

**AMENDMENT NO. 1 TO THE CONTRACT
BETWEEN THE CITY OF AUSTIN
AND HUSTON-TILLOTSON UNIVERSITY**

This Amendment No. 1 ("Amendment") to agreement NA180000136, the Center for Innovation and Entrepreneurship contract ("Agreement") is made and entered into by and between the City of Austin, Texas (the "City") and Huston-Tillotson University ("HTU"), the "Parties," for the consideration stated below.

WHEREAS, the Parties entered into a contract to provide support for the Center for Innovation and Entrepreneurship ("Agreement");

WHEREAS, the Agreement was for a 12-month term with one 12-month extension option at \$25,000.00 per term, for a total contract not to exceed \$50,000.00;

WHEREAS, the initial term of the Agreement became effective on May 10, 2018, and will expire on May 9, 2019;

WHEREAS, HTU has experienced unforeseen delays in completing remodeling of the facility in which the Center for Innovation and Entrepreneurship is to be located;

WHEREAS, the Center for Innovation and Entrepreneurship will not begin operation within the current Agreement term ending May 9, 2019;

WHEREAS, the delayed opening of the Center for Innovation and Entrepreneurship will result in the \$25,000.00 budget of the current Agreement term ending May 9, 2019, to remain unspent;

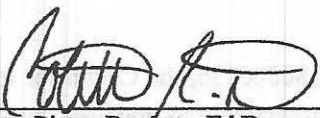
WHEREAS, HTU needs additional time to achieve the goals of the Agreement;

NOW, THEREFORE, the Parties therefore hereby agree as follows:

1. The Agreement shall be extended for 24 months.
2. The term of the extension shall begin on May 10, 2019, and end on May 9, 2021.
3. HTU shall be paid \$25,000 during this extension. The total contract amount shall remain \$50,000.00.
4. All other terms and conditions as stated in the original Agreement shall remain in effect.

Huston-Tillotson University

City of Austin

By: 
Colette Pierce Burdette, Ed.D.
President and CEO
Huston-Tillotson University

By: 
Rebecca Chiello, Interim Director
Economic Development Department

Date: 4/11/2019

Date: 4/25/19

Approved as to form:

By: 
Ron Pigott, Assistant City Attorney



MEMORANDUM

TO: File

FROM: Roger Stricklin, Procurement Specialist IV

DATE: June 20, 2018

SUBJECT: MA 5500 NA180000136

This contract was created by the Law Department for use by the Economic Development Department. All original documents are located with the Economic Development Department. The Purchasing Office is not responsible for any procurement actions taken for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes.

**SERVICE CONTRACT BETWEEN
THE CITY OF AUSTIN and HUSTON-TILLOTSON UNIVERSITY**

This Service Contract is between the City of Austin, a home-rule municipality incorporated by the State of Texas ("City"), and Huston-Tillotson University ("Contractor"), an institution of higher education, 900 Chicon, Austin, TX, 78702. This contract supersedes and replaces "Agreement for Establishment of a Business Solutions Center and Use of Classrooms for Artists Training" between these parties dated August 10, 2017.

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 in this Contract, the Contractor is engaged to provide the services set forth in Section 2.2 and Exhibit A, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate in meetings and conference calls for status reporting as needed, shall promptly review any written reports submitted by the Contractor, and shall review and approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 **Designation of Key Personnel.** The City's Contract Manager for this engagement shall be Blake Smith, (512) 974-7618, blake.smith@austintexas.gov. The Contractor's Contract Manager for this engagement shall be Dr. Steven Edmond, (512) 505-6472, ssemond@htu.edu.

SECTION 2. SCOPE OF WORK.

The Scope of Work is attached to this document as Exhibit's A and B.

SECTION 3. COMPENSATION.

- 3.1 **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$25,000.00 per 12-month contract term, with one 12-month extension option not to exceed \$25,000.00 for a total contract amount not to exceed \$50,000.00.
- 3.2 **Payment schedule**
 - 3.2.1 City will pay the Contractor \$6,250.00 within thirty days of receipt and approval of each completed quarterly report as specified in Section 3.3.1. The Contractor must submit an invoice meeting City requirements with each report.

- 3.2.2 The Contractor must meet all the requirements outlined in the Scope of Work before the City will approve payment for that quarter.

3.3 **Reporting and Invoicing**

- 3.3.1 Contractor will submit reports on a quarterly basis that detail progress-to-date in meeting the performance measures detailed in Exhibit A, Scope of Work, and Exhibit B, Business Solutions Center.
- 3.3.2 The City will work with the Contractor to develop a format and supporting documentation for the quarterly report.
- 3.3.3 The City will review the reports and provide feedback or request additional information as needed.
- 3.3.4 All proper invoices received by the City will be paid after the City has accepted the deliverables and approved the invoice for payment. The City of Austin has 30 days from the approval of an invoice to make payment.
- 3.3.5 **Invoices shall contain a non-duplicated invoice number, invoice date, the purchase order or delivery order number, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. 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 e-mailed to Blake Smith, blake.smith@austintexas.gov.
- 3.3.6 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.3.7 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.
- 3.3.8 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:
- 3.3.8.1 delivery of defective or non-conforming deliverables by the Contractor, incomplete or non-conforming monthly reports or an invalid invoice;
 - 3.3.8.2 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;
 - 3.3.8.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment, failure of the Contractor to pay Subcontractors, or for labor, materials or equipment
 - 3.3.8.4 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;

- 3.3.8.5 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;
 - 3.3.8.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation;
 - 3.3.8.7 or failure of the Contractor to comply with any material provision of the Contract Documents
- 3.3.9 Notice is 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.
- 3.4 **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 immediately upon discovery of lack of appropriation. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 3.5 **Final Payment and Close-Out.** The making and acceptance of final payment will constitute: 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 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION.

- 4.1 **Term of Contract.** The initial term of this contract will be for 12 months from execution by both parties. The contract may be extended for up to 1 additional 12-month term by the mutual agreement of both parties.
- 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 in this Contract, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.

- 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 10 calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within this 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. 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. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three years and any Offer submitted by the Contractor may be disqualified for up to three years. 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 with 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 of this Agreement.
- 4.6 **Funding Out.** Contractor acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.
- 4.7 Contractor acknowledges that the City has provided notice that the City's payment obligations to Contractor are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide Contractor notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.
- 4.8 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES.

- 5.1 **Insurance.** The following insurance requirement applies. (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).
- 5.1.1 **General Requirements.**
- 5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated in this Contract for the duration of the Contract and during any warranty period.
- 5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City.

- 5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- 5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor under this Contract and shall not be construed to be a limitation of liability on the part of the Contractor.
- 5.1.1.5 The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / contract number, the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

City of Austin
Economic Development Department
Attn: Blake Smith
P. O. Box 1088
Austin, Texas 78767

- 5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 5.1.1.9 If insurance policies are not written for amounts specified in Section 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- 5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City 30 calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

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

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements:

5.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Independent Contractor's Coverage.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 30 calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.1.2.3 **Certificate:** The following statement must be shown on the Certificate of Insurance: "The City of Austin is an Additional Insured on the general liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability policies."

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached to this Contract as Exhibit A.

5.2.2 **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 **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 City shall provide notice to the Contractor of any defects or non-conforming deliverables upon acceptance, if the non-conformance is evident at the time of acceptance. 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.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 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.

5.4.2 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 business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

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

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

SECTION 6. WARRANTIES.

6.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided 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.

SECTION 7. MISCELLANEOUS

7.1 Subcontractors.

- 7.1.1 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:
 - 7.1.1.1 Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.1.1.2 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;
 - 7.1.1.3 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;
 - 7.1.1.4 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
 - 7.1.1.5 Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 7.1.2 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors, working in their scope and capacity as 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.
- 7.1.3 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 days after receipt of payment from the City.

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.
 - 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 Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to 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 such as, but not limited to, customer service representatives or claims adjusters;
 - 7.4.7 Known or anticipated sale, merger, or acquisition;
 - 7.4.8 Known, planned or anticipated stock sales;
 - 7.4.9 Any litigation filed by a member against the Contractor; or
 - 7.4.10 Significant change in market share or product focus.
- 7.5 **Right To Audit.**
- 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 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 The Contractor shall include this provision 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 **Each Party To Assume Liability for Wrongdoing of its Employees and Agents.** The parties to this agreement are a local government unit of the State of Texas and a qualified charitable non-profit association. Each party recognizes the unique liabilities, immunities and defenses related to its actions to execute this agreement. Each party shall be liable for the negligent acts or other wrongdoing of its employees, subcontractors and agents and shall assume the expense of any defense or costs.
- 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 2nd Street, 4th 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: | To the Contractor: |
| Sylvia Holt-Rabb, Deputy Director | Dr. Steven Edmond, Acting Dean |
| Economic Development Department | School of Business and Technology |
| City of Austin | Huston-Tillotson University |
| P O Box 1088 | 900 Chicon |
| Austin, TX 78767 | Austin, TX, 78702 |
- 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 of Austin 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; the intention of the parties is that there be no third party beneficiaries.

- 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 by a writing signed by both parties. No pre-printed or similar terms on any the 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 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 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 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 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 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 30 calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

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 **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.

7.23 **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.

7.24 **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.

- 7.25 **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.
- 7.26 **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.
- 7.27 **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: <http://www.ci.austin.tx.us/purchase/standard.htm>

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

HUSTON TILLOTSON UNIVERSITY

By: [Signature]
Signature

Name: Colette Pierce Burnette, Ed.D.
Printed Name

Title: President and CEO

Date: 05/2/2018

CITY OF AUSTIN

By: [Signature]
Signature

Name: Rebecca Griello
Printed Name

Title: Interim Director

Date: 5/10/18

APPROVED AS TO FORM

By: [Signature]
Signature

Name: Leela Fireside
Printed Name

Title: Assistant City Attorney

Date: May 9, 2018

List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Business Solutions Center
Exhibit C	Non Discrimination Certification

EXHIBIT A SCOPE OF WORK

I. Background: Huston-Tillotson University School of Business and Technology

The Huston-Tillotson University School of Business and Technology (SBT) is committed to providing educational opportunities to individuals interested in pursuing undergraduate degrees in **business and technology**. A major objective of the SBT is the preparation of students of diverse origins and backgrounds to become competent leaders in business, industry, and government in the global marketplace as well as to excel in graduate studies.

The SBT is in the development stages of its Center for Entrepreneurship and Innovation (CEI), which is scheduled for launch in June 2018. CEI will offer a wide variety of programs and opportunities for students, faculty, and the East Austin community. Special attention will be given to training women and minorities to learn about and engage in all phases of the entrepreneurship and innovation process.

A major feature of CEI is the proposed business incubator. The SBT will develop a business incubator in the heart of East Austin to advance entrepreneurship in urban communities. The goal of CEI and its incubator is to create a center for entrepreneurial activity and innovation that serves as a catalyst for the revitalization of historic yet rapidly evolving East Austin. CEI will establish a model and initial framework for collaborative social entrepreneurship to solve various urban issues. By leveraging some of the brightest and most diverse minds in Austin, and from throughout the nation, the SBT incubator aspires to incubate companies that are creating sustainable solutions to education, housing, transportation and other areas so important to urban corridors. With the right funding, CEI can drive economic development through targeted programming that nets dollars and jobs.

II. Program Objectives, Strategies and Measures

Huston-Tillotson University is seeking support from the City of Austin to create inclusive economic development programming that will be leveraged for the benefit of the East Austin Business Community and Austin as a whole.

Objective 1: Be a central location for East Austin business associations and organizations to foster collaboration and communication for the growth of East Austin.

Strategies:

1. Operating in its new 6,600 sq. ft. space in the heart of East Austin, CEI will be a one-stop shop for entrepreneurial resources and information, collaboration, and mentoring. Services will be provided for each business' unique stage of development and business category: start-up, micro-enterprise, small-size enterprise, community-based, targeted industry, technology and innovation, and more.

2. In a gesture of goodwill and to foster collaboration and communication for the growth of minority businesses in East Austin, CEI will grant free access for meetings and events to the National Association of Black Accountants (NABA), National Black MBA Association (NBMBA), National Society of Black Engineers (NSBE), and others.
3. Huston-Tillotson University's Civic and Community Engagement department will be tasked with reaching out to business and community organizations for the express purpose of creating collaborative relationships as well as publicizing various opportunities.

Performance measures:

- CEI will provide incubation services to at least 4 businesses.
- CEI will host at least 15 meetings and events of community business organizations.
- The Civic and Community Engagement Department will contact at least 12 community business organizations about creating collaborative relationships.

Objective 2: Foster cross-cultural learning through partnerships with local entrepreneurs that provide internship opportunities for Huston-Tillotson students.

Strategy: Partner with the CEI incubator startups to provide internship opportunities to Huston-Tillotson students.

Performance Measures:

- Create at least 4 internships for Huston-Tillotson students.
- Each intern will work at least 150 hours (4 x 150 = 600 hours total)

Objective 3: Create job opportunities for low-income, hard-to-employ residents.

Strategy: Most low-income workers turn to self-employment as a means of creating a job or to supplement a low-wage job. CEI will assist this category of workers to become entrepreneurs, and in turn, they will become drivers of local growth and job creation for other low-income workers in the East Austin community.

Performance Measures:

- Assist at least 2 low-income workers to start a business.
- Assist in employing at least 15 individuals.
- Promote job opportunities on a weekly basis through Huston-Tillotson University social media, website, and community newspapers.

Objective 4: Build the capacity of start-ups and small businesses that focus on solving urban problems in the areas of education, transportation, housing, digital inclusion and environmental equity.

Strategy: CEI will host business training programs that champion new social change ideas and support the social entrepreneurs behind those changes by helping them get started, grow, succeed, and collaborate.

Performance Measures:

- Conduct at least 6 business training programs annually.
- At least 25 attendees at each business training program.
- Provide office space for one City of Austin's Small Business Program staff.
- Provide one classroom for City's Small Business Program entrepreneurship training sessions.

Objective 5: Provide incubator participants and other local small businesses with free access to subscription-based online databases and informational websites for conducting business research and identifying sales opportunities.

Strategy: Re-establish the Business Solutions Center on the Huston-Tillotson campus.

Performance Measures:

- The Business Solutions Center receives at least 500 customer visits per year.
- A minimum of 30 new jobs are created by Business Solutions Center customers per year.
- Meet all requirements established for the Business Solutions Center in Exhibit B.

EXHIBIT B
BUSINESS SOLUTIONS CENTER

A. Facility and Operating Requirements

1. Huston-Tillotson shall designate an ADA accessible classroom as the Business Solutions Center at no charge to the City.
2. The Business Solutions Center may be used by CEI incubated businesses, Huston-Tillotson students who are conducting business-related research, and by any small business owner or person interested in starting a business.
3. The Business Solutions Center shall be open a minimum of four (4) hours per day, five (5) days a week, excluding holidays.
 - a. The exact operating schedule will be mutually-determined by the parties, and may be altered as needed by mutual agreement of the parties.
 - b. The schedule may include evening and weekend hours.
4. Signage
 - a. Huston-Tillotson must place the Business Solutions Center's schedule on a sign outside the classroom.
 - b. Huston-Tillotson must place a sign inside the room acknowledging the Business Solutions Center as a public-private partnership between Huston-Tillotson and the City of Austin's Economic Development Department.
5. Huston-Tillotson shall provide on-campus promotion of the Business Solutions Center to their day and evening students and also to communities served through other outreach methods.
6. Huston-Tillotson shall provide insurance for the City's resources that will be in the Business Solutions Center room. The insurance shall meet standard City requirements and shall be reviewed and approved by the City.
7. Huston-Tillotson shall provide security for the equipment and technology resources provided by the City. The security shall be reviewed and approved by the City.
8. The estimated in-kind value of the exclusive designation of the classroom as the Business Solutions Center is \$14,400 per year, based on Huston-Tillotson's facility rental fees.

B. Staffing

1. Huston-Tillotson shall hire a student from the School of Business & Technology to staff the Business Solutions Center during operating hours.

2. The student must be able to assist customers with using the online and equipment resources that will be provided by the City for the Business Solutions Center.
3. The student will require that the users of the Business Solutions Center sign in and are counted using the existing customer tracking database provided by the City referred to in D1 below.
4. The student will gather performance information and compile performance reports for City review, per sections D2 and D4 below.
5. The student may be paid by Huston-Tillotson for this time from the Agreement funding provided by the City.
6. The student will not be an employee of the City.

C. The City's Contribution

1. A City of Austin staff person to be available at the Business Solutions Center for four (4) hours once every week on a weekday mutually agreed by the Parties. The estimated value of this staff time is \$7,000 per year.
2. City staff shall provide up to forty (40) hours of training to HT staff, to be scheduled as needed, on using Business Solution Center web-based subscriptions and the customer usage tracking database. The estimated value of this staff time is \$1,700 per year.
3. In addition to 5 PCs and a desktop laser printer previously provided, the City will make a one-time contribution of technology consisting of:
 - a. One 50-inch LED television that will cost not more than \$300;
 - b. One camera that can be used for video conferencing that will cost not more than \$400;
 - c. One microphone that will cost not more than \$75;
 - d. One cart to move television and camera that will cost not more than \$600;
 - e. Zoom teleconferencing subscription (2 years) costing not more than \$500;
 - f. Online database subscriptions for business research up to \$8,000 annually.

D. Performance tracking and reporting

1. Huston-Tillotson shall require customers to sign in and sign out to track the number of customer visits to the Business Solutions Center and their hours of usage.

- a. The City shall make an existing customer tracking database available for this purpose, and train Huston-Tillotson staff on its use.
2. Huston-Tillotson shall survey customers on a quarterly basis to determine:
 - a. Their satisfaction with the Business Solutions Center.
 - b. The number of jobs they have created since the last survey.
3. The survey's format and exact content shall be developed by Huston-Tillotson for approval by the City.
4. Huston-Tillotson shall submit a quarterly report which the City will be used to evaluate the Business Solutions Center's effectiveness, and to determine what improvements, if any, are needed to increase its effectiveness. The report shall include at a minimum:
 - a. Statistics on customer visits and hourly usage.
 - b. Customer satisfaction survey results.
 - c. Job creation results.
 - d. Any recommendations for improvement Huston-Tillotson staff may have to offer.
 - e. The report shall be in a format approved by the City.