



Amendment No. 2  
to  
Contract No. NA180000088  
for  
Human resource management subscription service  
between  
Checkster Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective March 13, 2020 through March 12, 2021. Three (3) options will remain.
- 2.0 The total contract amount is increased by \$14,803.31 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 03/13/2018 – 03/12/2019	\$14,590.00	\$14,590.00
Amendment No. 1: Option 1-Extension 03/13/2019 – 03/12/2020	\$14,442.25	\$29,032.25
Amendment No. 2: Option 2-Extension 03/13/2020 – 03/12/2021	\$14,803.31	\$43,835.56

- 3.0 By signing this Amendment, the City of Austin confirms 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 SIGNATURE affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Printed Name: Brenita Selement  
Authorized Representative

Sign/Date: [Signature] 12/26/19

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



Amendment No. 1  
to  
Contract No. MA 9300 NA180000088  
for  
Background Screening Subscription Services  
between  
Checkster, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective March 13, 2019 through March 13, 2020. Four (4) options will remain.
- 2.0 The total contract amount is increased by \$14,442.25 this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 03/13/2018 – 03/12/2019	\$14,590.00	\$14,590.00
Amendment No. 1: Option 1 – Extension 03/13/2019 – 03/12/2020	\$14,442.25	\$29,032.25

- 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: 

Printed Name: Yves Lermusi  
Authorized Representative  
Checkster, Inc.

926 Diablo Ave. #305  
Novato, CA 94947

Sign/Date:  3/19/19

Printed Name: Ken Bragdon  
Authorized Representative  
City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Checkster, Inc.  
For  
Background Screening Subscription Services**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Checkster, Inc. ("Contractor"), having offices at 926 Diablo Ave #305, Novato, CA 94947.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

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

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

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Scott Raymond, Phone: (425) 207-8955, Email Address: scott@checkster.com. The City's Contract Manager for the engagement shall be William A. Alderete, Phone: (512) 978-0485, Email Address: william.alderete@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

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

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed **\$74,561.67** for all fees and expenses.

<b>YEAR 1</b>	<b>PROJECTED SPENDING AUTHORITY</b>
<b>REFERENCE CHECKUP SUBSCRIPTION SERVICES</b>	<b>\$14,090.00</b>
<b>ONE TIME TRAINING AND IMPLEMENTATION</b>	<b>\$500.00</b>
<b>YEAR 1 GRAND TOTAL</b>	<b>\$14,590.00</b>
<b>YEAR 2</b>	<b>PROJECTED SPENDING AUTHORITY</b>
<b>REFERENCE CHECKUP SUBSCRIPTION SERVICES</b>	<b>\$14,090.00</b>

2.5% INCREASES	\$352.25
YEAR 2 GRAND TOTAL	\$14,442.25
YEAR 3	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$14,442.25
2.5% INCREASES	\$361.06
YEAR 3 GRAND TOTAL	\$14,803.31
YEAR 4	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$14,803.31
2.5% INCREASES	\$370.08
YEAR 4 GRAND TOTAL	\$15,173.39
YEAR 5	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$15,173.39
2.5% INCREASES	\$379.33
YEAR 5 GRAND TOTAL	\$15,552.72
GRAND TOTAL	\$74,561.67

### 3.2 **Invoices.**

3.2.1 Invoices shall contain a unique invoice 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	Emergency Medical Services (9300)
Attn:	Account Payable
Address	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767

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 **Reimbursable Expenses.** Reimbursable expenses are not allowable for this contract

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

3.6.1 The making and acceptance of final payment will constitute:

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

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

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

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months.

The Contract may be extended beyond the initial term for up to four additional 12-month periods at the City's sole option.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

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

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

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

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

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

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

## **SECTION 5. OTHER DELIVERABLES**

### **5.1 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.

## **SECTION 6. MISCELLANEOUS**

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

6.1.1 disposal of major assets;

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

6.1.3 any significant termination or addition of provider contracts;

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

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

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

6.1.7 known or anticipated sale, merger, or acquisition;

6.1.8 known, planned or anticipated stock sales;

6.1.9 any litigation against the Contractor; or

6.1.10 significant change in market share or product focus.

## **6.2 Audits and Records.**

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

### **6.2.2 Records Retention:**

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

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

### 6.3 **Indemnity.**

#### 6.3.1 Definitions:

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

**6.3.1.1.1** 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;

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

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

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

6.4 **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.

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

To the City:

City of Austin, Purchasing Office

ATTN: CA's Name, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Checkster, Inc.

ATTN: Scott Raymond, Contract Manager

926 Diablo Ave, # 305

Novato, CA 94947

6.6 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets,



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

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

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

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

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

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

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

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

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

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

6.16 **Dispute Resolution.**

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

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

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

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

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

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January

President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

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

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

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

6.22 **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)

6.23 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

6.23.1 This contract;

6.23.2 Checkster's Subscription Agreement.

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

CHECKSTER, INC.

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

Name: \_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: Yves Lermusi  
Yves Lermusi (Mar 13, 2018)

Email: contract@checkster.com

CITY OF AUSTIN

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

Name: Sai Purcell  
Printed Name

Title: Procurement Specialist IV

Date: 3/13/2018

Signature:

Email: sai.xoomsai@austintexas.gov

**List of Exhibits**

Exhibit A      Non Discrimination Certification, Section 0800

**EXHIBIT A**  
**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 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Signature: Yves Lermusi  
Yves Lermusi (Mar 13, 2018)

Email: contract@checkster.com

CONTRACTOR

Authorized  
Signature

Title



## **Subscription Agreement Between Checkster and City of Austin**

---

This Subscription Agreement (the "Agreement") is made and entered into effective as of November 1st, 2017 (the "Effective Date"), by and between Checkster Inc., with a principal place of business at 926 Diablo Ave. #305, Novato, CA 94947 ("Checkster"), and City of Austin, with a principal place of business at 301 W. 2<sup>nd</sup> Street, Austin, TX 78701 ("Customer"). Together, Checkster and Customer may sometimes be referred to herein as a "Party," and together as the "Parties."

### **Recitals**

Checkster is the developer and owner of certain proprietary and confidential software, know-how, processes and intellectual property, which may include computer programs, applications, utilities, middleware, hardware and other related technologies, together with all security devices, updates, upgrades, enhancements, versions, releases, corrections or modifications (together "Software") which Customer desires to use by way of subscription, upon and subject to the terms and conditions set forth in this Agreement.

In consideration of the mutual undertakings and agreements set forth below, Checkster and Customer agree as follows:

### **1. Description of Services**

Checkster shall provide Customer, and Customer accepts to purchase:

1. A Reference Checkup subscription of the Software for Customer. System access is limited to an employee population of 12,000. and an expected annual hiring volume of 165.
2. An Employment Verification subscription of the Software for Customer. Limited to a volume of 165.
3. A Quality of Hire subscription of the Software for Customer. Limited to a volume of 70.
4. An Exit Checkup subscription of the software for Customer. Limited to a volume of 60.
5. An Implementation of the Checkster Reference Checkup product with up to 3 tailored Checkups and one training per 15 recruiters.

### **2. Term**

This Agreement commences upon the Effective Date and, unless earlier terminated as set forth below, continues for a period of three (3) years ("Initial Term"). This Agreement will automatically renew for subsequent one (1) year periods ("Renewal Terms") unless one party provides the other party with written notice of its intent not to renew at least ninety (90) days prior to the end of the then-current term. Earlier termination may only be effected as set forth in Section 10, "Termination for cause".



### 3. Cost

Customer agrees to pay:

The Reference Checkup subscription is payable monthly. The subscription pricing will be subject to annual revision in line with the employee population and hiring volume. Pricing will be subject to revision before annual review if the "In-Scope" employee count and hiring volume changes by 20% or more (due to acquisition, divestiture or any other reasons). A 2.5% yearly increase will be applied every year after the Initial Term of the contract. There will be a one-time implementation and training fee of \$500. The annual cost will go as follows:

YEAR 1	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$14,090.00
ONE TIME TRAINING AND IMPLEMENTATION	\$500.00
YEAR 1 GRAND TOTAL	\$14,590.00
YEAR 2	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$14,090.00
2.5% INCREASES	\$352.25
YEAR 2 GRAND TOTAL	\$14,442.25
YEAR 3	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$14,442.25
2.5% INCREASES	\$361.06
YEAR 3 GRAND TOTAL	\$14,803.31
YEAR 4	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$14,803.31
2.5% INCREASES	\$370.08
YEAR 4 GRAND TOTAL	\$15,173.39
YEAR 5	PROJECTED SPENDING AUTHORITY
REFERENCE CHECKUP SUBSCRIPTION SERVICES	\$15,173.39
2.5% INCREASES	\$379.33
YEAR 5 GRAND TOTAL	\$15,552.72
GRAND TOTAL	\$74,561.67

### 4. Payment

Payment will be made by wire transfer or ACH, and invoices will be sent by email. For Customers requiring invoicing via procurement portal, invoicing will default to an annual schedule. Customer account payable email is:

Checkster, 926 Diablo Ave, #305, Novato, CA 94947  
Citibank Account [REDACTED]



## **5. Reports, maintenance of records**

Customer understands and acknowledges that Checkster is a web application and all reports and records are stored on the Checkster servers. Customer shall have access to all of the aggregated records of its candidates online. Customer shall also be given the possibility to download the candidates' reports from the Checkster website.

## **6. Confidentiality**

All proprietary, non-public, trade secret and confidential information of a Party ("Confidential Information") shall remain the property of the communicating Party and shall be returned to such Party upon termination of this Agreement or immediately upon request by such communicating Party. Each Party acknowledges and agrees that it shall have no proprietary interest in the Confidential Information of the other Party and will not disclose, communicate nor publish the nature or content of such information to any person or entity (except to those employees or representatives as necessary to carry out such Party's obligations under this Agreement), nor use, except as authorized in writing by the communicating Party, any of the Confidential Information they receive, acquire or obtain from such Party. Each Party shall immediately advise its employees and others to whom the Confidential Information is disclosed of their strict obligations under this Agreement and shall take all necessary steps to insure that the Confidential Information is securely maintained, but in all cases applying no less than that degree of care it applies to its own Confidential Information. In the event either Party becomes legally compelled to disclose any of the Confidential Information, such Party shall provide the other with prompt notice thereof and shall not divulge any information until the non-disclosing Party has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by such Party are unsuccessful, or the non-disclosing Party otherwise waives its right to seek such remedies, the disclosing Party shall disclose only that portion of the Confidential Information which it is legally required to disclose. The obligations of the Parties under this Section shall survive for a period of seven (7) years beyond the termination of this Agreement.

## **7. Proprietary Information; Title to Software**

Customer understands and agrees that Checkster may only provide the reports of the individual in aggregated format, in order to protect each feedback/reference giver's anonymity, and Customer acknowledges that in that case it will not be entitled to any of the underlying rater's personal response information. Customer further acknowledges that title to the Software shall at all times remain with Checkster, and that Customer has no rights in the Software except those expressly granted by subscription in this Agreement. Customer may not rent, lease, sell, sublicense, assign, distribute or otherwise transfer Software, by succession, merger, change of control or otherwise, without express written approval by Checkster. The Software, whether existing, in development or developed in the future, including any related copyright, trademark, and patent rights are owned by Checkster and will remain the sole and exclusive property of Checkster. Customer shall not copy, modify or merge copies of the Software. Customer shall not reverse engineer, de-compile or disassemble the Software.

## **8. Limitation of Liability**

IN NO EVENT SHALL CHECKSTER OR ANY OF CHECKSTER'S SUBCONTRACTORS, SUPPLIERS OR DEVELOPERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH, THE USE OF OR THE INABILITY TO USE THE SOFTWARE. IN NO EVENT SHALL ANY LIABILITY OF CHECKSTER EXCEED THE AGGREGATE AMOUNT PAID BY CUSTOMER.

## **9. Disclaimer**

Notwithstanding any of the provisions herein, Checkster makes no warranties, express or implied, with respect to its services, the number of transactions generated by its services or Checkster's ability to offer or fulfill its services, or delays or unavailability of Checkster services due to technical failures and hereby disclaims all representations and warranties of any kind, except those expressly set forth herein. Checkster disclaims any and all implied warranties, including but not limited to implied warranties of merchantability and fitness for a particular purpose. Checkster's sole liability and Customer's exclusive remedy for breach of the provisions hereof shall be, at Checkster's option, either to (a) return the price paid, provided Customer returns and does not retain, the alleged non-performing Software; or (b) repair or replace the Software, provided Customer returns and does not retain the alleged non-performing Software.

## **10. Termination for cause**

Checkster reserves the right to terminate this Agreement, with refund of unused credit, if any, if Customer fails to fully and timely observe any covenant, obligation or agreement herein, including but not limited to, usage of individual information for other means than recruiting and/or career development purposes. Customer has the right to terminate this Agreement in the event Checkster's services do not substantially perform as described on its website. It is understood and agreed that Customer may not terminate the Agreement in the event an individual does not obtain feedback from his or her raters. In the event of termination, whether under this or any other Section of this Agreement, Customer covenants and agrees that it shall neither use nor retain any Software, and shall promptly notify Checkster that all Software within Customer's possession or control has been returned or destroyed.

## **11. Independent Contactor**

Checkster shall select the means, method and manner of performing all services contemplated in this Agreement. Nothing herein is intended, nor shall it be construed in any manner as creating or establishing the relationship of co-partners between the Parties, or as constituting either Party as the agent, representative, or employee of the other Party.

## **12. Governing Law**

This Agreement and any and all disputes, claims or actions brought by either party hereto, arising out of, related to, or in connection with this Agreement, shall be exclusively and irrevocably governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of law provisions, and any disputes, claims or actions between the parties, whether arising in contract, tort or otherwise, whether at law or in equity, shall be heard exclusively in the State or Federal Courts of the State of California, and venue shall be exclusively in San Francisco. In the event of any dispute between the parties, each party consents to a trial before a judge without a jury.

## **13. Entire Agreement; Incorporation by Reference**

Checkster refers to, and by this reference, incorporates all the terms and conditions set forth on its website, located at [www.checkster.com](http://www.checkster.com), to which terms and conditions Customer agrees to be bound, as though fully set forth herein, and which shall be deemed, both individually and in the aggregate, material to this Agreement. This Agreement embodies the entire agreement between the parties in connection with the transactions contemplated herein and hereby. This Agreement cannot be modified except in writing and signed by all the Parties.

The signatures affixed below represent an understanding of the contents of this Agreement, and an intention to implement the services set forth above in a timely fashion.



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 02/05/2018

DEPT: EMERGENCY MEDICAL SERVICES

TO: Purchasing Officer or Designee

FROM: TINA GRAVES, HUMAN RESOURCES

BUYER: Xoomsai (Purcell), Sai

PHONE: (512) 974-1096

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

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

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

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
  - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
  - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
  - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
  - ☐ a procurement for personal, professional, or planning services
  - ☐ a procurement for work that is performed and paid for by the day as the work progresses
  - ☐ a purchase of land or right-of-way
  - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
  - ☐ a purchase of rare books, papers, and other library materials for a public library
  - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
  - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters



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

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

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

In an effort to hire quality Medics, increase engagement and retention of EMS Medic staff; Austin – Travis County EMS Recruiting is in need of a one-stop shop Pre-employment Background screening, Employee Engagement and Retention application that offers the following; (1) Pre-employment Reference Checks; 2) Employment Verification; 3) Quality of Hire check-in surveys; 4) Employee Exit survey; 5) Tailored data reporting; and 6) unlimited surveys. Checkster is the developer and owner of certain proprietary and confidential software, know-how, processes and intellectual property, Software as a Service application. Use of this application furthers EMS and City's engagement of its employees careers and embracing the City's vision of a government that is engaged with each and every employee's career opportunity

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).

Use of the Checkster Software as a service Solution is a unique cost effective solution offered by no other known human resource management cloud based provider, achieving the desired employee screening services necessary for an effective human resource management program. Through multiple demonstrations with SAAS platform vendors, only one organization, Checkster offered all six required elements that meet our needs. Checkster is a well-established platform that is secure, and maintains confidentiality throughout the process for the applicant, employers and agency. Checkster offers these services at one cost effective price point; truly a best value to the department and City.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with CHECKSTER INC. which will cost approximately \$ 74,561.67 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

Originator

Date

Approved  
Certification

Department Director or designee

Date

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

Date

Purchasing Review  
(if applicable)

Buyer

Date

Manager Initials

Exemption Authorized  
(if applicable)

Purchasing Officer or designee

Date

02/26/2013



January 12, 2018

To Whom this may concern,

This letter is to confirm that Checkster is the sole provider of Software as a Service products that include all of the following products: Automated Reference Checks, Automated Employment Verification, Automated Quality of Hire, 360 Feedback and Automated Exit Interviews. There is no other provider that provides the aforementioned products in one Software as a Solution platform. Further, Checkster is the only provider that allows customers to have unlimited raters and references.

Checkster  
926 Diablo Ave #305  
Novato, CA 94947  
866-800-0709

*Yves Lermusi*

Yves Lermusi  
CEO, Checkster

If you have any questions, please call me at 425-207-8955.

Scott Raymond  
Checkster  
Regional Sales Manager  
425-207-8955