



Amendment No. 1  
to  
Contract No. 5600 NC170000027  
for  
SMS Gateway Services  
between  
Messagemedia  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be March 29, 2018 through March 28, 2019. Two (2) options will remain.
- 2.0 The total contract amount is increased by \$18,750.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term:	\$19,500.00	\$19,500.00
Amendment No. 1: Option 1 – Extension 03/29/2018 – 03/28/2019	\$18,750.00	\$38,250.00

- 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.

Sign/Date: Brian Ford 4-11-2018

Printed Name: Brian Ford | VP Sales  
Authorized Representative

**Brian Ford**

SMS Gateway Services  
461 Pacific Ave.  
San Francisco, CA 94133

Digitally signed by Brian Ford  
Date: 2018.04.11 16:35:28 -04'00'

Sign/Date: Bartley Tyler 4/11/18

Printed Name: Bartley Tyler  
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  
MESSAGEMEDIA  
For  
SMS GATEWAY SERVICES**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and MESSAGEMEDIA ("Contractor"), having offices at 461 Pacific Ave., San Francisco, California 94133.

**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 providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. 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.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Brian Ford, Phone: , Email Address: [brian.ford@messagemedia.com](mailto:brian.ford@messagemedia.com). The City's Contract Manager for the engagement shall be Ralph Warren, (512) 974-1137, Email Address: [Ralph.warren@austintexas.gov](mailto:Ralph.warren@austintexas.gov). The City's 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 an amount not-to-exceed \$19,500 for the initial 12 month contract term and \$18,750 for option 1, \$18,750 for option 2 and \$18,750 for option 3 for a total not-to-exceed amount of \$75,750.00 for all fees and expenses upon the successful completion of the Scope of Work, as described herein.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 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 itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management (CTM)
Attn:	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov

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

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

3.2.5 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 set off 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.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

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

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

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

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

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

**3.6.1** If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

**3.6.2** The making and acceptance of final payment will constitute:

**3.6.2.1** 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

**3.6.2.2** 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.** This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect for an initial term of 12 months with 3 additional 12 month options or the City terminates the Contract.

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

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

**4.3 Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the

bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

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

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

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

**5.1 Contractor To Package Deliverables.** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**5.2 Shipment Under Reservation Prohibited.** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

**5.3 Title & Risk of Loss.** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

**5.4 Right Of Inspection And Rejection.** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**5.5 No Replacement Of Defective Tender.** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.6 **Special Tools & Test Equipment.** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

5.7 **Equal Opportunity.**

5.7.1 **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.

5.7.2 **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.

5.8 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

5.9 **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.

5.10 **Delays.**

5.10.1 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.

5.10.2 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.

5.11 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.11.1 **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.

5.11.2 **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.

5.11.3 **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.

5.11.4 Nothing in this clause 5.11 entitles the City to any rights pre-existing or newly developed intellectual property of the Contractor.

5.12 **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.

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

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

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the 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 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 **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:

- 7.4.1 disposal of major assets;
- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

## 7.5 Audits and Records.

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

### 7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code 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.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City. For the avoidance of doubt, message logs that are automatically generated by Contractor's internal systems shall not be considered property of the City

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

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

## 7.7 Indemnity.

#### 7.7.1 Definitions:

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

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

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

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, gross [NJ1]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. THIS INDEMNITY OBLIGATION SHALL NOT APPLY TO THE EXTENT ANY FAULT IS CAUSED BY OR RELATES TO, IN ANY WAY, ANY ACT OR OMISSION BY THE CITY.

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 affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 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, Purchasing Office

ATTN: Jane Neal, Buyer II

P O Box 1088

Austin, TX 78767

To the Contractor:

MessageMedia

ATTN: Brian Ford

461 Pacific Ave.

San Francisco, California 94133

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

**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

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-Solicitation.**

7.27.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.27.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.27.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.27.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor

**7.28 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.

**7.29 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)

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

7.30.1 any exceptions to the Offer accepted in writing by the City;

7.30.2 the Supplemental Purchase Terms and Conditions;

7.30.3 the Standard Purchase Terms and Conditions;

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

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

MESSAGEMEDIA      Brian  
                                 Ford  
By: Brian Ford      Digitally signed  
Signature                      by Brian Ford  
                                 Date: 2017.03.29  
                                 14:23:13 -04'00'  
Name: Brian Ford  
Printed Name  
Title: VP Sales  
Date: 3-29-17

CITY OF AUSTIN  
By: Jane Neal  
Signature  
Name: Jane Neal  
Printed Name  
Title: Procurement Specialist II  
Date: 3/21/2017

#### List of Exhibits

Exhibit A      MessageMedia Offer  
Exhibit B      Non Discrimination Certification, Section 0800  
Exhibit C      Non-Suspension or Debarment Certification

## **Communications and Technology Management (0500)**

### **REQUEST FOR Short Message Services**

Pursuant to the policies and procedures of the City of Austin ("City"), notice is hereby given that firms and individuals ("Proposers") are invited to submit a Request for Proposal to render Short Message Services (the "Service") to the City of Austin Communications and Technology Management ("CTM").

#### **I. PURPOSE**

CTM is seeking a Short Message Service (SMS) standards based delivery provider in support of our Multi-Factor Authentication service (RSA Secure ID), SharePoint 2013 services, and Adhoc messaging capabilities. The service will be utilized to send on-demand token codes, SharePoint notifications, and Adhoc SMS messages to City of Austin personnel. The service must easily integrate into our RSA Secure ID implementation and SharePoint 2013 solutions.

#### **II. BACKGROUND**

The City of Austin, Texas, with a metropolitan area population of over 2 million, is the 11th largest city in the country. This vibrant and dynamic city tops numerous "Best" lists for business, entertainment, cost of living and quality of life. Austin was selected as the "Best City for the Next Decade" (Kiplinger), the "Top Creative Center" in the US (Entrepreneur.com), and is in the Top Seven List of Intelligent Communities for 2012 as ranked by the Intelligent Community Forum. Austin continues to lead the country with its vision of being the "Most Livable City in the Country", emerging as a player on the international scene with such events as SXSW, Formula 1 and being home to companies such as Apple, Samsung, Dell, The Seton Healthcare Family and St. David's HealthCare systems. From the home of state government and the City of Texas, to the "Live Music Capital of the World" and its growth as a film center, Austin has gained worldwide attention as a hub for education, business, health, and sustainability. Since 1900, Austin's population has doubled every 20 years, with continued projected record-breaking growth into the next decade and beyond.

#### **III. SCOPE OF SERVICES**

Proposers shall demonstrate that they are able to meet the following specifications:

Must easily integrate with SharePoint 2013

Must be a certified RSA vendor

Service must scale past initial volume estimates

Must scale up upon demand

Must provide 100% guaranteed uptime

Communications must be secure (HTTPS/SSL, TLS)

Must provide an Application Program Interface

Must provide monitoring and reporting solution

Must provide 24x7x5 support

Service must be Geo redundant

Service must be cloud based

Service must deliver to every US carrier (ex AT&T, Sprint, T-Mobile, Verizon, etc.)

Service must connect to multiple Tier 1 aggregators within the US

Service must support Adhoc messaging

Must integrate with Outlook 2013

Service should offer support for real time message exchange

Service should offer scheduled message capabilities

Should have dedicated account manager

Should provide option to review historical messages

Service must provide dedicated US Short Code



Service must provide US Long Code

#### **IV. Deliverables**

SMS Gateway Services in support of our RSA Secue ID solution, SharePoint, and Adhoc messaging capabilities.

## ATTACHMENT A – PRICE PROPOSAL FORM

### PRICING

- A. Proposers are requested to provide a quote based on 1.5 Million messages per year for four years. It should include everything required to support implementation and ongoing maintenance to include any Installation fees, licenses, and short code/ long code fees. Our intentions are to establish a 4 year contract with a not to exceed amount, quotes should be based on annual renewal.

**Note:** Travel expenses. All travel lodging expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at: <http://www.gsa.gov/portal/category/100120>

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

Exhibit A  
MessageMedia Offer



Address: 555 Howard St.  
San Francisco, California 94103  
United States

Quote Number: 00005450  
Created Date: 12/25/2015

Prepared By: Brian Ford  
Phone: 650 972 7667  
Email: brian.ford@messagemedia.com

Contact Name: Jane Hsu  
Phone: 650 974 1822  
Email: jane.hsu@ustratistics.gov

Bill To Name: City of Austin  
Bill To: 1104 S. IH 35  
Ste 300  
Austin, Texas 78704  
United States

Item #	Description	Notes/Comments	Unit Price	Qty	Total Price
Custom Setup Fee	RSA Integration - Covers all setup, routing analysis, and dedicated account and technical support	Once off custom configuration setup fee	USD 750.00	1.00	USD 750.00
Dedicated Number	Dedicated Long Codes. Free of charge	Monthly License Fee	USD 0.00	1.00	USD 0.00
Dedicated Number Setup Fee	Dedicated Long Codes. Free of charge	Once off Dedicated Number service setup fee	USD 0.00	1.00	USD 0.00
SMS CUSTOM	Annual License Fee - \$18,750 (\$1562.50 x 12)	Monthly Access Fee - includes the sending of messages up to the dollar amount specified	USD \$18,750.00	4.00	USD \$75,000.00

Subtotal: USD \$75,750.00  
Total Price: \$75,750.00  
# of Units: 48 (months)  
Grand Annual: \$75,750.00  
Total:

#### Australia

Level 77  
385 Bourke Street  
Melbourne VIC 3000  
T: 61 3 9593 7667  
E: sales@MessageMedia.com.au

#### USA

Level 77  
550 Howard Street  
San Francisco, CA 94103  
T: 650 972 7667  
E: sales@MessageMedia.com

#### UK

Level 6  
55 Grosvenor Gardens  
Victoria London SW1W 6AU  
T: 44 20 7244 0247  
E: sales@MessageMedia.co.uk

100% 100% 100%

## SMS Service Agreement – Application Form

The SMS Service Agreement (the "Agreement") is made and entered into effective as of the date set forth in the "Acceptance of Terms and Conditions" section below by and between MessageMedia, USA Inc. and the Customer identified below. This Agreement is comprised of two parts: the Application Form and the attached Terms and Conditions. The signature of any person on a fax, PDF or other electronic copy of this Agreement will have the same full force and effect as that party's original signature.

<b>Customer</b>																																			
Company Name City of Austin Public Safety																																			
Postal Address 5010 Old Manor Rd.																																			
City Austin	State TX	Postcode 78723	Country United States																																
<b>Service and pricing</b>																																			
Product:	WebSMS	Email2SMS	API																																
<p align="center"><u>Service Fees &amp; Charges (All figures in US Dollars)</u></p> <p>(a) MessageMedia's fees are as follows for the Customer's Account:</p> <ul style="list-style-type: none"> <li>(i) One-time Account Activation and License Fee: Waived</li> <li>(ii) Prepaid Purchase – 50,000 messages (\$0.03 per message) purchase order for \$2,500 up from</li> <li>(iii) All Pricing Terms can be re-negotiated by either party at any time if volumes vary from forecast</li> </ul> <p>(b) SMS Message pricing structure (Monthly):</p> <ul style="list-style-type: none"> <li>(i) Unknown Inbound Messages</li> <li>(ii) SMS total monthly volume will determine SMS per message pricing (from zero)</li> <li>(iii) Delivery Reports (if selected) are available for 1 cent per message</li> </ul> <table border="1"> <thead> <tr> <th>Total Monthly Volume</th> <th>USA</th> <th>Canada</th> <th>INTERNATIONAL*</th> </tr> </thead> <tbody> <tr> <td>0-50K</td> <td>\$0.05</td> <td>\$0.045</td> <td>\$0.09</td> </tr> <tr> <td>50K-100K</td> <td>\$0.035</td> <td>Quote</td> <td>Quote</td> </tr> <tr> <td>100K-200K</td> <td>\$0.02</td> <td>Quote</td> <td>Quote</td> </tr> <tr> <td>200K-500K</td> <td>\$0.0175</td> <td>Quote</td> <td>Quote</td> </tr> <tr> <td>500K-1M</td> <td>\$0.01</td> <td>Quote</td> <td>Quote</td> </tr> <tr> <td>&gt;1M</td> <td>\$0.01</td> <td>Quote</td> <td>Quote</td> </tr> <tr> <td>Delivery Report - msg</td> <td>\$0.01</td> <td>\$0.01</td> <td>\$0.01</td> </tr> </tbody> </table> <p>(c) Each SMS message sent counts as 1 message.</p> <p>(d) Each SMS message sent of 160 or less characters counts as 1 message. Sending messages longer than 160 characters will result in multiple messages being sent, with the first message being reduced to 160 characters. All following messages will also be reduced to equal or less than 160 characters per message.</p> <p>(e) Pricing is based on delivery to all US wired and wireless carriers. International messaging is available and will be charged at 10 cents per message flat rate, unless negotiated prior to sending on a country by country basis.</p> <p>(f) There is no Early Termination Fee. [Note: If an Early Termination Fee applies, specify the fee and when it applies]</p> <p>(g) Message rates are subject to change with 30 days prior written notice.</p>				Total Monthly Volume	USA	Canada	INTERNATIONAL*	0-50K	\$0.05	\$0.045	\$0.09	50K-100K	\$0.035	Quote	Quote	100K-200K	\$0.02	Quote	Quote	200K-500K	\$0.0175	Quote	Quote	500K-1M	\$0.01	Quote	Quote	>1M	\$0.01	Quote	Quote	Delivery Report - msg	\$0.01	\$0.01	\$0.01
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<b>Acceptance of Terms and Conditions</b>																																			

I, <b>Tory Williams</b> (print name), being duly authorized to enter into this Agreement, have read and accept this Agreement, including the attached Terms and Conditions effective from <b>10/27/2015</b> , today's date, on behalf of the Customer listed above.  Signature:	
<b>Contact details</b>	
Key Contact Name Tory Williams	
Phone 512-974-0791	Mobile 512-422-9194
Email twilliams@messagemedia.com	Fax
Account Administrator Name Tory Williams	
Phone 512-974-0791	Mobile 512-422-9194
Email twilliams@messagemedia.com	Fax
Billing Contact Name Tory Williams	
Phone 512-974-0791	Mobile 512-422-9194
Email twilliams@messagemedia.com	Fax

<b>Payment Method (please select one)</b>	
MessageMedia's preferred method for receiving funds is Direct Debit/Credit Card. Please note that service suspension for non-payment by the due date is strictly enforced.  Credit Card over the phone	
<b>Direct Debit - Credit Card</b>	
Card type (please select):	
MASTERCARD	
Credit Card Number	
Please call mobile number for credit card information	
Expiry Date	Security Code Please provide the three-digit code over the phone when we call you with setup confirmation
Please call mobile number for credit card information	



- MessageMedia may be issued without prior consent in writing from MessageMedia (or its licensees, where appropriate). No rights are granted to Customer hereunder other than as expressly set forth herein and MessageMedia retains all rights not so expressly granted.
- 5.2. MessageMedia shall own all rights, title and interest, including all Intellectual Property Rights, in and to any improvements to the SMS Messaging Service and any modifications developed by MessageMedia in connection with rendering the SMS Messaging Service to Customer, even if resulting from Customer's request, or the custom development work performed by MessageMedia on behalf of Customer.
- 6. Indemnities and Limitation of Liability**
- 6.1. Customer shall indemnify and hold MessageMedia, its affiliates, and the respective officers, directors and employees harmless from and against any and all costs (including reasonable attorneys' fees), expenses, loss, liabilities, suits, actions, damages or claims or proceedings arising or in any other way connected with (a) any willful or negligent act or omission by Customer, its employees, agents or contractors, (b) any Messages sent by Customer whether or not the claim is brought or made by a MessageMedia customer, a parent, or another party, (c) Customer's non-compliance with any terms of this Agreement, or (d) Customer's use of its Account or the SMS Messaging Service, or any other person using Customer's username and password.
- 6.2. Failure by the Indemnifying Party to provide prompt notice to the Indemnified Party shall not relieve the Indemnifying Party of its obligations under this Section 6, unless the Indemnifying Party's ability to defend the Claim has been materially disadvantaged or compromised.
- 6.3. Any indemnity in this Agreement is a continuing obligation, independent of other obligations under this Agreement and continues after the Agreement ends.
- 7. Recipient Information and Disclaimers**
- 7.1. Customer, on behalf of itself and recipients, hereby grants to MessageMedia the nonexclusive right to access and use certain recipient information as is necessary for MessageMedia to provide the SMS Messaging Service. Customer represents and warrants that it possesses all rights, interests and permissions necessary to use and disclose recipient information in connection with the SMS Messaging Service and the Agreement and that it has authority to grant MessageMedia the rights set forth in this clause 7.1.
- 7.2. Customer acknowledges that MessageMedia exercises no control over, and will have no liability for, any recipient information. Customer will be responsible at all times for maintaining the accuracy, timeliness and security of its and its recipients' information, and MessageMedia bears no liability for the accuracy, loss or damage in part or whole, of such information or failure to store any such information.
- 7.3. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, MESSAGEMEDIA DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTIES WITH RESPECT TO THIS AGREEMENT OR THE SMS MESSAGING SERVICE, INCLUDING WITH RESPECT TO THE RESULTS THAT MAY BE OBTAINED FROM CUSTOMER'S USE OF THE SMS MESSAGING SERVICE OR THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SMS MESSAGING SERVICE. MESSAGEMEDIA EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTIES WITH RESPECT TO THIS AGREEMENT AND THE SMS MESSAGING SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE SMS MESSAGING SERVICE IS PROVIDED ON AN "AS-IS" BASIS. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE SMS MESSAGING SERVICES, WHETHER OR NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY MESSAGEMEDIA.
- 7.4. IN NO EVENT SHALL MESSAGEMEDIA HAVE ANY LIABILITY TO CUSTOMER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT MESSAGEMEDIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, IN NO EVENT SHALL MESSAGEMEDIA'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR UNDER ANY THEORY OF LIABILITY EXCEED THE MESSAGE MEDIA FEE ACTUALLY PAID BY CUSTOMER TO RESEALER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM.
- 8. Term and Termination**
- 8.1. This Agreement commences on the Effective Date and will continue until terminated in accordance with this clause 7 ("Term"). In addition to the other rights as provided herein, either party may terminate this Agreement by providing at least 30 days prior written notice to the other party.
- 8.2. MessageMedia may terminate this Agreement immediately upon notice to Customer if:
- (a) Customer files for bankruptcy, a receiver, liquidator, provisional liquidator or administrator is appointed over any of Customer's undertakings or assets, or if Customer enters into any arrangement with any creditors on any basis;
  - (b) it becomes unlawful for Customer to perform its obligations under this Agreement or the performance by a party of its obligations under this Agreement is in breach of a law;
  - (c) Customer violates any provision of this Agreement or the AUP; or
  - (d) MessageMedia notifies Customer in writing of any other breach of this Agreement not otherwise identified above and Customer fails to remedy the breach to the satisfaction of MessageMedia within 7 Business Days of notification.
- 8.3. Upon any termination or expiration of this Agreement:
- (a) MessageMedia will immediately terminate Customer's access to the SMS Messaging Service and the license granted to Customer pursuant to clause 1 shall cease; and clauses 2, 3, 4.1, 4.3, 5, 6, 7, 8.3, and 9 shall continue to apply.
- 8.4. Any termination is without prejudice to any rights, liabilities or obligations accruing as at such termination.
- 9. General**
- 9.1. MessageMedia has the right to change, modify, and otherwise convert the software, hardware and/or technology used to provide the SMS Messaging Service without notice.
- 9.2. This Agreement shall be governed and interpreted according to the laws of the State of California, except for its conflict of laws provisions and any dispute arising out of or relating to this Agreement shall be brought and heard in a state or federal court located in the City and County of San Francisco, California. To the extent permitted by law, each party also waives any right to jury trial in connection with any action or litigation related to this Agreement.
- 9.3. In the event that any provision of this Agreement proves to be illegal or unenforceable, that provision is deemed to be omitted from the Agreement without affecting the legality of the remaining provisions. The remaining provisions of this Agreement shall continue in full force and effect.
- 9.4. Neither party shall be liable for any delay or failure to perform its obligations under this Agreement due to any event beyond its reasonable control including, without limitation, an act of god, inclement weather, flood, lightning, fire, power break down, clock-out or brown-out, industrial action, the act or omission of any government, terrorism, war, military operations or riot.
- 9.5. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 9.6. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of MessageMedia. Any attempt by Customer to assign its rights or obligations under this Agreement in breach of this clause shall be void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 9.7. No claim may be brought by Customer under this Agreement more than one (1) year after the accrual of the claim.



9.8. This Agreement, including all documents referred herein shall constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Application Form or Service Level Agreement, the terms of this Agreement shall prevail.

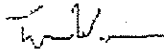
9.9. Notices under this Agreement may be delivered by hand, by mail or by facsimile to the following, and be considered delivered upon delivery:

To MessageMedia:  
Attention: Chief Executive Officer  
US Address and US Facsimile provided from time to time at: [info@mm.com.au](mailto:info@mm.com.au)  
or [info@mm.com.au](mailto:info@mm.com.au)

To Customer: At the address for Customer specified forth on the Application Form.

10. This Agreement, including all documents referred herein shall constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

Signature



and the other party

The other party

The other party

## Acceptable Use and Anti-Spam Policy

MessageMedia's Acceptable Use and Anti-Spam Policy (the "Policy") sets forth MessageMedia's requirements for our partners, resellers and customers (collectively, "Customers") with respect to acceptable and unacceptable practices using MessageMedia services, connections or facilities. Customers must not engage in practices that are (i) illegal, (ii) non-compliant with accepted industry best practice guidelines, (iii) disrupt or damage any MessageMedia computer systems or network or other parties' computers systems and networks, or (iv) in violation of any person's rights. This Policy may be amended from time to time.

MessageMedia maintains a zero-tolerance policy for any violation of this Policy and requires that its Customers implement and enforce this same zero-tolerance policy.

In using any of MessageMedia's SMS services, Customer must comply with all applicable federal and state laws and regulations when using MessageMedia services, connections or facilities (which laws may impose more stringent requirements than the guidelines described herein). All Customers must review and comply with the following laws and guidelines, however, this information is not intended to be (i) interpreted as, relied upon, or used as a substitute for the advice of legal counsel, (ii) or considered to be a complete and exhaustive list of all laws and regulations applicable to Client's use of the MessageMedia service. In addition to the below laws, various other state and foreign laws may apply to Customer's use of MessageMedia services. Each Customer is advised to obtain the advice of its own legal counsel before using the MessageMedia services.

### A. Telephone Consumer Protection Act ("TCPA") (United States)

The TCPA states that without prior express consent of the called party, it is illegal to use an automatic dialing system to make any call to a consumer's mobile phone or wireless device. Under FCC guidance and applicable case law, calls include text messages.

The Federal Communication Commission ("FCC") rules implementing the TCPA also prohibit sending unwanted text message solicitations to a wireless phone if the wireless phone number is listed on the national Do-Not-Call registry.

The full text of the TCPA can be found here: <http://www.fcc.gov/cgb/policy/TCPA-Rules.pdf>

The FCC's TCPA Rules can be found here: <http://www.fcc.gov/cgb/policy/Telemarketing-Rules.pdf>

For more information on these matters, see also: <http://www.the-dma.org/guidelines/tcpa.shtml>

### B. Telemarketing Sales Rule ("TSR") (United States)

The Telemarketing Sales Rule is a trade regulation developed by the Federal Trade Commission that regulates telemarketing calls.



This Policy was last updated May 2015.

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

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

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

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

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

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

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

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer,

demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

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

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

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

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

**Sanctions:**

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

**Term:**

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

Dated this 31st day of March, 2017

CONTRACTOR  
Authorized  
Signature

Brian Ford

*Brian Ford*

Title

VP Sales

Exhibit C

City of Austin, Texas  
Section 0805  
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

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

Contractor's Name: MessageMedia, USA, Inc.

Signature of Officer or  
Authorized  
Representative: Brian Ford Date: 3-31-17

Printed Name: Brian Ford

Title: VP Sales

**Brian  
Ford** Digitally  
signed by Brian  
Ford  
Date:  
2017.03.31  
16:38:32 -04'00'