



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

August 25, 2017

It's Time Texas, Inc.
Baker Harrell
CEO
911 W Anderson Lane, Suite 101
Austin, TX 78757

Dear Mr. Harrell:

The City of Austin approved the execution of a contract with your company for the Stronger Austin – Health and Wellness Initiative in accordance with the referenced solicitation.

Responsible Department:	Parks and Recreation
Department Contact Person:	Tiffany Cabin
Department Contact Email Addr:	tiffany.cabin@austintexas.gov
Department Contact Telephone:	512-974-3903
Project Name:	Stronger Austin – Health and Wellness Initiative
Contractor Name:	It's Time Texas, Inc.
Contract Number:	NN170000006
Contract Period:	08/25/17 – 08/24/20
Dollar Amount	\$50,000
Extension Options:	Two 12-month options
Solicitation Type & Number:	Professional service

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

Sincerely,

John Hilbun
Contract Mgmt Specialist IV
City of Austin
Purchasing Office

cc: Tiffany Cabin, PARD

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
It's Time Texas, Inc.
For
Stronger Austin – Health and Wellness Initiative
MA 8600 NN170000006**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and It's Time Texas, Inc. ("Contractor"), having offices at 911 W Anderson Lane, Suite 101, Austin, TX 78757.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Baker Harrell, PhD, Phone: (512) 289-3964, Email Address: baker@itstimetexas.org. The City's Contract Managers for the engagement shall be Tiffany Cabin, Phone: (512) 974-3903, Email Address: tiffany.cabin@austintexas.gov and Adrienne Sturup, Phone: (512) 974-5167, Email Address: adrienne.sturup@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform the tasks specified in the following document:

2.2.1 Section 0500 Scope of Work (attached).

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein. The Contractor shall be paid in advance an amount not-to-exceed \$50,000 for all fees and expenses.

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 Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with

the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Parks and Recreation Department
Attn:	Accounts Payable
Address	200 S. Lamar
City, State, Zip Code	Austin, TX 78704

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

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

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

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 Contractor to such extent as may be necessary on account of:

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

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

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

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

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

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

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

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

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

3.4 **Workforce Security Clearance And Identification (ID).**

- 3.4.1 Contractors are required to obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor's personnel").
- 3.4.2 The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report [requestors may anticipate a two-week delay for State reports and up to a four to six week delay for receipt of a Federal report.].
 - 3.4.2.1 Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card;
 - 3.4.2.2 The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card; or
 - 3.4.2.3 A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- 3.4.3 Contractor shall obtain the reports at least 30 days prior to any onsite work commencement. Contractor also shall attach to each report the project name, Contractor's personnel name(s), current address(es), and a copy of the U.S. state-issued or foreign national driver's license or photo ID card.
- 3.4.4 Contractor shall provide the City a Certified Criminal Background Report affirming that Contractor has conducted required security screening of Contractor's personnel to determine those appropriate for execution of the work and for presence on the City's property. A list of all Contractor Personnel requiring access to the City's site shall be attached to the affidavit.
- 3.4.5 Contractor is not required to obtain reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Contractor's personnel at all times while at the work site.
- 3.4.6 The Contractor shall retain the reports and make them available for audit by the City during regular business hours (reference paragraph 17 in Section 0300, entitled Right to Audit).

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to two additional twelve month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

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

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

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

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

5.1.1.2 The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage.

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

5.1.1.4 Contractor must submit certificates of insurance for all subcontractors to the City prior to them commencing work on the project.

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

5.1.1.6 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the following information:

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

5.1.1.7 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 City and Contractor, shall be considered primary coverage as applicable.

5.1.1.8 If insurance policies are not written for amounts specified below, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.9 The City shall be entitled, upon request and without expense, to receive 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.

5.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by 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 Contractor.

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

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

5.1.1.13 The insurance coverage's specified below are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A and B. This policy shall cover injury to a participant.

5.1.2.1.1 The policy shall contain the following provisions:

5.1.2.1.1.1 Blanket contractual liability coverage for liability assumed under this Contract and all Contracts related to this project.

5.1.2.1.1.2 Independent Contractor's Coverage.

5.1.2.1.2 The policy shall also include these endorsements in favor of the City of Austin:

5.1.2.1.2.1 Waiver of Subrogation, Endorsement CG 2404

5.1.2.1.2.2 Thirty (30) days Notice of Cancellation, Endorsement CG 0205

5.1.2.1.2.3 The City of Austin listed as an additional insured, Endorsement CG2010

5.1.2.1.3 If care of a child is provided outside the presence of a legal guardian or parent, the Contractor shall provide coverage for sexual abuse and molestation for a minimum limit of \$500,000 per occurrence.

5.1.2.2 **Professional Liability Insurance Coverage.** At a minimum limit of \$100,000 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.

5.1.2.2.1 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.

5.1.2.3 **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.

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

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

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

5.1 **Equal Opportunity.**

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

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

SECTION 6. MISCELLANEOUS

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

6.2 **Workforce.**

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

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

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

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

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

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

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

6.4.1 disposal of major assets;

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

6.4.3 any significant termination or addition of provider contracts;

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

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

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

6.4.7 known or anticipated sale, merger, or acquisition;

6.4.8 known, planned or anticipated stock sales;

6.4.9 any litigation against the Contractor; or

6.4.10 significant change in market share or product focus.

6.5 **Audits and Records.**

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

that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

6.5.2 Records Retention:

6.5.2.1 Contractor 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 Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

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

6.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

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

6.7 **Indemnity.**

6.7.1 Definitions:

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

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

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

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

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

6.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: John Hilbun, Contract Mgmt Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

It's Time Texas, Inc.

ATTN: Baker Harrell, Contract Manager

911 W Anderson Lane, Suite 101

Austin, TX 78757

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

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

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

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

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

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

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

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

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

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

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

6.20 Dispute Resolution.

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

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

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

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

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

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

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

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

6.25 **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.

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

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

IT'S TIME TEXAS, INC.

By: _____
Signature

Name: _____
Printed Name

Title: _____

Date: _____

CITY OF AUSTIN

By: _____
Signature

Name: _____
Printed Name

Title: _____

Date: _____

List of Exhibits

Exhibit A	Scope of Work, Section 0500
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification

**CITY OF AUSTIN PURCHASING OFFICE
SECTION 0500: SCOPE OF WORK
STRONGER AUSTIN – HEALTH AND WELLNESS INITIATIVE**

I. INTRODUCTION

The City of Austin (City), a home rule municipality, through the Parks and Recreation Department (PARD) and Austin Public Health Department (APH) intends to enter into a contract with an Austin-based nonprofit organization in unifying the effort to improve the health and wellness of Austinites through the health initiative Stronger Austin.

II. PURPOSE:

The Parks and Recreation Department's (PARD) mission is to inspire Austin to learn, play, protect and connect by creating diverse programs and experiences in sustainable natural spaces and public places. To accomplish this, PARD offers a wide variety of programs for youth and teens, adults and 50+/seniors at its Community Recreation Centers. Teen programs, adaptive recreation, and 50+/senior programs are offered at select centers. Athletics and fitness, enrichment classes, and seasonal events are offered year round.

Austin Public Health's mission is prevent disease, promote health, and protect the well-being of its community with the vision of making Austin/Travis County the healthiest in the nation. APH plays a critical role everywhere and every day in protecting and supporting the health and well-being of people and communities. APH provides a range of services that promote healthy behaviors, prevent diseases, provide food protection, offer life-saving immunizations, and prepare and respond to public health emergencies to help people navigate through crisis in order to reach their full potential.

This first-of-its-kind, public-private initiative aims to reduce the burden of preventable chronic disease among Austin's most at-risk and economically disadvantaged populations. Through Stronger Austin, the Austin Parks and Recreation Department, Austin Public Health Department, and the Contractor will significantly expand access to free programming that increases physical activity, improves diet, and fosters community engagement and development. By exposing historically marginalized communities to a wider array of recreational opportunities, resources, and information, Stronger Austin Days will address the health disparities that exist within many communities of color, build a more inclusive recreational environment in Greater Austin, and strengthen Austin as a whole.

This approach will build on the latest science and will activate and strengthen neighborhood partnerships and places/spaces to create a stronger, more united Austin community. In addition to improving the health of Austin's most at-risk citizens, our aim is to develop and demonstrate a cost-effective model that can be scaled to communities across Texas.

III. Contractor Roles and Responsibilities. For the programming described in

Attachment A, the Contractor shall:

- a. Plan, deliver, and manage programming in existing spaces, including schools, recreation centers, and parks, to significantly expand access to physical activity and nutrition education programming for youth, families, adults, and seniors in Austin's most high need and at-risk communities. Stronger Austin's core services, which are detailed in Attachment "A", will include free, year-round Teach Healthier Out-of-School Time, Fitness in the Park, Activity Groups, and Stronger Austin Days programming.
- b. Establish a Community Advisory Board (CAB), composed of leaders and stakeholders from target areas and neighborhoods. The CAB will:
 - a) Help inform the programming offered through Stronger Austin
 - b) Support promotion of Stronger Austin programming to our target audiences,
 - c) Help establish community connections and partnerships, and
 - d) Work with the Founding Partners Michael and Susan Dell Center for Healthy Living and UT School of Public Health to identify and secure sustainable sources of funding.
- c. Partner with local organizations, agencies, and programs, and shall serve as the main contact for expanded, wraparound health and wellness services within the initiative's target areas.
- d. Serve as the lead for:
 - i. Implementation,
 - ii. Fundraising,
 - iii. Promotion, and
 - iv. Community outreach/partnership recruitment.
- e. Serve as primary fiscal agent.
- f. Support development and evaluation of the programming.
- g. Notify the PARD Contract Manager within 72 hours of any delays, absences or cancellations related to an activity or event scheduled in a PARD facility.
- h. Coordinate with the City's Contract Manager to ensure employees and volunteers Pass criminal background investigations (CBI) and provide CBI results to the City's Contract Manager.
- i. Acknowledge its partnership between the City of Austin Parks and Recreation Department and Austin Public Health in its program brochures, program events, marketing materials, social media, press releases, and television/radio interviews utilizing language approved by the director of the Parks and Recreation Department.
- j. Administer an evaluation to participants to gauge satisfaction with the provided services and other outcomes and will provide the results of the survey/evaluation to the City's Contract Manager no later than 12 months after the start of the Stronger Austin Initiative.

**CITY OF AUSTIN PURCHASING OFFICE
SECTION 0500: SCOPE OF WORK
STRONGER AUSTIN – HEALTH AND WELLNESS INITIATIVE**

IV. CITY OF AUSTIN Roles and Responsibilities (PARD)

- a. The City's Contract Manager from PARD will serve as contact person to address questions and issues concerning coordination of target parks and recreation centers.
- b. The City will allow The Contractor's employees and volunteers access to the recreation centers and other PARD facilities and amenities during normal business hours.
- c. The City of Austin PARD Marketing and Communication Unit will approve all drafts of all publicity materials, including posters and flyers, and obtain PARD director approval prior to material distribution.
- d. City personnel will maintain facilities in a clean and presentable manner.

V. CITY OF AUSTIN Roles and Responsibilities (APH)

- e. APH will support development, implementation, promotion, community outreach/partnership recruitment, evaluation and resource development in the following manner:
 - i. Provide on-going staff support via participation in planning meetings;
 - ii. Provide health screening services
 - iii. Provide health promotion and education activities, i.e., diabetes education, nutrition classes, cooking demonstrations.
 - iv. Provide assistance with engaging other APH programs and community partners for provision of wrap-around services.

VI. EVALUATION

The Michael and Susan Dell Center for Healthy Living/UT School of Public Health, a founding partner of Stronger Austin, will lead the evaluation of Stronger Austin during the first year of operation. Both process and outcome- related goals will be assessed. Qualitative data will also be collected from program participants, Community Advisory Board members, community partners, and instructors/volunteers to identify strengths and weaknesses of program model. Contractor shall coordinate and assist the founding partner with these duties as needed.

VII. EXHIBITS

Attachment A - Implementation Plan

ATTACHMENT “A” IMPLEMENTATION PLAN

Programming	Details	Sites	Audiences
Teach Healthier Out-of-School Time Program	3 Programs: <ul style="list-style-type: none"> • <u>Elementary</u>: Games & Activities, Nutrition Education, Athletics & Homework Time (Fall/Spring) • <u>Middle</u>: Games & Activities, Athletics, Nutrition Education & Homework Time (Fall/Spring) • <u>Family</u>: Games & Activities, Nutrition Education & Healthy Cooking Demonstrations 	Recreation Centers, Parks & Schools	Youth (Elementary & Middle School-Aged) & Families
Fitness in the Park	3 Types of Group Fitness Classes: <ul style="list-style-type: none"> • <u>Beginner</u> (ex: Yoga) • <u>Intermediate</u> (ex: Zumba) • <u>Advanced</u> (ex: CrossFit) 	Recreation Centers, Parks & Schools	Adults & Seniors
Activity Groups	Components: <ul style="list-style-type: none"> • <u>Activity Clubs/Groups</u> (Ex: Walking Groups) • <u>Monthly, Community-Wide/Neighborhood Walks</u> 	Parks/Trails, Neighborhoods & Community-/Faith-Based Organizations	All Ages
Stronger Austin Days	Components: <ul style="list-style-type: none"> • <u>Community Health Forum</u> • <u>Social Services Expo</u> • <u>Free Health & Fitness Programming & Sports Tournaments</u> • <u>Community-Wide Walk</u> • <u>Give Back at Participating, Health-Related Businesses</u> 	Recreation Centers, Parks/Trails, & Participating Businesses	All Ages

ATTACHMENT "A"

Programming	Target Neighborhoods/Sites	Schedule	Detail
Teach Healthier Out-of-School Time Program	<ul style="list-style-type: none"> • <u>78724</u>: District 1; Includes <ul style="list-style-type: none"> ○ Recreation Center: Turner Roberts Recreation Center ○ Current Elementary/Middle Schools: Hornsby Dunlap, Joseph Gilbert ○ Additional Elementary Schools: Jordan, Oak Meadows, Overton • <u>78752/53</u>: District 4; Includes <ul style="list-style-type: none"> ○ Recreation Center: Gus Garcia Park & Recreation Center ○ Current Elementary/Middle Schools: Brown, Pickle, Barrington ○ Additional Elementary/Middle Schools: Guerrero Thompson, Walnut Creek, Barrington, Wooldridge, Hart, Reilly, Webb • <u>78741</u>: District 3; Includes <ul style="list-style-type: none"> ○ Recreation Center: Montopolis Park & Recreation Center ○ Current Elementary/Middle Schools: Allison, Baty, Linder • <u>Potential - 78744/45</u>: District 2; Includes <ul style="list-style-type: none"> ○ Recreation Centers: Dove Springs, Dittmar ○ Current Elementary/Middle Schools: Blazier, Hillcrest, Houston, Langford, Palm, Perez, Rodriguez, Smith, Widen ○ Additional Elementary/Middle Schools: Odem, Joslin, St. Elmo 	<ul style="list-style-type: none"> • <u>Fall</u>: 10 weeks of programming; minimum of 8 sites; 1-2 programs/site; programs offered 2-4 times/week + monthly family program/site • <u>Spring</u>: 15 weeks of programming; minimum of 12 sites; 1-2 programs/site; programs offered 2-4 times/week + monthly family program/site • <u>Summer</u>: 10 weeks of programming; minimum of 15 sites; 1-2 programs/site; programs offered 3-5 times/week + monthly family program/site 	<ul style="list-style-type: none"> • <u>Fall</u>: Each class is 2 hours in duration; minimum of 160 classes offered (10 weeks x 8 sites x 1 class/site x 2 classes/week); ~10-20 youth served/class • <u>Spring</u>: Each class is 2 hours in duration; 360 classes offered (15 weeks x 12 sites x 1 class/site x 2 classes/week); ~10-20 youth served/class • <u>Summer</u>: Each class is 3 hours in duration; 360 classes offered (10 weeks x 12 sites x 1 class/site x 3 classes/week); ~15-30 youth served/class

ATTACHMENT "A"

			<ul style="list-style-type: none"> • <u>TOTAL:</u> 2,000 – 4,000 Students/ Families Served
Fitness in the Park	See Above Parks & Recreation Centers	<ul style="list-style-type: none"> • <u>Fall:</u> 10 weeks of programming; minimum of 8 sites; 1-2 classes/site; classes offered 2-4 times/week • <u>Spring:</u> 15 weeks of programming; minimum of 10 sites; 1-2 classes/site; classes offered 2-4 times/week • <u>Summer:</u> 10 weeks of programming; minimum of 10 sites; 1-2 classes/site; classes offered 2-4 times/week 	<ul style="list-style-type: none"> • <u>Fall:</u> Each class is 1 hour in duration; 200 classes offered (10 weeks x 10 sites x 1 class/site x 2 classes/week); ~10-30 individuals served/class • <u>Spring:</u> Each class is 1 hours in duration; 300 classes offered (15 weeks x 10 sites x 1 class/site x 2 classes/week); ~10-30 individuals served/class • <u>Summer:</u> Each class is 1 hour in duration; 200 classes offered (10 weeks x 10 sites x 1 class/site x 2 classes/week); ~10-30 individuals served/class • <u>TOTAL:</u> 4,000 – 8,000 Adults Served

ATTACHMENT "A"

Activity Groups	See Above Sites + Faith-Based Organizations, Clinics & Worksites	<ul style="list-style-type: none"> • <u>Fall</u>: 10 weeks of programming; minimum of 8 sites; 1-2 activity groups/site; activity sessions occur 1-3 times/week + monthly community/neighborhood walk • <u>Spring</u>: 15 weeks of programming; minimum of 12 sites; 1-2 activity groups/site; activity sessions occur 1-3 times/week + monthly community/neighborhood walk • <u>Summer</u>: 10 weeks of programming; minimum of 15 sites; 1-2 activity groups/site; activity sessions occur 1-3 times/week + monthly community/neighborhood walk 	<ul style="list-style-type: none"> • <u>Fall</u>: Each walk is 1 hour in duration; 180 activity sessions offered (10 weeks x 8 sites x 1 activity group/site x 1 activity session/week); ~10-30 individuals served/class • <u>Spring</u>: Each walk is 1 hour in duration; 180 walks offered (15 weeks x 12 sites x 1 walking group/site x 1 walk/week); ~10-30 individuals served/walk • <u>Summer</u>: Each walk is 1 hour in duration; 150 walks offered (10 weeks x 15 sites x 1 walking group/site x 1 walk/week); ~10-30 individuals served/class • <u>TOTAL</u>: 2,000 – 6,000 Families & Adults Served
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ATTACHMENT “A”

IMPACT & EVALUATION

The evaluation of Stronger Austin will be led by faculty at the Michael and Susan Dell Center for Healthy Living/UT School of Public Health - Austin. In the first year of operation, both process and outcome-related goals will be assessed. Regarding process goals, Stronger Austin will establish new programming in 3-4 high need geographic areas in Austin (see section above) and will also form partnerships with community organizations to expand the reach and impact of the initiative. Stronger Austin will be informed by and advanced through a Community Advisory Board composed of representatives from each of the initiative’s target areas. Qualitative data will also be collected from program participants, Community Advisory Board members, community partners, and instructors/volunteers to identify strengths and weakness of our program model. Stronger Austin’s primary outcome goals will focus on increasing participants’ physical activity, healthy eating, and self-efficacy for physical activity and healthy eating. With sufficient and sustained funding, we will also seek to decrease overweight and obesity among participants. While obesity is a difficult outcome to change, recent findings out of Miami-Dade County in Florida indicate the potential promise of quality OST programming in promoting and support healthy weight among children (reference).

FUNDING & SUSTAINABILITY

Stronger Austin will employ a comprehensive development model that generates ongoing revenue from diversified sources, including contracts, grants, sponsorships, individual gifts, and earned income. All Stronger Austin programming will be offered totally free of charge, however, the initiative will employ a “pay-what-you-want” pricing structure that allows participants to financially support the programming.

In order to reduce costs, Stronger Austin will also recruit volunteer instructors for both the Fitness in the Park and Walking programs. The Stronger Austin team will also secure in-kind sponsors that will reduce equipment costs and expenses associated with marketing/promotion and incentives/rewards.

The Austin Parks and Recreation Department and IT’S TIME TEXAS will, together, contribute a minimum of \$100,000 in seed funding to support the successful launch of Stronger Austin in 2017.

2017 TIMELINE

- **Q1 (January-March):** Secure founding partners and initial investment; begin community outreach; continue needs assessment
- **Q2 (April-June):** Complete needs assessment; finalize implementation, evaluation, and fundraising/sustainability plans; form Community Advisory Board

ATTACHMENT “A”

- **Q3 (July-September):** Secure initial community partners and additional seed funding; collect baseline data; expand Community Advisory Board and community partners
- **Q4 (October-December):** **Begin implementation; continue fundraising efforts; secure additional community partners**

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 Contractor, 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 Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with 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 subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor 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 Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor 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.

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

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'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 CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'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 Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 24th day of August, 2017

CONTRACTOR
Authorized
Signature

It's Time Texas
Bukhameel

Title

CEO

EXHIBIT C

City of Austin, Texas

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. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Contractor hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Dated this 24th day of August, 2017

CONTRACTOR
Authorized
Signature

It's Time Texas
[Signature]

Title

CEO



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 05/22/2017

DEPT: Parks and Recreation Department

TO: Purchasing Officer or Designee

FROM: Tiffany Cabin

BUYER: Sandy Brandt

PHONE: (512) 974-6778

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

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)

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).


IT'S TIME TEXAS, an Austin-based nonprofit organization, is a recognized leader in unifying the effort to improve the health and wellness of Texans. IT'S TIME TEXAS empowers Texans to lead healthier lives and build healthier communities through its portfolio of award-winning technology, programs, events, initiatives, training and support services. Together with its allies and partners, IT'S TIME TEXAS will impact the health of more than one million Texans in over 500 communities across the state. IT'S TIME TEXAS has agreed to manage the Stronger Austin Initiative with the Parks and Recreation Department and Austin Public Health to provide a program with the goal of improving the health and wellness of the Austin public (see attached agreement). PARD is providing a one-time payment of \$50,000 to IT'S TIME TEXAS toward the support of the program partnership. The initial term of the agreement will be for three years with two one-year renewal options.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with IT'S TIME TEXAS which will cost approximately \$ 50,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

 7/20/17
Originator Date

Approved
Certification

 7-21-17
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

- ☐ 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.