen exemption
8. Enter Vendor's Company Name
9. Enter Total Aggregate Amount
10. Obtain signature of:
  - Person requesting exemption (Originator)
  - Department Director or designee
  - AE General Manager (for Critical Business Needs)
  - Assistant City Manager, AE General Manager or designee (for all other exemptions where the purchase > \$50,000)
11. Forward completed form to Purchasing:
  - Buyer reviews and signs document
  - Purchasing Officer or designee (only required if purchase > \$50,000)





## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 06/02/2017

DEPT: Economic Development Department

TO: Purchasing Officer or Designee

FROM: Kevin Johns, Director

BUYER: Claudia Rodriguez

PHONE: (512) 974-7802

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.



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 (valuation of other firms, knowledge of market, etc)).

CIDC's President and CEO, Mr. Loewenstein has over three decades experience in the economic and housing development fields. He is knowledgeable in a full range of federal, state and local housing and economic development programs. He specializes in the empowerment of public and private partnerships, working with non-profits and establishing self-sustaining local delivery systems. CIDC has developed several hundred housing units and more than \$30 million in public benefit facilities owned by CIDC affiliates. He also directs CIDC, state and local contract delivery systems. He has provided Technical Assistance to the U.S. Department of Housing and Urban Development, working with area and state offices in Buffalo, New York; Newark, New Jersey, San Francisco and Los Angeles, California; and Austin, Texas under grants for the CDBG, HOME and CHDO programs. Previously, Mr. Lowenstein assisted Economic Development Department in acquiring \$11 Million in Federal Funding. CIDC shall perform all the necessary services under the contract in connection with and respecting, but not not limited to, the following: 1) Assist in planning, implementation and financing of economic development initiatives and projects; 2) Assist in maximizing governmental grants and loans for the City, and 3) Assist in identifying developers.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Communities Initiative Development Corporation which will cost approximately \$ 55,000.00 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

Originator

Date

Approved  
Certification

Department Director or designee

Date

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

Purchasing Review  
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized  
(if applicable)

Purchasing Officer or designee

Date

02/26/2013