



Amendment No. 3  
to  
Contract No. NS180000003  
For  
CAD Services and Social Tables Platform Access  
Between  
Social Tables, Inc.  
and the  
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	To
<b>Vendor Name</b>	Social Tables, Inc.	Cvent, Inc.
<b>Vendor Code</b>	V00000946416	CVE8322015
<b>FEIN</b>		

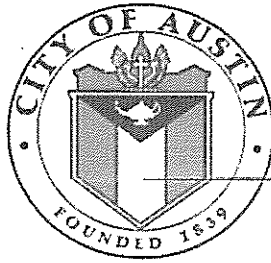
2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

**BY THE SIGNATURE** affixed below, this Amendment No. 3 is hereby incorporated into and made a part of the Contract.

Linell Goodin-Brown  
Procurement Supervisor  
City of Austin, Purchasing Office

2-4-2020

Date



Amendment No. 2  
to  
Contract No. 5600 NS180000003  
for  
CAD Services and Social Tables Platform Access  
between  
Social Tables Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 1, 2019, through October 31, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$32,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/01/2017 – 10/31/2018	\$56,900.00	\$56,900.00
Amendment No. 1: Option 1 – Extension 11/01/2018 – 10/31/2019	\$32,000.00	\$88,900.00
Amendment No. 2: Option 2 – Extension 11/01/2019 – 10/31/2020	\$32,000.00	\$120,900.00

- 3.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Allie Turnage 10/3/19

Printed Name: Allie Turnage

Authorized Representative

Social Tables, Inc.

1325 G Street Northwest, 3<sup>rd</sup> Floor

Washington, DC 20005

aturnage@socialtables.com

Sign/Date: Terry Nicholson Xai Xoomsai-Purcell 10/8/2019

Terry Nicholson Xai Xoomsai-Purcell  
Procurement Supervisor

Austin Energy

721 Barton Springs Road

Austin, Texas 78704



Amendment No. 1  
to  
Contract No. 5600 NS180000003  
for  
CAD Services and Social Tables Platform Access  
between  
Social Tables Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 1, 2018, through October 31, 2019. Two (12 month) options will remain.
- 2.0 The total contract amount is increased by \$32,000.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/01/2017 – 10/31/2018	\$56,900.00	\$56,900.00
Amendment No. 1: Option 1 – Extension 11/01/2018 – 10/31/2019	\$32,000.00	\$88,900.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

DocuSigned by:  
Sign/Date: Jacquie Harrison 9/19/2018  
FFE4D5D0D921415...  
Printed Name: Jacquelyn Harrison  
Authorized Representative

Social Tables, Inc.  
1325 G St NW 3<sup>rd</sup> Floor  
Washington, DC 20005

Sign/Date: Bartley Tyler 9/19/18  
Printed Name: Bartley Tyler  
Authorized Representative  
Sign/Date: Jones T. Howard  
Printed Name: Jones T. Howard

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")  
AND  
Social Tables, Inc. ("Contractor")  
for  
CAD Services and Social Tables Platform Access**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Social Tables, Inc. having offices at 1325 G St. NW, 3<sup>rd</sup> Floor, Washington, DC 20005 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

**1.1 This Contract is composed of the following documents:**

1.1.1 These Contract cover pages 1-2.

1.1.2 Exhibit A, Contract between the City of Austin and Social Tables, Inc. for CAD Services

1.1.3 Exhibit B, Social Tables Platform Access Terms and Conditions

1.1.4 Exhibit C, Non Discrimination Certification

1.1.5 Exhibit D, Social Tables Pricing Agreement, Q012395

1.1.6 Exhibit E, Economic Price Adjustment

**1.2 Term of Contract.** The Contract will be in effect for an initial term of 12 months and may be extended thereafter for up to 3 additional 12 month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee.

**1.3 Operation of Contract and Compensation.** The Contractor will provide the one-time services identified in Exhibit D as "Custom CAD" and "Floor Plan Conversion" in accordance with the terms set out in Exhibit A, and will be paid a total of \$22,650 as set out more fully in Exhibit A. The Contractor will provide all remaining services and platform access identified in Exhibit D in accordance with the terms set out in Exhibit B, and will be paid a total of \$34,250 for the initial term, \$32,000 for the first extension option, \$32,000 for the second extension option, and \$32,000 for the third extension option, subject to economic price adjustments allowed for in Exhibit B. The respective terms of Exhibits A and B will govern only those services within their respective scopes.

**1.4 Total Compensation.** The Contractor shall be paid a total estimated contract amount not to exceed \$152,900.00 comprising the one-time services, platform access and maintenance, and support fees.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be

altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

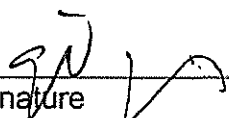
**Social Tables, Inc.**

**CITY OF AUSTIN**

Austin Bordley  
Printed Name of Authorized Person

Gi Zilkha  
Printed Name of Authorized Person

  
Signature

  
Signature

9/29/2017  
Title:

Contract Management Specialist III  
Title:

Director  
Date:

9/29/17  
Date:

**Exhibit A**  
**CONTRACT BETWEEN THE CITY OF AUSTIN**  
**AND**  
**Social Tables, Inc.**  
**For**  
**CAD Services**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Social Tables, Inc. ("Contractor"), having offices at 1325 G St. NW, 3<sup>rd</sup> Floor, Washington, DC 20005.

**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. The provision of Social Tables' products offered as a software-as-a-service platform is governed by separate terms between the parties and is not within the scope of the subject matter of this Contract.

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 Austin Bordley, Phone: (202) 899-4346, Email Address: [austinb@socialtables.com](mailto:austinb@socialtables.com). The City's Contract Manager for the engagement shall be Debbie Gossett, Phone: (512) 404-4034, Email: [Debbie.Gossett@austintexas.gov](mailto:Debbie.Gossett@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 services to be delivered hereunder consist of Contractor causing CAD technicians to measure certain City event spaces on agreed-upon dates (as may be reasonably agreed from time to time by the parties promptly after the effective date of this Contract) and make available to the City digital CAD files representing such spaces. The City shall make available a designated point of contact at the location and time of such measurement to escort such CAD technicians through the property during the measurement process. The City spaces covered consist of: (A) For the Austin Convention Center, the following event spaces: Exhibit Halls 1 through 5 inclusive; Ballrooms A through G inclusive;; Meeting Rooms 1 through 19 inclusive; Mezzanine Rooms 1, 2, 5, and 6 through 11 inclusive; and Show Offices 12 through 16 inclusive; and (B) For the Palmer Events Center, the following event spaces: Exhibit Halls 1 and 2; Meeting Rooms 1 through 5 inclusive; and the Outdoor Canopies. Contractor shall fully and timely (subject to timely access to the properties and proper escort) provide the CAD deliverables described herein in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount equal to, and not to exceed, \$22,650.00, representing the "Custom CAD" and "Floor Plan Conversion" line items set forth on quote Q012395 issued by Contractor (for clarity, the remaining line items in such quote relate to a separate agreement between the parties).

### 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	Convention Center Department
Attn:	Accounts Payable
Email Address	<a href="mailto:ACCD.AcctsPayable@austintexas.gov">ACCD.AcctsPayable@austintexas.gov</a>
Address	500 East Cesar Chavez
City, State, Zip Code	Austin, TX 78701

3.2.2 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 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this

Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

### 3.5 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

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

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

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall be in effect until such time as the CAD deliverables are approved by the City (which approval the City shall not unreasonably withhold or delay and should be within 30 days from completion date) or earlier if it is terminated earlier in accordance with its terms.

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 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 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.

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

### **5.3 Delays.**

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

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

5.4 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables, which consist solely of the CAD drawings.

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

5.4.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however,

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

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

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

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

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

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

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

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

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

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

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

## **SECTION 7. MISCELLANEOUS**

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

### **7.2 Workforce.**

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

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

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

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

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

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

### **7.4 Audits and Records.**

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

#### **7.4.2 Records Retention:**

7.4.2.1 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.

7.4.2.2 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.

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

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

## 7.6 **Termination And Suspension Of Service.**

- A. In the event of a termination of the contract, the Contractor shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the Contractor shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any City data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for causeAfter such period, the Contractor shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
- E. The Contractor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

## 7.7 **Indemnity.**

### 7.7.1 Definitions:

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

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

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers

and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

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

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

To the City:

City of Austin, Austin Convention Center  
Department

ATTN: Debbie Gossett, Contract Manager  
500 East Cesar Chavez  
Austin, Texas, 78701

To the Contractor:

Social Tables, Inc.

ATTN: Contract Manager  
1325 G St. NW, 3<sup>rd</sup> Floor  
Washington, DC 20005

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

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

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

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

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

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

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

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

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

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

## 7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum,

one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

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

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

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

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

#### 7.22 **Subcontractors.**

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

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

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

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

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

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

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

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

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

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

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

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

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
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
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If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

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

[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)



# socialtables

## SOCIAL TABLES PLATFORM ACCESS TERMS AND CONDITIONS

This Agreement sets forth the terms and conditions pursuant to which the Customer has the right to access and use the Social Tables Platform, and is effective as of the date the last of both party's authorized representatives sign the Order, whether or not through an electronic "signature," including through use of Social Tables' electronic contract acceptance process, or the "Effective Date" if otherwise specified.

### 1. DEFINITIONS.

In addition to those terms defined elsewhere in this Agreement, the following capitalized terms when used in this Agreement shall have the following meaning:

- a. **"Agreement"** means the agreement between Social Tables and the Customer regarding the provision of the Social Tables Platform, consisting of these terms and conditions and the applicable Order and no other document.
- b. **"Customer"** means the party identified as the "Subscriber" on the Order referencing this Agreement or attached to this Agreement.
- c. **"Customer Data"** means all data and content, wherever stored or located, that is either uploaded by the Customer to and stored on Social Tables' servers or uploaded, stored, created, hosted, or otherwise possessed by Social Tables as part of the service integration and customization, including all Floor Plans and any draft Floor Plans created by Social Tables.
- d. **"Floor Plans"** means all renderings of a physical space uploaded to the Customer's instance of the Social Tables Platform in a system supported format (e.g., a PDF, image file, acceptable CAD file or Social Tables' proprietary .FPC2 (or later) data file), but excluding Social Tables' proprietary data structure for storing and representing such Floor Plans.
- e. **"Order"** refers to the Social Tables' quote executed (either electronically or by physical signature) by Customer in a timely fashion that identifies the Customer and the variable terms of this Agreement, including the start and end date of the Initial Term, the name of Customer and the property(ies) using the Social Tables Platform (consisting of the products identified in the Order), the fees, and the number of authorized users or a statement that it is an "Unlimited License" if there are no limits on the number of authorized users as well as the number of properties or a statement that it is an "Unlimited Properties" if there are no limits on the number of properties to be included in Customer's instance of the Social Tables Platform. To the extent the quote references "Custom CAD" or "Floor Plan Conversion", such line items refer to services and are governed by a separate services agreement between the parties and are outside the scope of this Agreement.
- f. **"Social Tables Platform"** means the basic cloud-based event diagramming platform provided by Social Tables, as well as any add-on, optional or enhanced cloud-based products that Social Tables offers as add-ons to the basic platform that are expressly listed on the Order (if any).

### 2. SOCIAL TABLES PLATFORM

- a. Social Tables Platform. Customer's right to access and use the Social Tables Platform commences on the **"Start Date,"** which is the later of the date specified in the Order or the date an access code for the Social Tables Platform is first provided to Customer. Social Tables will provide to Customer access to the Social Tables Platform promptly after receipt from Customer of the necessary details of the initial user associated with the account. This access shall include licenses for the number of users as described on the Order (either a fixed number of users or an unlimited number of users). Social Tables reserves the right to change, improve and/or update the Social Tables Platform from time to time in its sole discretion, and to provide such changes, improvements and/or updates to Customer at no additional cost so long as it is not a feature or

functionality that Social Tables offers to its other customers as a separate product at an additional charge. A minimum of seven (7) days advance notice will be provided for all scheduled downtime to perform system maintenance, backup and upgrade functions for the Social Tables Platform (the "**Scheduled Downtime**"). Scheduled Downtime will not exceed eight (8) hours per month and will be scheduled in advance during off-peak hours ET. Social Tables shall notify Customer administrator via email of any Scheduled Downtime that will exceed two (2) hours. The duration of Scheduled Downtime is measured, in minutes, as the amount of elapsed time from when the Social Tables Platform is not accessible or does not permit Customer to log on, to when the Social Tables Platform permits Customer to log on and access the Social Tables Platform.

- i. The Social Tables Platform will be available 24 hours/day, 7 days/week, during the term of this Agreement, except that the Social Tables Platform will be unavailable for up to 3 hours a month for routine maintenance.
- ii. Social Tables shall endeavor to maintain Social Tables Platform availability during any given month with regard to the Social Tables Platform at 99.9% (excluding scheduled downtime). Social Tables Platform availability may be observed at [trust.socialtables.com](http://trust.socialtables.com).

### 3. FEES AND EXPENSES

- a. Fees. The fees for the Social Tables Platform are set forth in the quote Q012395 issued by Social Tables. The Customer shall pay the "Recommended Plan" line item amount annually in advance as the access fee for the Social Tables Platform. While such fee is expected to be fixed for the first four years of access to the Social Tables Platform, the parties agree that Social Tables may seek a cost increase annually in accordance with the provisions of Exhibit A attached hereto. Additionally, Customer shall pay the "Standard Set Creation" line items as one-time set up fees within 30 days after invoice (which will be sent after Customer is granted first access to the Social Tables Platform).
- b. Invoices. 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. Social Tables' name and, if applicable, the tax identification number on the invoice must exactly match the information in the Social Tables' registration with Customer. Unless otherwise instructed in writing, Customer may rely on the remittance address specified on the Social Tables' invoice. Invoices received without all required information cannot be processed and will be returned to Social Tables. Invoices shall be mailed to the below address:

	Customer of Austin
Department	Convention Center Department
Attn:	Accounts Payable
Email Address	<a href="mailto:ACCD.AcctsPayable@austintexas.gov">ACCD.AcctsPayable@austintexas.gov</a>
Address	500 East Cesar Chavez
Customer, State, Zip Code	Austin, TX 78701

- c. Acknowledgment. Customer acknowledges and agrees that the level of the Fees under this Agreement have been set based on the application of the limitations described in Sections 9(a) and 9(b) below, and that Social Tables relied upon the inclusion of such limitations in considering entering into this Agreement and establishing its prices as set forth in the Order.

- d. Overdue Payments. If payment is not timely made, 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 Customer may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved. Without limiting its rights or remedies, Social Tables may suspend access to the Social Tables Platform if any overdue payments are not paid within 30 days after receipt of a second notice of such amount being due.

- e. Taxes. The fees are exclusive of all federal, state, local and foreign taxes, levies and assessments, excluding any tax based on Social Tables' net income. Taxes will not be invoiced to Customer if it provides to Social Tables evidence of a valid tax exemption.

### 4. TERM AND TERMINATION

- a. Term. The initial term for provision of the Social Tables Platform shall be the time period specified in the Order, or if no such term is stated, then for a period of one (1) year, in either case commencing on the Start Date (the "**Initial Term**").
- b. Renewal. This Agreement may be extended thereafter for up to 3 additional 12 month periods by Customer, subject to the approval of Social Tables and the Customer's Purchasing Officer or his designee (each 12 month period referred to as a "**Renewal**").

**Term**" and together with the "Initial Term," referred to herein as the **"Term"**).

c. Holdover. Upon expiration of the Initial Term or any Renewal Term, the Contractor agrees to hold over under the terms and conditions of this Agreement, including any pricing then in effect during the most recent Term, for such a period of time as is reasonably necessary to re-solicit and/or complete the services, not to exceed 120 days unless mutually agreed on in writing.

d. Termination of this Agreement.

i. Either party may terminate the Agreement if the other party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice.

ii. Either party may terminate this Agreement if the other party (1) terminates or suspends its business activities, (2) becomes insolvent, admits in writing its inability to pay debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to control of a trustee, receiver or similar authority, or (3) becomes subject to any bankruptcy or insolvency proceeding, or proceeding involving the protection of or from its creditors, that is not dismissed within sixty (60) days.

iii. Material fraudulent statements by Social Tables shall be grounds for the termination of the Agreement for cause by the Customer and may result in legal action.

e. Effects of Termination. Each party's obligations under Sections 6 and 9 of this Agreement shall survive termination or expiration of the Agreement. Termination shall be in addition to, and shall not prejudice, each party's remedies at law or in equity.

## **5. RESTRICTION OR SUSPENSION.**

a. Suspension. Social Tables reserves the right to suspend Customer access to the Social Tables Platform if, (i) Customer is delinquent in payment by more than thirty (30) days after receipt of a second notice of such delinquency, or (ii) in Social Tables' sole judgment, an immediate restriction or suspension is necessary to protect the Social Tables Platform, Social Tables' network or Social Tables' ability to provide the Social Tables Platform to its other customers. Additionally, Social Tables may suspend user accounts up to the number of users in excess of those permitted under the Order if Social Tables has reason to believe the user number has been exceeded. Social Tables shall promptly restore access when the reason for such suspension is resolved.

b. Data Retention. Social Tables reserves the right to impose a reconnection fee, not to exceed \$500, in the event Customer is suspended for a reason caused by Customer and thereafter Customer requests renewed access to the Social Tables Platform.

i. In the event of a termination of the contract, the Contractor shall implement an orderly return of Customer data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer data.

ii. During any period of service suspension, the Contractor shall not take any action to intentionally erase any Customer data.

iii. In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any Customer data for a period of:

- 10 days after the effective date of termination, if the termination is in accordance with the contract period

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

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

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

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

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

## **6. LICENSES, OWNERSHIP, AND RESERVATION OF RIGHTS.**

a. Ownership of Intellectual Property. Each party retains any and all pre-existing right, title and interest in and to its website/s, Marks (defined below), intellectual property, Customer Data (in the case of Customer), the Social Tables Platform (in the case of Social Tables), and all modules and components thereof, including Social Tables' proprietary Floor Plan data format and all data created by Social

Tables in such format. Customer understands and acknowledges that Social Tables retains ownership of all intellectual property rights in and to the Social Tables Platform and all methodologies, techniques, processes and the like embodied therein or used to create any changes to the Social Tables Platform during the Term, whether or not proposed by Customer, and Social Tables may use and provide any such changes in the course of other engagements for its other customers. This Agreement shall not be construed in any manner as transferring any rights of ownership to any intellectual property owned by a party to the other. Under no circumstances shall this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any intellectual or other property or components thereof other than as specifically granted in this Agreement.

b. Use of Social Tables Platform. Social Tables hereby grants to Customer a limited, revocable, non-exclusive, non-transferable, worldwide (except where prohibited or restricted by applicable law) right to access and use the Social Tables Platform solely for the purposes described in this Agreement. Customer's use of the Social Tables Platform (i.e., logon access to the Social Tables Platform and not use of any printed event plans generated by the Social Tables Platform) is limited to employees of Customer, including independent contractors acting as temporary employees, but excludes any other service providers or independent contractors, particularly those that facilitate or otherwise participate in the events whom are required to acquire their own access to the Social Tables Platform. All rights not expressly granted to Customer are reserved by Social Tables and its licensors. Except as expressly permitted by Social Tables, Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Social Tables Platform in any way; (ii) reverse engineer, decompile, modify, translate, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon Customer's access to or usage of the Social Tables Platform; (iii) rent, lease or otherwise transfer rights to any aspect of the Social Tables Platform; or (iv) take any act to remove, obscure, interfere with or modify the presentation or functionality of any aspect of the Social Tables Platform. Customer further agrees that, upon termination or expiration of this Agreement, Customer shall no longer have the right to use the Social Tables Platform. This license shall terminate automatically upon the termination or expiration of this Agreement.

c. Use of Marks. Subject to the terms and conditions of this Agreement, each party grants to the other a non-transferable (except as provided herein), non-exclusive, royalty-free right to reproduce and display the other party's logos, trademarks, trade names and other similar identifying material (the "**Marks**") solely for the purposes described herein and in accordance with the owner's

established usage policies and procedures, as may be modified from time to time in the owner's sole discretion and as supplied to the other party. In connection with such licenses, each party shall have the unilateral right to establish such quality standards and additional terms and conditions as such party deems necessary to reasonably protect its Marks. All use of a party's Marks by the other shall inure solely to the benefit of the party that owns the Marks. This license and all sublicenses thereto shall terminate automatically upon the termination or expiration of this Agreement.

d. Customer Data Security.

i. Security. Social Tables shall disclose upon request its non-proprietary security processes and technical limitations to Customer such that adequate protection and flexibility can be attained between the Customer and the Social Tables. For example: virus checking and port sniffing –Customer and Social Tables shall understand each other's roles and responsibilities. Customer acknowledges that the Social Tables Platform contain certain open data fields intended to store only individuals' names and food allergies (the "Permitted Personal Information"), and that a security requirement of the parties is that any other personal or other information that Customer elects to input into such open data fields (the "Impermissible Personal Information") shall be at Customer's own risk. Absent Social Tables' intentional or grossly negligent disclosure of any Impermissible Personal Information a disclosure of Impermissible Personal Information shall (i) not be considered a breach by Social Tables of its obligations under this Agreement, nor (ii) shall Social Tables have any other liability arising out of or relating to any such disclosure of such Impermissible Personal Information. Social Tables shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of Permitted Personal Information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

ii. Security Incident or Data Breach Notification. Social Tables shall inform Customer of any security incident or data breach that affects Customer Data. Social Tables may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with Customer should be handled on an

urgent as-needed basis, as part of Social Tables communication and mitigation processes as mutually agreed upon, defined by law or contained in this Agreement.

iii. Breach Responsibilities. This section (iii) only applies when a data breach occurs with respect to Permitted Personal Information within the possession or control of Social Tables.

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

b. Social Tables, unless stipulated otherwise, shall promptly notify the appropriate Customer identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. Social Tables shall (1) cooperate with the Customer as reasonably requested by the Customer to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

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

e. RESERVED.

f. License to Customer Data.

i. Customer hereby grants Social Tables a non-transferable (except as provided herein), royalty-free (except as provided herein), non-exclusive, worldwide license to display, transmit, distribute, copy, store and/or reproduce the Customer Data on or through the Social Tables Platform for the sole purpose of providing services under this Agreement. Additionally, Social Tables may use, display, transmit, distribute, copy, store, provision into and/or reproduce the Floor Plans as part of the Social Tables Platform during the Term until promptly after such time as Customer requests in writing that Social Tables cease such activities with respect to any Floor Plan identified in such writing. Social Tables acknowledges that Customer may, from time to time, require additional confidentiality of its floor plans or other Customer Data in order to meet operational security needs. If Customer so requests in writing, Social Tables will not publish or otherwise make available, except to Customer through the Service or otherwise, any Floor Plans or other Customer Data to which any such request applies.

ii. Customer hereby acknowledges that Social Tables may gather aggregated statistics from data created, collected or stored within the Social Tables Platform in a manner that is anonymized and cannot be identified back to Customer or any particular person or any particular Customer property or Customer event, for disclosure and/or sale in such aggregated, anonymized form to users of such statistics.

iii. Customer shall not upload or otherwise allow any of its users to place within the Social Tables Platform any Customer Data for which Customer does not have all necessary rights to grant the licenses granted herein or to use such Customer Data in the manner used within the Social Tables Platform.

iv. Social Tables shall indemnify, defend and hold Customer, its affiliates, and their respective officers, directors, employees, agents and advisors, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees) that are or may be sustained or incurred by an indemnified party as a result of any asserted claim or claims that the Social Tables Platform (excluding any Customer Data) infringes or misappropriates the intellectual property right of any person or entity, provided, however, that such obligation to indemnify, defend and hold harmless shall not apply to any claim arising from any allegation of or relating to any: (w) Customer Data; (x) the combination, operation or use of the Social Tables Platform with any technology (including any software, hardware, firmware, system or network) or service not provided by Social Tables or specified for use in Social Tables' documentation for the Social Tables Platform; (y) use of any

API to the Social Tables Platform without Social Tables' written permission, or (z) a use of the Social Tables Platform by or on behalf of Customer that is outside the purpose, scope or manner of use authorized by this Agreement or the documentation for the Social Tables Platform.

**7. CUSTOMER'S RESPONSIBILITIES.** Customer is legally and financially responsible for all activity occurring under Customer accounts. Customer shall notify Social Tables immediately of any unauthorized use of any password or account.

**8. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

a. Corporate. Each party represents and warrants to the other that (i) it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization, (ii) it has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder; (iii) it is duly authorized to execute and deliver this Agreement and duly authorized to perform the obligations hereunder; (iv) this Agreement is a legal and valid obligation of such party, binding and enforceable in accordance with its terms, (v) the execution, delivery and performance of this Agreement does not conflict with any agreement, instrument, or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law, regulation or order of any court, governmental body or administrative or other agency having jurisdiction over it.

b. No Infringement. Social Tables represents to Customer that Social Tables, to its knowledge, either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to grant the licenses granted by Social Tables under this Agreement for the duration of the Term. Customer represents to Social Tables that Customer either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to perform Customer's obligations hereunder and to grant the licenses granted by Customer under this Agreement for the duration of the Term.

c. Representations About Customer Data. Customer represents and warrants to Social Tables that the Customer Data and the use, distribution or publication of the Customer Data, including through the Social Tables Platform, directly or indirectly, does not, and shall not, infringe or misappropriate any third party's rights in or to such Customer Data, nor shall doing so violate any right of any person, including any right acquired under a privacy policy or similar agreement.

**9. DISCLAIMERS.**

a. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SOCIAL TABLES PLATFORM IS PROVIDED "AS IS," AND NEITHER SOCIAL TABLES NOR ANY OF ITS PROVIDERS, LICENSORS, OFFICERS, EMPLOYEES, OR AGENTS MAKES ANY WARRANTY, CONDITION OR GUARANTEE WITH RESPECT TO THE SOCIAL TABLES PLATFORM OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SOCIAL TABLES PLATFORM, UNDER THIS AGREEMENT OR OTHERWISE. THE PURCHASE OF ACCESS TO AND USE OF THE SOCIAL TABLES PLATFORM IS MADE WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. SOCIAL TABLES EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. SOCIAL TABLES DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SOCIAL TABLES PLATFORM.

b. WITHOUT PREJUDICE TO OR LIMITING OF SOCIAL TABLES' RIGHT TO RECEIVE PAYMENT FOR ACCESS TO AND USE OF THE SOCIAL TABLES PLATFORM, SOCIAL TABLES' ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THIS AGREEMENT AND THE PROVISION BY SOCIAL TABLES OF FACILITIES, TRANSMISSION, DATA, SOCIAL TABLES PLATFORM OR EQUIPMENT INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL/PERSONAL PROPERTY, SHALL NOT EXCEED, IN THE AGGREGATE THE FEES PAID TO SOCIAL TABLES HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY LIABILITY FOR A DATA BREACH GOVERNED BY SECTION 6(d) OR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

c. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND NOT SUBJECT TO SOCIAL TABLES' CONTROL. CUSTOMER AGREES THAT SOCIAL TABLES SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE SOCIAL TABLES PLATFORM IS TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF, INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO SOCIAL TABLES' CONTROL, OR FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER INFORMATION CARRIED ON SUCH NETWORKS OR INTERNET SERVICE PROVIDERS OR AS A RESULT OF THE DISCONNECTION FROM OR UNAVAILABILITY OF ANY NETWORK.

d. CUSTOMER ACKNOWLEDGES THAT THE SOCIAL TABLES PLATFORM RELIES ON BLUEPRINTS THAT ARE PROVIDED BY CUSTOMER OR THAT MAY BE CREATED BY SOCIAL TABLES, AND THAT THE SOCIAL TABLES PLATFORM MATHEMATICALLY EXTRAPOLATES DATA DETERMINED FROM SUCH BLUEPRINTS, AND UNDERSTANDS THAT SUCH BLUEPRINTS AND DATA MAY CONTAIN ERRORS OR INACCURACIES, AND THAT SUCH DATA WHEN USED BY THE SOCIAL TABLES PLATFORM MAY PERMIT CONFIGURATIONS THAT VIOLATE THE LAWS, RULES OR REGULATIONS OF THE JURISDICTION IN WHICH THE FACILITY REPRESENTED IN SUCH BLUEPRINT IS LOCATED (WHETHER BY OVERRIDE BY CUSTOMER OR BY FUNCTION OF THE SOCIAL TABLES PLATFORM). CONSEQUENTLY, CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE FOR ENSURING THAT THE PLANS GENERATED BY THE SOCIAL TABLES PLATFORM ARE SUITABLE FOR THE CONTEMPLATED EVENT AND WILL IN PRACTICE ACTUALLY PERMIT THE USE OF THE SPACE CONTEMPLATED IN SUCH PLAN AND THAT SUCH PLAN COMPLIES WITH ALL LAWS, RULES AND REGULATIONS APPLICABLE IN THE LOCAL JURISDICTION FOR WHICH THE PLAN HAS BEEN CREATED.

e. NEITHER SOCIAL TABLES NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING (INCLUDING SUSPENDING OR DISCONTINUING SOCIAL TABLES PLATFORM) OR SUPPORTING THE SOCIAL TABLES PLATFORM SHALL BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SOCIAL TABLES PLATFORM OR INABILITY TO USE THE SOCIAL TABLES PLATFORM, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY OR OTHER RIGHTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

#### 10. MISCELLANEOUS.

a. No Agency. Nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the parties.

b. Entire Agreement. This Agreement constitutes the entire agreement between Social Tables and Customer with respect to the subject matter hereof and supersedes and terminates any prior agreements or understandings relating to such subject matter. The parties acknowledge that they have entered into a separate agreement regarding Social Tables' provision of Services to Customer and that it is a separate and distinct agreement of different subject matter and is not superceded by this Agreement. No addendum, waiver, consent, modification, amendment or change of the terms of this Agreement shall bind either party unless in

writing and signed by duly authorized officers of Social Tables and Customer.

c. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable, unless such construction would materially alter the meaning of this Agreement.

d. Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement 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 Customer and Social Tables shall be addressed as follows:

To Customer:

City of Austin  
Austin Convention Center Department  
ATTN: Debbie Gossett, Contract Manager  
500 East Cesar Chavez  
Austin, Texas, 78701

With a Copy to:

City of Austin  
City Attorney  
301 W. 2nd Street  
P.O. Box 1088  
Austin, TX 78767

To Social Tables:

Attn: Legal Department  
1325 G St. NW, 3rd Floor  
Washington, DC 20005

e. Assignment; Change in Control. This Agreement may not be assigned by Customer without the prior written approval of Social Tables but may be assigned without Social Tables consent to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Social Tables directly or indirectly owning or controlling 50% or more of



Customer shall entitle Social Tables to terminate this Agreement immediately upon written notice to Customer.

f. Governing Law. The validity, construction and interpretation of this Agreement, and the rights and duties of the parties, shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of law provisions thereof.

g. Dispute Resolution. If a dispute arises out of or relates to the Agreement, 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. 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 Customer and Social Tables 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 Agreement 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 Customer and Social Tables 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.

h. No Waiver. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it

has, or may have thereunder, operate as a waiver of any right, power or privilege by such party.

i. Survival. All terms of this Agreement which by their nature extend beyond their termination shall remain in effect until fulfilled and apply to respective successors and assigns.

j. Headings. The section headings and subheadings contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.

k. Force Majeure. In no event shall either party be liable to the other for any delay or failure to perform hereunder, which delay or failure to perform is due to causes beyond the reasonable control of said party, including, but not limited to, acts of God, acts of the public enemy, acts of the United States of America, or any State, territory or political subdivision thereof or of the District of Columbia, acts of other governments, fires, storms, floods, epidemics, quarantine restrictions, labor disputes, strikes, freight embargoes, failures or delays in transportation or communications, equipment failures and similar occurrences (collectively, "**Force Majeure**"). If there is any such delay, then the periods for completion of the obligations of the party(ies) affected by such event shall be automatically extended by an equitable period of time based on the duration and effect of such Force Majeure.

l. Purchase Orders and Other Agreements. Social Tables may receive and sign or otherwise execute purchase orders or similar documents from Customer contemporaneously with or after the execution of this Agreement (including subsequent such documents provided in connection with accepting a Renewal Term), and the parties agree that the sole purpose of such documents is for Customer's internal payment processes and that such execution by Social Tables does not constitute an acceptance of any of the terms or conditions of such document. Customer further represents, warrants and agrees that (i) such documents are solely for compliance with its internal purchasing policies, (i) such document is not intended to and shall not add any new terms or conditions or supersede any conflicting terms and conditions in this Agreement, and (iii) Customer shall not assert any terms or conditions contained in such documents against Social Tables. Additionally Social Tables may sign a non-disclosure agreement or similar agreement as part of the process to evaluate this transaction and in such event, without limiting Social Tables or Customers obligations thereunder with respect to all information disclosed prior to the execution of this Agreement, the parties agree that this Agreement supersedes and replaces any such agreement notwithstanding anything to the contrary herein, unless a new non-disclosure agreement or other document re-affirming such non-disclosure agreement or such similar agreement is executed contemporaneously with this Agreement.

m. Advertising. Social Tables shall not advertise or publish, without the Customer's prior consent, the fact that Customer has entered into the Agreement, except to the extent required by law.

n. No Contingent Fees. Social Tables warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Social Tables for the purpose of securing business. For breach or violation of this warranty, Customer shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Social Tables, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

o. Gratuities. Customer may, by written notice to the Social Tables, cancel the Agreement without liability if it is determined by the Customer that gratuities were offered or given by the Social Tables or any agent or representative of the Social Tables to any officer or employee of the Customer with a view toward securing the Agreement 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 Agreement is canceled by the Customer pursuant to this provision, the Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Social Tables in providing such gratuities.

p. Non-Suspension or Debarment Certification. Customer 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. Social Tables 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.

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

r. Significant Events. Social Tables will immediately notify Customer's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications must be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon Social Tables's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- i. disposal of major assets;
- ii. any major computer software conversion to the operating systems, security systems, and application software used in the performance of this Contract that would have a material impact on the services to be provided under this Agreement;
- iii. 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;
- iv. known or anticipated sale, merger, or acquisition;
- v. significant change in market share or product focus that would prevent Social Tables from fully delivering the services to be provided under this agreement.

[END OF TERMS]

**EXHIBIT C**  
**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 September day of 29, 2017

CONTRACTOR  
Authorized  
Signature

Title

Social Tables  
Austin Borelley  
Director



Social Tables  
1325 G St. NW 3<sup>rd</sup> Floor  
Washington, DC 20005  
Phone: +1 (877) 9-SEAT-ME

**Q012395**

Valid Until: 09/30/2017

Name: Quote for Austin Convention Center and  
the Palmer Events Center

**Subscriber**

City of Austin Convention Center and the Palmer Events Center  
Chad Paine  
500 E Cesar Chavez St  
Austin Texas  
United States 78701

**Bill To**

City of Austin Convention Center and the Palmer Events Center  
Chad Paine  
500 E Cesar Chavez St  
Austin Texas  
United States 78701

Start Date: 11/01/2017  
End Date: 10/31/2021  
Initial Term (Months): 12  
Total Term (Months): 48  
Number of Users: Unlimited

Payment Method: ACH  
Payment Term: Net 30  
Currency: USD  
Total Contract Value: \$152,900

Social Tables Platform Details		
Product	Billing Frequency	Term Payment
Instructor Led Online Training	Waived	0
In-Person Training (4 hours)	Waived	0
Custom CAD (Palmer Events Center)	One-Time	4,650
Floor Plan Conversion	One-Time	8,000
Custom CAD (Austin Convention Center)	One-Time	10,000
Recommended Plan	Annual - Recurring	34,250
Diagram		
Total First Year		\$56,900
Total Second Year		\$32,000
Total Third Year		\$32,000
Total Fourth Year		\$32,000
Total Contract Value:		\$152,900

**Invoicing Schedule:**

Year 1: \$56,900.00  
Year 2: \$32,000.00  
Year 3: \$32,000.00  
Year 4: \$32,000.00

The first-year term price of \$56,900 is a fixed fee and is all inclusive of all products, services, travel, training, fees, etc. needed to successfully deliver and implement the Social Tables platform to the Customer. Under no circumstances shall services exceed \$56,900. ACCD will not accept, nor will ACCD pay, any fees or charges which cause the first-year term price to exceed \$56,900.

The Agreement will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of Social Tables and the City Purchasing Officer or his designee. Annually, an economic price adjustment may apply.

Social Tables will incur all T&E expenses in year 1 to deliver professional services to the Customer.

 9/29/17  
Signature Date

Signature  
Austin Bordley

austinb@socialtables.com

Signature  
Name

Austin Convention Center and the Palmer Events Center

Signature Date

**EXHIBIT E**  
**ECONOMIC PRICE ADJUSTMENT**

1.1 **Price Adjustments.** Prices shown in this Agreement shall remain firm for the first 12-month period of the Agreement. After that, in recognition of the potential for fluctuation of the Social Tables' cost, a price adjustment (increase or decrease) may be requested by either Customer or Social Tables on the anniversary date of the Agreement or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed ten percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

1.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

1.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party no less than 60 calendar days before the yearly anniversary date of the Agreement; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in Social Tables's direct costs. Social Tables shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

1.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

1.4.1 The following definitions apply:

1.4.1.1 **Base Period:** Month and year of the original contracted price (the solicitation close date).

1.4.1.2 **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.

1.4.1.3 **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

1.4.1.4 **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.

1.4.1.5 **Weight %:** The percent of the Base Price subject to adjustment based on the index change.

1.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

1.4.2.1 Utilize final Compilation data instead of Preliminary data

1.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

1.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100	
Database Name: Producer Price Index Data	
Series ID: WPU34	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area:	
Description of Series ID: Software Publishing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: ALL	

1.5 **Calculation.** Price adjustment will be calculated as follows:

1.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Price
Equals the Adjusted Price

1.6 If the requested adjustment is not supported by the referenced index, the Customer, as its sole discretion, may consider approving an adjustment on fully documented market increases.



**Exhibit A**  
**CONTRACT BETWEEN THE CITY OF AUSTIN**  
**AND**  
**Social Tables, Inc.**  
**For**  
**CAD Services**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Social Tables, Inc. ("Contractor"), having offices at 1325 G St. NW, 3<sup>rd</sup> Floor, Washington, DC 20005.

**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. The provision of Social Tables' products offered as a software-as-a-service platform is governed by separate terms between the parties and is not within the scope of the subject matter of this Contract.

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 Austin Bordley, Phone: (202) 899-4346, Email Address: [austinb@socialtables.com](mailto:austinb@socialtables.com). The City's Contract Manager for the engagement shall be Debbie Gossett, Phone: (512) 404-4034, Email: [Debbie.Gossett@austintexas.gov](mailto:Debbie.Gossett@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 services to be delivered hereunder consist of Contractor causing CAD technicians to measure certain City event spaces on agreed-upon dates (as may be reasonably agreed from time to time by the parties promptly after the effective date of this Contract) and make available to the City digital CAD files representing such spaces. The City shall make available a designated point of contact at the location and time of such measurement to escort such CAD technicians through the property during the measurement process. The City spaces covered consist of: (A) For the Austin Convention Center, the following event spaces: Exhibit Halls 1 through 5 inclusive; Ballrooms A through G inclusive;; Meeting Rooms 1 through 19 inclusive; Mezzanine Rooms 1, 2, 5, and 6 through 11 inclusive; and Show Offices 12 through 16 inclusive; and (B) For the Palmer Events Center, the following event spaces: Exhibit Halls 1 and 2; Meeting Rooms 1 through 5 inclusive; and the Outdoor Canopies. Contractor shall fully and timely (subject to timely access to the properties and proper escort) provide the CAD deliverables described herein in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount equal to, and not to exceed, \$22,650.00, representing the "Custom CAD" and "Floor Plan Conversion" line items set forth on quote Q012395 issued by Contractor (for clarity, the remaining line items in such quote relate to a separate agreement between the parties).



### 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	Convention Center Department
Attn:	Accounts Payable
Email Address	<a href="mailto:ACCD.AcctsPayable@austintexas.gov">ACCD.AcctsPayable@austintexas.gov</a>
Address	500 East Cesar Chavez
City, State, Zip Code	Austin, TX 78701

3.2.2 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 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this

Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

### 3.5 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

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

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

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** The Contract shall be in effect until such time as the CAD deliverables are approved by the City (which approval the City shall not unreasonably withhold or delay and should be within 30 days from completion date) or earlier if it is terminated earlier in accordance with its terms.

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 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 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.

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

### **5.3 Delays.**

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

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

5.4 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables, which consist solely of the CAD drawings.

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

5.4.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however,

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

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

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

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

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

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

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

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

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

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

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

## **SECTION 7. MISCELLANEOUS**

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

### **7.2 Workforce.**

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

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

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

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

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

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

### **7.4 Audits and Records.**

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

#### **7.4.2 Records Retention:**

7.4.2.1 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.

7.4.2.2 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.

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

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

## 7.6 **Termination And Suspension Of Service.**

- A. In the event of a termination of the contract, the Contractor shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the Contractor shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any City data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for causeAfter such period, the Contractor shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
- E. The Contractor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

## 7.7 **Indemnity.**

### 7.7.1 Definitions:

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

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

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers

and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

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

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

To the City:

City of Austin, Austin Convention Center  
Department

ATTN: Debbie Gossett, Contract Manager  
500 East Cesar Chavez  
Austin, Texas, 78701

To the Contractor:

Social Tables, Inc.

ATTN: Contract Manager  
1325 G St. NW, 3<sup>rd</sup> Floor  
Washington, DC 20005

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

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

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

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

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

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

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

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

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

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

## 7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum,



one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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

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

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

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

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

#### 7.22 **Subcontractors.**

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

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

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

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

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

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

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

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

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

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

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

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

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
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
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If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

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

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

[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)



# socialtables

## SOCIAL TABLES PLATFORM ACCESS TERMS AND CONDITIONS

This Agreement sets forth the terms and conditions pursuant to which the Customer has the right to access and use the Social Tables Platform, and is effective as of the date the last of both party's authorized representatives sign the Order, whether or not through an electronic "signature," including through use of Social Tables' electronic contract acceptance process, or the "Effective Date" if otherwise specified.

### 1. DEFINITIONS.

In addition to those terms defined elsewhere in this Agreement, the following capitalized terms when used in this Agreement shall have the following meaning:

- a. **"Agreement"** means the agreement between Social Tables and the Customer regarding the provision of the Social Tables Platform, consisting of these terms and conditions and the applicable Order and no other document.
- b. **"Customer"** means the party identified as the "Subscriber" on the Order referencing this Agreement or attached to this Agreement.
- c. **"Customer Data"** means all data and content, wherever stored or located, that is either uploaded by the Customer to and stored on Social Tables' servers or uploaded, stored, created, hosted, or otherwise possessed by Social Tables as part of the service integration and customization, including all Floor Plans and any draft Floor Plans created by Social Tables.
- d. **"Floor Plans"** means all renderings of a physical space uploaded to the Customer's instance of the Social Tables Platform in a system supported format (e.g., a PDF, image file, acceptable CAD file or Social Tables' proprietary .FPC2 (or later) data file), but excluding Social Tables' proprietary data structure for storing and representing such Floor Plans.
- e. **"Order"** refers to the Social Tables' quote executed (either electronically or by physical signature) by Customer in a timely fashion that identifies the Customer and the variable terms of this Agreement, including the start and end date of the Initial Term, the name of Customer and the property(ies) using the Social Tables Platform (consisting of the products identified in the Order), the fees, and the number of authorized users or a statement that it is an "Unlimited License" if there are no limits on the number of authorized users as well as the number of properties or a statement that it is an "Unlimited Properties" if there are no limits on the number of properties to be included in Customer's instance of the Social Tables Platform. To the extent the quote references "Custom CAD" or "Floor Plan Conversion", such line items refer to services and are governed by a separate services agreement between the parties and are outside the scope of this Agreement.
- f. **"Social Tables Platform"** means the basic cloud-based event diagramming platform provided by Social Tables, as well as any add-on, optional or enhanced cloud-based products that Social Tables offers as add-ons to the basic platform that are expressly listed on the Order (if any).

### 2. SOCIAL TABLES PLATFORM

- a. Social Tables Platform. Customer's right to access and use the Social Tables Platform commences on the **"Start Date,"** which is the later of the date specified in the Order or the date an access code for the Social Tables Platform is first provided to Customer. Social Tables will provide to Customer access to the Social Tables Platform promptly after receipt from Customer of the necessary details of the initial user associated with the account. This access shall include licenses for the number of users as described on the Order (either a fixed number of users or an unlimited number of users). Social Tables reserves the right to change, improve and/or update the Social Tables Platform from time to time in its sole discretion, and to provide such changes, improvements and/or updates to Customer at no additional cost so long as it is not a feature or

functionality that Social Tables offers to its other customers as a separate product at an additional charge. A minimum of seven (7) days advance notice will be provided for all scheduled downtime to perform system maintenance, backup and upgrade functions for the Social Tables Platform (the “**Scheduled Downtime**”). Scheduled Downtime will not exceed eight (8) hours per month and will be scheduled in advance during off-peak hours ET. Social Tables shall notify Customer administrator via email of any Scheduled Downtime that will exceed two (2) hours. The duration of Scheduled Downtime is measured, in minutes, as the amount of elapsed time from when the Social Tables Platform is not accessible or does not permit Customer to log on, to when the Social Tables Platform permits Customer to log on and access the Social Tables Platform.

- i. The Social Tables Platform will be available 24 hours/day, 7 days/week, during the term of this Agreement, except that the Social Tables Platform will be unavailable for up to 3 hours a month for routine maintenance.
- ii. Social Tables shall endeavor to maintain Social Tables Platform availability during any given month with regard to the Social Tables Platform at 99.9% (excluding scheduled downtime). Social Tables Platform availability may be observed at [trust.socialtables.com](http://trust.socialtables.com).

### 3. FEES AND EXPENSES

a. Fees. The fees for the Social Tables Platform are set forth in the quote Q012395 issued by Social Tables. The Customer shall pay the “Recommended Plan” line item amount annually in advance as the access fee for the Social Tables Platform. While such fee is expected to be fixed for the first four years of access to the Social Tables Platform, the parties agree that Social Tables may seek a cost increase annually in accordance with the provisions of Exhibit A attached hereto. Additionally, Customer shall pay the “Standard Set Creation” line items as one-time set up fees within 30 days after invoice (which will be sent after Customer is granted first access to the Social Tables Platform).

b. Invoices. 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. Social Tables’ name and, if applicable, the tax identification number on the invoice must exactly match the information in the Social Tables’ registration with Customer. Unless otherwise instructed in writing, Customer may rely on the remittance address specified on the Social Tables’ invoice. Invoices received without all required information cannot be processed and will be returned to Social Tables. Invoices shall be mailed to the below address:

	Customer of Austin
Department	Convention Center Department
Attn:	Accounts Payable
Email Address	<a href="mailto:ACCD.AcctsPayable@austintexas.gov">ACCD.AcctsPayable@austintexas.gov</a>
Address	500 East Cesar Chavez
Customer, State, Zip Code	Austin, TX 78701

c. Acknowledgment. Customer acknowledges and agrees that the level of the Fees under this Agreement have been set based on the application of the limitations described in Sections 9(a) and 9(b) below, and that Social Tables relied upon the inclusion of such limitations in considering entering into this Agreement and establishing its prices as set forth in the Order.

d. Overdue Payments. If payment is not timely made, 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 Customer may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved. Without limiting its rights or remedies, Social Tables may suspend access to the Social Tables Platform if any overdue payments are not paid within 30 days after receipt of a second notice of such amount being due.

e. Taxes. The fees are exclusive of all federal, state, local and foreign taxes, levies and assessments, excluding any tax based on Social Tables’ net income. Taxes will not be invoiced to Customer if it provides to Social Tables evidence of a valid tax exemption.

### 4. TERM AND TERMINATION

a. Term. The initial term for provision of the Social Tables Platform shall be the time period specified in the Order, or if no such term is stated, then for a period of one (1) year, in either case commencing on the Start Date (the “**Initial Term**”).

b. Renewal. This Agreement may be extended thereafter for up to 3 additional 12 month periods by Customer, subject to the approval of Social Tables and the Customer’s Purchasing Officer or his designee (each 12 month period referred to as a “**Renewal**”).

**Term**" and together with the "Initial Term," referred to herein as the **"Term"**).

c. Holdover. Upon expiration of the Initial Term or any Renewal Term, the Contractor agrees to hold over under the terms and conditions of this Agreement, including any pricing then in effect during the most recent Term, for such a period of time as is reasonably necessary to re-solicit and/or complete the services, not to exceed 120 days unless mutually agreed on in writing.

d. Termination of this Agreement.

i. Either party may terminate the Agreement if the other party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice.

ii. Either party may terminate this Agreement if the other party (1) terminates or suspends its business activities, (2) becomes insolvent, admits in writing its inability to pay debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to control of a trustee, receiver or similar authority, or (3) becomes subject to any bankruptcy or insolvency proceeding, or proceeding involving the protection of or from its creditors, that is not dismissed within sixty (60) days.

iii. Material fraudulent statements by Social Tables shall be grounds for the termination of the Agreement for cause by the Customer and may result in legal action.

e. Effects of Termination. Each party's obligations under Sections 6 and 9 of this Agreement shall survive termination or expiration of the Agreement. Termination shall be in addition to, and shall not prejudice, each party's remedies at law or in equity.

## **5. RESTRICTION OR SUSPENSION.**

a. Suspension. Social Tables reserves the right to suspend Customer access to the Social Tables Platform if, (i) Customer is delinquent in payment by more than thirty (30) days after receipt of a second notice of such delinquency, or (ii) in Social Tables' sole judgment, an immediate restriction or suspension is necessary to protect the Social Tables Platform, Social Tables' network or Social Tables' ability to provide the Social Tables Platform to its other customers. Additionally, Social Tables may suspend user accounts up to the number of users in excess of those permitted under the Order if Social Tables has reason to believe the user number has been exceeded. Social Tables shall promptly restore access when the reason for such suspension is resolved.

b. Data Retention. Social Tables reserves the right to impose a reconnection fee, not to exceed \$500, in the event Customer is suspended for a reason caused by Customer and thereafter Customer requests renewed access to the Social Tables Platform.

i. In the event of a termination of the contract, the Contractor shall implement an orderly return of Customer data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer data.

ii. During any period of service suspension, the Contractor shall not take any action to intentionally erase any Customer data.

iii. In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any Customer data for a period of:

- 10 days after the effective date of termination, if the termination is in accordance with the contract period

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

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

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

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

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

## **6. LICENSES, OWNERSHIP, AND RESERVATION OF RIGHTS.**

a. Ownership of Intellectual Property. Each party retains any and all pre-existing right, title and interest in and to its website/s, Marks (defined below), intellectual property, Customer Data (in the case of Customer), the Social Tables Platform (in the case of Social Tables), and all modules and components thereof, including Social Tables' proprietary Floor Plan data format and all data created by Social

Tables in such format. Customer understands and acknowledges that Social Tables retains ownership of all intellectual property rights in and to the Social Tables Platform and all methodologies, techniques, processes and the like embodied therein or used to create any changes to the Social Tables Platform during the Term, whether or not proposed by Customer, and Social Tables may use and provide any such changes in the course of other engagements for its other customers. This Agreement shall not be construed in any manner as transferring any rights of ownership to any intellectual property owned by a party to the other. Under no circumstances shall this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any intellectual or other property or components thereof other than as specifically granted in this Agreement.

b. Use of Social Tables Platform. Social Tables hereby grants to Customer a limited, revocable, non-exclusive, non-transferable, worldwide (except where prohibited or restricted by applicable law) right to access and use the Social Tables Platform solely for the purposes described in this Agreement. Customer's use of the Social Tables Platform (i.e., logon access to the Social Tables Platform and not use of any printed event plans generated by the Social Tables Platform) is limited to employees of Customer, including independent contractors acting as temporary employees, but excludes any other service providers or independent contractors, particularly those that facilitate or otherwise participate in the events whom are required to acquire their own access to the Social Tables Platform. All rights not expressly granted to Customer are reserved by Social Tables and its licensors. Except as expressly permitted by Social Tables, Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Social Tables Platform in any way; (ii) reverse engineer, decompile, modify, translate, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon Customer's access to or usage of the Social Tables Platform; (iii) rent, lease or otherwise transfer rights to any aspect of the Social Tables Platform; or (iv) take any act to remove, obscure, interfere with or modify the presentation or functionality of any aspect of the Social Tables Platform. Customer further agrees that, upon termination or expiration of this Agreement, Customer shall no longer have the right to use the Social Tables Platform. This license shall terminate automatically upon the termination or expiration of this Agreement.

c. Use of Marks. Subject to the terms and conditions of this Agreement, each party grants to the other a non-transferable (except as provided herein), non-exclusive, royalty-free right to reproduce and display the other party's logos, trademarks, trade names and other similar identifying material (the "**Marks**") solely for the purposes described herein and in accordance with the owner's

established usage policies and procedures, as may be modified from time to time in the owner's sole discretion and as supplied to the other party. In connection with such licenses, each party shall have the unilateral right to establish such quality standards and additional terms and conditions as such party deems necessary to reasonably protect its Marks. All use of a party's Marks by the other shall inure solely to the benefit of the party that owns the Marks. This license and all sublicenses thereto shall terminate automatically upon the termination or expiration of this Agreement.

d. Customer Data Security.

i. Security. Social Tables shall disclose upon request its non-proprietary security processes and technical limitations to Customer such that adequate protection and flexibility can be attained between the Customer and the Social Tables. For example: virus checking and port sniffing –Customer and Social Tables shall understand each other's roles and responsibilities. Customer acknowledges that the Social Tables Platform contain certain open data fields intended to store only individuals' names and food allergies (the "Permitted Personal Information"), and that a security requirement of the parties is that any other personal or other information that Customer elects to input into such open data fields (the "Impermissible Personal Information") shall be at Customer's own risk. Absent Social Tables' intentional or grossly negligent disclosure of any Impermissible Personal Information a disclosure of Impermissible Personal Information shall (i) not be considered a breach by Social Tables of its obligations under this Agreement, nor (ii) shall Social Tables have any other liability arising out of or relating to any such disclosure of such Impermissible Personal Information. Social Tables shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of Permitted Personal Information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

ii. Security Incident or Data Breach Notification. Social Tables shall inform Customer of any security incident or data breach that affects Customer Data. Social Tables may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with Customer should be handled on an

urgent as-needed basis, as part of Social Tables communication and mitigation processes as mutually agreed upon, defined by law or contained in this Agreement.

iii. Breach Responsibilities. This section (iii) only applies when a data breach occurs with respect to Permitted Personal Information within the possession or control of Social Tables.

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

b. Social Tables, unless stipulated otherwise, shall promptly notify the appropriate Customer identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. Social Tables shall (1) cooperate with the Customer as reasonably requested by the Customer to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

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

e. RESERVED.

f. License to Customer Data.

i. Customer hereby grants Social Tables a non-transferable (except as provided herein), royalty-free (except as provided herein), non-exclusive, worldwide license to display, transmit, distribute, copy, store and/or reproduce the Customer Data on or through the Social Tables Platform for the sole purpose of providing services under this Agreement. Additionally, Social Tables may use, display, transmit, distribute, copy, store, provision into and/or reproduce the Floor Plans as part of the Social Tables Platform during the Term until promptly after such time as Customer requests in writing that Social Tables cease such activities with respect to any Floor Plan identified in such writing. Social Tables acknowledges that Customer may, from time to time, require additional confidentiality of its floor plans or other Customer Data in order to meet operational security needs. If Customer so requests in writing, Social Tables will not publish or otherwise make available, except to Customer through the Service or otherwise, any Floor Plans or other Customer Data to which any such request applies.

ii. Customer hereby acknowledges that Social Tables may gather aggregated statistics from data created, collected or stored within the Social Tables Platform in a manner that is anonymized and cannot be identified back to Customer or any particular person or any particular Customer property or Customer event, for disclosure and/or sale in such aggregated, anonymized form to users of such statistics.

iii. Customer shall not upload or otherwise allow any of its users to place within the Social Tables Platform any Customer Data for which Customer does not have all necessary rights to grant the licenses granted herein or to use such Customer Data in the manner used within the Social Tables Platform.

iv. Social Tables shall indemnify, defend and hold Customer, its affiliates, and their respective officers, directors, employees, agents and advisors, harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees) that are or may be sustained or incurred by an indemnified party as a result of any asserted claim or claims that the Social Tables Platform (excluding any Customer Data) infringes or misappropriates the intellectual property right of any person or entity, provided, however, that such obligation to indemnify, defend and hold harmless shall not apply to any claim arising from any allegation of or relating to any: (w) Customer Data; (x) the combination, operation or use of the Social Tables Platform with any technology (including any software, hardware, firmware, system or network) or service not provided by Social Tables or specified for use in Social Tables' documentation for the Social Tables Platform; (y) use of any



API to the Social Tables Platform without Social Tables' written permission, or (z) a use of the Social Tables Platform by or on behalf of Customer that is outside the purpose, scope or manner of use authorized by this Agreement or the documentation for the Social Tables Platform.

**7. CUSTOMER'S RESPONSIBILITIES.** Customer is legally and financially responsible for all activity occurring under Customer accounts. Customer shall notify Social Tables immediately of any unauthorized use of any password or account.

**8. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

a. Corporate. Each party represents and warrants to the other that (i) it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization, (ii) it has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder; (iii) it is duly authorized to execute and deliver this Agreement and duly authorized to perform the obligations hereunder; (iv) this Agreement is a legal and valid obligation of such party, binding and enforceable in accordance with its terms, (v) the execution, delivery and performance of this Agreement does not conflict with any agreement, instrument, or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law, regulation or order of any court, governmental body or administrative or other agency having jurisdiction over it.

b. No Infringement. Social Tables represents to Customer that Social Tables, to its knowledge, either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to grant the licenses granted by Social Tables under this Agreement for the duration of the Term. Customer represents to Social Tables that Customer either owns fully and outright or otherwise possesses and has obtained all rights, approvals, licenses, consents and permissions as are necessary to perform Customer's obligations hereunder and to grant the licenses granted by Customer under this Agreement for the duration of the Term.

c. Representations About Customer Data. Customer represents and warrants to Social Tables that the Customer Data and the use, distribution or publication of the Customer Data, including through the Social Tables Platform, directly or indirectly, does not, and shall not, infringe or misappropriate any third party's rights in or to such Customer Data, nor shall doing so violate any right of any person, including any right acquired under a privacy policy or similar agreement.

**9. DISCLAIMERS.**

a. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SOCIAL TABLES PLATFORM IS PROVIDED "AS IS," AND NEITHER SOCIAL TABLES NOR ANY OF ITS PROVIDERS, LICENSORS, OFFICERS, EMPLOYEES, OR AGENTS MAKES ANY WARRANTY, CONDITION OR GUARANTEE WITH RESPECT TO THE SOCIAL TABLES PLATFORM OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SOCIAL TABLES PLATFORM, UNDER THIS AGREEMENT OR OTHERWISE. THE PURCHASE OF ACCESS TO AND USE OF THE SOCIAL TABLES PLATFORM IS MADE WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. SOCIAL TABLES EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. SOCIAL TABLES DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SOCIAL TABLES PLATFORM.

b. WITHOUT PREJUDICE TO OR LIMITING OF SOCIAL TABLES' RIGHT TO RECEIVE PAYMENT FOR ACCESS TO AND USE OF THE SOCIAL TABLES PLATFORM, SOCIAL TABLES' ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THIS AGREEMENT AND THE PROVISION BY SOCIAL TABLES OF FACILITIES, TRANSMISSION, DATA, SOCIAL TABLES PLATFORM OR EQUIPMENT INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL/PERSONAL PROPERTY, SHALL NOT EXCEED, IN THE AGGREGATE THE FEES PAID TO SOCIAL TABLES HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY LIABILITY FOR A DATA BREACH GOVERNED BY SECTION 6(d) OR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

c. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND NOT SUBJECT TO SOCIAL TABLES' CONTROL. CUSTOMER AGREES THAT SOCIAL TABLES SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE SOCIAL TABLES PLATFORM IS TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF, INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO SOCIAL TABLES' CONTROL, OR FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER INFORMATION CARRIED ON SUCH NETWORKS OR INTERNET SERVICE PROVIDERS OR AS A RESULT OF THE DISCONNECTION FROM OR UNAVAILABILITY OF ANY NETWORK.

d. CUSTOMER ACKNOWLEDGES THAT THE SOCIAL TABLES PLATFORM RELIES ON BLUEPRINTS THAT ARE PROVIDED BY CUSTOMER OR THAT MAY BE CREATED BY SOCIAL TABLES, AND THAT THE SOCIAL TABLES PLATFORM MATHEMATICALLY EXTRAPOLATES DATA DETERMINED FROM SUCH BLUEPRINTS, AND UNDERSTANDS THAT SUCH BLUEPRINTS AND DATA MAY CONTAIN ERRORS OR INACCURACIES, AND THAT SUCH DATA WHEN USED BY THE SOCIAL TABLES PLATFORM MAY PERMIT CONFIGURATIONS THAT VIOLATE THE LAWS, RULES OR REGULATIONS OF THE JURISDICTION IN WHICH THE FACILITY REPRESENTED IN SUCH BLUEPRINT IS LOCATED (WHETHER BY OVERRIDE BY CUSTOMER OR BY FUNCTION OF THE SOCIAL TABLES PLATFORM). CONSEQUENTLY, CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE FOR ENSURING THAT THE PLANS GENERATED BY THE SOCIAL TABLES PLATFORM ARE SUITABLE FOR THE CONTEMPLATED EVENT AND WILL IN PRACTICE ACTUALLY PERMIT THE USE OF THE SPACE CONTEMPLATED IN SUCH PLAN AND THAT SUCH PLAN COMPLIES WITH ALL LAWS, RULES AND REGULATIONS APPLICABLE IN THE LOCAL JURISDICTION FOR WHICH THE PLAN HAS BEEN CREATED.

e. NEITHER SOCIAL TABLES NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING (INCLUDING SUSPENDING OR DISCONTINUING SOCIAL TABLES PLATFORM) OR SUPPORTING THE SOCIAL TABLES PLATFORM SHALL BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SOCIAL TABLES PLATFORM OR INABILITY TO USE THE SOCIAL TABLES PLATFORM, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY OR OTHER RIGHTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

#### 10. MISCELLANEOUS.

a. No Agency. Nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the parties.

b. Entire Agreement. This Agreement constitutes the entire agreement between Social Tables and Customer with respect to the subject matter hereof and supersedes and terminates any prior agreements or understandings relating to such subject matter. The parties acknowledge that they have entered into a separate agreement regarding Social Tables' provision of Services to Customer and that it is a separate and distinct agreement of different subject matter and is not superceded by this Agreement. No addendum, waiver, consent, modification, amendment or change of the terms of this Agreement shall bind either party unless in

writing and signed by duly authorized officers of Social Tables and Customer.

c. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provisions held to be unenforceable, unless such construction would materially alter the meaning of this Agreement.

d. Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement 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 Customer and Social Tables shall be addressed as follows:

To Customer:

City of Austin  
Austin Convention Center Department  
ATTN: Debbie Gossett, Contract Manager  
500 East Cesar Chavez  
Austin, Texas, 78701

With a Copy to:

City of Austin  
City Attorney  
301 W. 2nd Street  
P.O. Box 1088  
Austin, TX 78767

To Social Tables:

Attn: Legal Department  
1325 G St. NW, 3rd Floor  
Washington, DC 20005

e. Assignment; Change in Control. This Agreement may not be assigned by Customer without the prior written approval of Social Tables but may be assigned without Social Tables consent to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of Customer that results or would result in a direct competitor of Social Tables directly or indirectly owning or controlling 50% or more of

Customer shall entitle Social Tables to terminate this Agreement immediately upon written notice to Customer.

f. Governing Law. The validity, construction and interpretation of this Agreement, and the rights and duties of the parties, shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to the conflict of law provisions thereof.

g. Dispute Resolution. If a dispute arises out of or relates to the Agreement, 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. 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 Customer and Social Tables 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 Agreement 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 Customer and Social Tables 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.

h. No Waiver. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it

has, or may have thereunder, operate as a waiver of any right, power or privilege by such party.

i. Survival. All terms of this Agreement which by their nature extend beyond their termination shall remain in effect until fulfilled and apply to respective successors and assigns.

j. Headings. The section headings and subheadings contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.

k. Force Majeure. In no event shall either party be liable to the other for any delay or failure to perform hereunder, which delay or failure to perform is due to causes beyond the reasonable control of said party, including, but not limited to, acts of God, acts of the public enemy, acts of the United States of America, or any State, territory or political subdivision thereof or of the District of Columbia, acts of other governments, fires, storms, floods, epidemics, quarantine restrictions, labor disputes, strikes, freight embargoes, failures or delays in transportation or communications, equipment failures and similar occurrences (collectively, "**Force Majeure**"). If there is any such delay, then the periods for completion of the obligations of the party(ies) affected by such event shall be automatically extended by an equitable period of time based on the duration and effect of such Force Majeure.

l. Purchase Orders and Other Agreements. Social Tables may receive and sign or otherwise execute purchase orders or similar documents from Customer contemporaneously with or after the execution of this Agreement (including subsequent such documents provided in connection with accepting a Renewal Term), and the parties agree that the sole purpose of such documents is for Customer's internal payment processes and that such execution by Social Tables does not constitute an acceptance of any of the terms or conditions of such document. Customer further represents, warrants and agrees that (i) such documents are solely for compliance with its internal purchasing policies, (i) such document is not intended to and shall not add any new terms or conditions or supersede any conflicting terms and conditions in this Agreement, and (iii) Customer shall not assert any terms or conditions contained in such documents against Social Tables. Additionally Social Tables may sign a non-disclosure agreement or similar agreement as part of the process to evaluate this transaction and in such event, without limiting Social Tables or Customers obligations thereunder with respect to all information disclosed prior to the execution of this Agreement, the parties agree that this Agreement supersedes and replaces any such agreement notwithstanding anything to the contrary herein, unless a new non-disclosure agreement or other document re-affirming such non-disclosure agreement or such similar agreement is executed contemporaneously with this Agreement.

m. Advertising. Social Tables shall not advertise or publish, without the Customer's prior consent, the fact that Customer has entered into the Agreement, except to the extent required by law.

n. No Contingent Fees. Social Tables warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Social Tables for the purpose of securing business. For breach or violation of this warranty, Customer shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Social Tables, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

o. Gratuities. Customer may, by written notice to the Social Tables, cancel the Agreement without liability if it is determined by the Customer that gratuities were offered or given by the Social Tables or any agent or representative of the Social Tables to any officer or employee of the Customer with a view toward securing the Agreement 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 Agreement is canceled by the Customer pursuant to this provision, the Customer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Social Tables in providing such gratuities.

p. Non-Suspension or Debarment Certification. Customer 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. Social Tables 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.

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

r. Significant Events. Social Tables will immediately notify Customer's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications must be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon Social Tables's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- i. disposal of major assets;
- ii. any major computer software conversion to the operating systems, security systems, and application software used in the performance of this Contract that would have a material impact on the services to be provided under this Agreement;
- iii. 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;
- iv. known or anticipated sale, merger, or acquisition;
- v. significant change in market share or product focus that would prevent Social Tables from fully delivering the services to be provided under this agreement.

[END OF TERMS]

**EXHIBIT C**  
**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 September day of 29, 2017

CONTRACTOR  
Authorized  
Signature

Title

Social Tables  
Austin Borelley  
Director





Social Tables  
1325 G St. NW 3<sup>rd</sup> Floor  
Washington, DC 20005  
Phone: +1 (877) 9-SEAT-ME

**Q012395**

Valid Until: 09/30/2017

Name: Quote for Austin Convention Center and  
the Palmer Events Center

**Subscriber**

City of Austin Convention Center and the Palmer Events Center  
Chad Paine  
500 E Cesar Chavez St  
Austin Texas  
United States 78701

**Bill To**

City of Austin Convention Center and the Palmer Events Center  
Chad Paine  
500 E Cesar Chavez St  
Austin Texas  
United States 78701

Start Date: 11/01/2017  
End Date: 10/31/2021  
Initial Term (Months): 12  
Total Term (Months): 48  
Number of Users: Unlimited

Payment Method: ACH  
Payment Term: Net 30  
Currency: USD  
Total Contract Value: \$152,900

Social Tables Platform Details		
Product	Billing Frequency	Term Payment
Instructor Led Online Training	Waived	0
In-Person Training (4 hours)	Waived	0
Custom CAD (Palmer Events Center)	One-Time	4,650
Floor Plan Conversion	One-Time	8,000
Custom CAD (Austin Convention Center)	One-Time	10,000
Recommended Plan	Annual - Recurring	34,250
Diagram		
Total First Year		\$56,900
Total Second Year		\$32,000
Total Third Year		\$32,000
Total Fourth Year		\$32,000
Total Contract Value:		\$152,900

**Invoicing Schedule:**

Year 1: \$56,900.00  
Year 2: \$32,000.00  
Year 3: \$32,000.00  
Year 4: \$32,000.00

The first-year term price of \$56,900 is a fixed fee and is all inclusive of all products, services, travel, training, fees, etc. needed to successfully deliver and implement the Social Tables platform to the Customer. Under no circumstances shall services exceed \$56,900. ACCD will not accept, nor will ACCD pay, any fees or charges which cause the first-year term price to exceed \$56,900.

The Agreement will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of Social Tables and the City Purchasing Officer or his designee. Annually, an economic price adjustment may apply.

Social Tables will incur all T&E expenses in year 1 to deliver professional services to the Customer.

 9/29/17  
Signature Date

Signature  
Austin Bordley

austinb@socialtables.com

Signature  
Name

Austin Convention Center and the Palmer Events Center

Signature Date

**EXHIBIT E**  
**ECONOMIC PRICE ADJUSTMENT**

1.1 **Price Adjustments.** Prices shown in this Agreement shall remain firm for the first 12-month period of the Agreement. After that, in recognition of the potential for fluctuation of the Social Tables' cost, a price adjustment (increase or decrease) may be requested by either Customer or Social Tables on the anniversary date of the Agreement or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed ten percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

1.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.

1.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party no less than 60 calendar days before the yearly anniversary date of the Agreement; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in Social Tables's direct costs. Social Tables shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

1.4 **Indexes.** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

1.4.1 The following definitions apply:

1.4.1.1 **Base Period:** Month and year of the original contracted price (the solicitation close date).

1.4.1.2 **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.

1.4.1.3 **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.

1.4.1.4 **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.

1.4.1.5 **Weight %:** The percent of the Base Price subject to adjustment based on the index change.

1.4.2 **Adjustment-Request Review.** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

1.4.2.1 Utilize final Compilation data instead of Preliminary data



1.4.2.2. If the referenced index is no longer available shift up to the next higher category index.

1.4.3 **Index Identification.** Complete table as they may apply.

Weight % or \$ of Base Price: 100	
Database Name: Producer Price Index Data	
Series ID: WPU34	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area:	
Description of Series ID: Software Publishing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: ALL	

1.5 **Calculation.** Price adjustment will be calculated as follows:

1.5.1 **Single Index.** Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Price
Equals the Adjusted Price

1.6 If the requested adjustment is not supported by the referenced index, the Customer, as its sole discretion, may consider approving an adjustment on fully documented market increases.



**City of Austin  
Contract Management Department  
Certificate of Exemption**

DATE: 6/26/17

DEPT: Austin Convention Center

TO: Contract Management Department  
Director or Designee

FROM: Debbie Gossett

PHONE: 512-404-4034

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.

This Certification of Exemption is executed and filed with the Contract Management Department 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

- ☐ 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

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.

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).

The Austin Convention Center recently purchased a booking and work order system from Ungerboeck Software through RFP process. We have found that for the purpose of creating diagrams within the system, Ungerboeck has integrated capabilities with one company, and that company is Social Tables. We have attached sole source letters from both Ungerboeck and Social Tables to validate this to be true.

We currently use Vectorworks for diagrams, and our version is at end of life.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Social Tables which will cost approximately \$ 59,400 plus a \$ 0 contingency for a total contract amount not to exceed \$ 59,400 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

Dalton Smith 6/27/17  
Originator Date

Approved  
Certification

M. D. B. 6/29/17  
Department Director or designee Date

Alan K. AA 6/30/17  
Assistant City Manager /or designee Date

Contract Management

\_\_\_\_\_  
Contract Relations Division Manager Date

Exemption Authorized  
(if applicable)

\_\_\_\_\_  
Contract Management Department Director or  
designee Date

3/13/15