



Amendment No. 4
to
Contract No. NA180000114
for
Strategic Discovery Consulting Services
between
M. Arthur Gensler Jr. & Associates, Inc. DBA Gensler
and the
City of Austin

1.0 The City hereby amends the above referenced contract to make the following changes:

- 1.1 Increase contract amount by \$50,000.00, effective 12/11/19.
- 1.2 Extend the contract term to 9/30/20.
- 1.3 Increase contract amount by \$61,000.00 with each remaining extension.

2.0 The total contract amount is increased by \$50,000.00 by this action. The total Contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|--|---|-----------------------|
| Initial Term: 05/09/2018 – 05/08/2019 | \$50,000.00 | \$50,000.00 |
| Amendment No. 1: Add four (4) twelve-month Extension Options 08/21/2018 | \$0.00 | \$50,000.00 |
| Amendment No. 2: Option 1 – Extension for Time Only 05/09/2019 – 05/08/2020 | \$0.00 | \$50,000.00 |
| Amendment No. 3: Contract increase 12/4/19 | \$50,000.00 +\$11,000.00 \$61,000.00 | \$61,000.00 |
| Amendment No. 4: Contract increase of \$50,000.00, extend current contract term to 9/30/20 and add \$61,000.00 increase with each remaining extension. 12/11/19 | \$61,000.00 +\$50,000.00 \$111,000.00 | \$111,000.00 |

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment, the City of Austin confirms that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (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 SIGNATURE affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date Alan B. Colyer 12/11/2019
Authorized Representative

Printed Name Alan B. Colyer
Authorized Representative

M. Arthur Gensler Jr. & Associates, Inc.
212 Lavaca Street, Suite 390
Austin, TX 78701

Alan_Colyer@gensler.com

Signature & Date Lynnette Hicks 12/11/2019
Authorized Representative Procurement Specialist IV

Printed Name Lynnette Hicks
Authorized Representative

City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767
Lynnette.Hicks@austintexas.gov



Amendment No. 3
to
Contract No. NA180000114
for
Strategic Discovery Consulting Services
between
M. Arthur Gensler Jr. & Associates, Inc. DBA Gensler
and the
City of Austin

- 1.0 The City hereby exercises increases the contract amount by \$11,000.00. The total Contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|--|-----------------------------|-----------------------|
| Initial Term: 05/09/2018 – 05/08/2019 | \$50,000.00 | \$50,000.00 |
| Amendment No. 1: Add four (4) twelve-month Extension Options 08/21/2018 | \$0.00 | \$50,000.00 |
| Amendment No. 2: Option 1 – Extension for Time Only 05/09/2019 – 05/08/2020 | \$0.00 | \$50,000.00 |
| | \$50,000.00 +\$11,000.00 | |
| Amendment No. 3: Contract increase 12/4/19 | \$61,000.00 | \$61,000.00 |

- 2.0 MBE/WBE goals were not established for this contract.
- 3.0 By signing this Amendment, the City of Austin confirms that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

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

Signature & Date [Signature] 12/4/2019
Authorized Representative

Printed Name Alan B. Colyer, Principal
Authorized Representative

M. Arthur Gensler Jr. & Associates, Inc.
212 Lavaca Street, Suite 390
Austin, TX 78701

Alan_Colyer@gensler.com

Signature & Date [Signature] 12/4/19
Authorized Representative

Printed Name Lynnette Hicks
Authorized Representative Procurement Specialist IV

City of Austin
Purchasing Office
PO Box 1088
Austin, TX 78767

Lynnette.Hicks@austintexas.gov



Amendment No. 2
to
Contract No. NA180000114
for
Strategic Discovery Consulting Services
between
M. Arthur Gensler, Jr., and Associates, Inc. DBA Gensler
and the
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective May 9, 2019, through May 8, 2020. Three options will remain.
- 2.0 The total contract amount is increased by \$ by this extension period. The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|--|---------------|-----------------------|
| Initial Term: 05/09/2018 – 05/08/2019 | \$50,000.00 | \$50,000.00 |
| Amendment No. 1: Add four (4) twelve-month Extension Options 08/21/2018 | \$0.00 | \$50,000.00 |
| Amendment No. 2: Option 1 – Extension for Time Only 05/09/2019 – 05/08/2020 | \$0.00 | \$50,000.00 |

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

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

Printed Name: Cindy Reyes
Authorized Representative

Sign/Date: C. Reyes 4.24.19

Cindy Reyes
Contract Management Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
to
Contract No. NA180000114
for
Strategic Discovery Consulting Services
between
M. Arthur Gensler, Jr., and Associates, Inc. DBA Gensler
and the
City of Austin, Texas

1.0 The City hereby amends the above referenced contract to include four (4) twelve (12) month extension options. The following language is incorporated into the contract:

1.1 The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twelve (12) months. The Contract may be extended beyond the initial term for up to four (4) additional twelve (12) month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract. **The first extension option will be exercised on May 9, 2019.**

2.0 The total Contract amount is recapped below:

| Term | Contract Amount for the Item | Total Contract Amount |
|--|---------------------------------|--------------------------|
| Basic Term: May 8, 2018 to May 9, 2019 | \$50,000 | \$50,000 |
| Amendment No.1: May 8, 2018 to May 9, 2019 Add four (4) twelve (12) month extension options | 0 | \$50,000 |

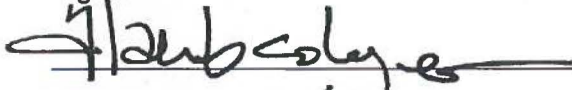
3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (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 SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date:

 8/20/2018

Printed Name: Alan Cover
Authorized Representative

M. Arthur Gensler, Jr., and Associates, Inc.
DBA Gensler
212 Lavaca Street, Ste. 390
Austin, Texas 78701

Signature & Date:

 8/21/18

Sydney Ceder, Procurement Specialist III
City of Austin Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
M. Arthur Gensler, Jr., and Associates, Inc.
DBA Gensler
For
Strategic Discovery Consulting Services
NA180000114**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and M. Arthur Gensler, Jr., and Associates, Inc. DBA Gensler ("Consultant"), having offices at 212 Lavaca Street, Suite 390, Austin, TX 78701.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

1.4 **Designation of Key Personnel.** The Consultant's Contract Manager for this engagement shall be Alan Colyer, Phone: (713) 356-1360, Email Address: Alan.Colyer@gensler.com. The City's Contract Manager for the engagement shall be Van Jobe, Phone: (512) 404-4047, Email Address: Van.Job@texas.gov. The City and the Consultant resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Consultant 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 Consultant 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

The City, through the Austin Convention Center Department (ACCD), wishes to engage with Consultant for the provision of professional services, specifically technical advice on public engagement activities. These engagements will support implementation of ACCD's 2015 Long-Range Master Plan and will drive City decisions regarding future ACCD facility expansion/utilization.

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

2.2 **Tasks.** In order to accomplish the work described herein, the Consultant shall perform each of the following tasks:

2.2.1 Consultant, as a representative of ACCD, shall engage in conversations with City Council and Austin's community related to the Convention Center expansion. These conversations will assist in the formulation of a comprehensive plan which will identify and recommend a series of actions that address the future development and success of ACCD.

2.2.1.1 Consultant's tasks shall include, but not be limited to, facilitate community engagements,

prepare presentations for ACCD's use; make presentations on behalf of ACCD; participate in meetings with City Council, City Executive Management, civic groups, and citizens of Austin's community; and facilitate vision sessions and planning workshops.

2.2.1.2 Prior to each engagement or conversation, the Consultant and ACCD shall mutually agree upon the specific tasks and responsibilities of each party.

2.2.2 Consultant shall update or revise the Long-Range Master Plan as a result of the engagements and conversations or as directed by City Council, City Executive Management, or ACCD.

2.2.2.1 Prior to updating or revising the Long-Range Master Plan, the Consultant and ACCD shall meet to discuss the proposed revisions, mutually agree on the actions and tasks needed to complete those revisions, and set a completion date.

2.2.3 At the request of ACCD, Consultant shall provide at no cost electronic copies of all materials, presentations, revised Long Range Plan, notes, or other materials related to the Long-Range Plan. Consultant may also be required to provide printed copies. Printed copies shall be considered a Reimbursable Expense.

2.2.4 Other tasks not detailed in the Scope of Work but directly related to the tasks shown above may be added by City, subject to the provisions of Paragraph 1.2.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Consultant will be paid as indicated herein upon the successful completion of tasks within the Scope of Work, and will be compensated in accordance with the provisions of Paragraphs 3.2 and 3.3. In consideration for the services to be performed under this Contract, the Consultant shall be paid an amount not-to-exceed \$50,000 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Consultant's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Consultant's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Consultant's invoice. Invoices received without all required information cannot be processed and will be returned to the Consultant. Invoices shall be mailed to the below address:

| | |
|-----------------------|---|
| | City of Austin |
| Department | Austin Convention Center |
| Attn: | Accounts Payable, Financial Management Division |
| Address | 500 East Cesar Chavez |
| City, State, Zip Code | Austin, TX 78701 |

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

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

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful**

rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Consultant to such extent as may be necessary on account of:

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

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

3.3.3.3 failure of the Consultant to pay Subconsultants, or for labor, materials or equipment;

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

3.3.3.5 reasonable evidence that the Consultant'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 Consultant to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Consultant 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 Consultant 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 Consultant. The City shall provide the Consultant 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 Consultant within the Contract amount.

3.5.1 **Administrative.** The Consultant 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 Consultant 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 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Consultant, 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 Consultant to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Consultant's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Consultant 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 until the earliest of when the deliverables set forth in the Scope of Work are complete or the City terminates the Contract.

4.1.1 Upon completion of the deliverables as set forth in the Scope of Work herein, Consultant agrees to hold over under the terms and conditions of this Contract for such a period of time as may be reasonably necessary to complete final reviews of deliverables, to meet with City leaders and/or executive management, or for other reasons mutually agreed upon between ACCD and the Consultant. The hold over period shall not exceed 120 calendar days unless mutually agreed 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 Consultant shall be in default under the Contract if the Consultant (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 Consultant's Offer, or in any report or deliverable required to be submitted by Consultant to the City.

4.4 **Termination For Cause.** In the event of a default by the Consultant, 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 Consultant, 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 Consultant on probation for a specified period of time within which the Consultant 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 Consultant has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Consultant, the City may suspend or debar the Consultant in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Consultant from the City's vendor list for up to five (5) years and any Offer submitted by the Consultant 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 Consultant'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 Consultant 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 Consultant, 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 Consultant on any Offer or in any report or deliverable required to be submitted by the Consultant to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

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

5.1.1 **General Requirements.**

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

5.1.1.2 The Consultant 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 fourteen (14) calendar days after written request from the City.

5.1.1.3 The Consultant 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 Consultant 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 Consultant hereunder and shall not be construed to be a limitation of liability on the part of the Consultant.

5.1.1.5 The City may request that the Consultant submit certificates of insurance to the City for all Subconsultants prior to the Subconsultants commencing work on the project.

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

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

OR

PURInsuranceCompliance@austintexas.gov

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 Consultant, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Consultant 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 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 Consultant.

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

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

5.1.1.13 The Consultant shall endeavor to provide the City thirty (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 Consultant 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 Consultant.

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 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Consultant/Subcontracted Work.

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 Thirty (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 **Business Automobile Liability Insurance.** The Consultant shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Consultant's policy shall apply to the State of Texas.

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

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

5.1.2.4 **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.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Consultant, or Consultant'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 Consultant's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Consultant, or Consultant'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.

5.3 **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 Consultant 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 Consultant.

5.4 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Consultant 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 Consultant shall negotiate an equitable adjustment for costs incurred by the Consultant in the Contract price and execute an amendment to the Contract. The Consultant 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 Consultant 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 (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

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

5.5.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Consultant agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Consultant 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.

5.5.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Consultant agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Consultant 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 Consultant 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 Consultant 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.

5.5.3 **Additional Assignments.** The Consultant 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 Consultant'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 Consultant agrees to treat the same as Confidential Information under the terms herein.

5.6 **Rights to Proposal and Contractual Material.** All material submitted by the Consultant to the City shall become property of the City upon receipt. Any portions of such material claimed by the Consultant 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.

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

6.1.2 The Consultant 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 Consultant, or otherwise recover, any amounts paid for items in excess of the Consultant's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Services.** The Consultant represents that all services to be provided to the City under the Contract will be fully and timely performed 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 Consultant may not limit, exclude or disclaim the foregoing representation or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 If the Consultant 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 Consultant, and purchase conforming services from other sources. In such event, the Consultant 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 **Workforce.**

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

7.1.2 The Consultant, its employees, Subconsultants, and Subconsultant'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:

7.1.2.1 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.

7.1.3 If the City or the City's representative notifies the Consultant 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 Consultant 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.

7.2 **Compliance with Health, Safety, and Environmental Regulations.** The Consultant, its Subconsultants, 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 Consultant 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 Consultant's obligations under this paragraph.

7.3 **Significant Event.** The Consultant 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 Consultant's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.3.1 disposal of major assets;

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

7.3.3 any significant termination or addition of provider contracts;

7.3.4 the Consultant'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;

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

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

7.3.7 known or anticipated sale, merger, or acquisition;

7.3.8 known, planned or anticipated stock sales;

7.3.9 any litigation against the Consultant; or

7.3.10 significant change in market share or product focus.

7.4 **Audits and Records.**

7.4.1 The Consultant 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 Consultant related to the performance under this Contract. The Consultant 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 Consultant are resolved, whichever is longer. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.

7.4.2 Records Retention:

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

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

7.4.3 The Consultant shall include sections 7.4.1 and 7.4.2 above in all Subconsultant agreements entered into in connection with this Contract.

7.5 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Consultant 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 Consultant will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Consultant shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.6 **Indemnity.**

7.6.1 Definitions:

7.6.1.1 "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:

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

7.6.1.1.2 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 Consultant, the Consultant's Subconsultants, and third parties),

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

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

7.7 **Claims.** If any claim, demand, suit, or other action is asserted against the Consultant which arises under or concerns the Contract, or which could have a material adverse effect on the Consultant's ability to perform thereunder, the Consultant shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Consultant. 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.

7.8 **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 Consultant shall be addressed as follows:

| | |
|--|------------------------------|
| To the City: | To the Consultant: |
| City of Austin, Purchasing Office | Consultant's Name |
| ATTN: Roger Stricklin, Procurement Specialist IV | ATTN: Alan Colyer, Principal |
| P O Box 1088 | 212 Lavaca Street, Suite 390 |
| Austin, TX 78767 | Austin, TX 78701 |

7.9 **Confidentiality.** In order to provide the deliverables to the City, Consultant 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"). Consultant 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 Consultant (including its employees, Subconsultants, 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 Consultant promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Consultant agrees to use protective measures no less stringent than the Consultant 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.

7.10 **Advertising.** The Consultant 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.

7.11 **No Contingent Fees.** The Consultant 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 Consultant 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 Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.12 **Gratuities.** The City may, by written notice to the Consultant, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Consultant or any agent or representative of the Consultant 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 Consultant in providing such gratuities.

7.13 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 Consultant shall render the Contract voidable by the City.

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

7.15 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Consultant 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 Consultant without the prior written consent of the City. Any attempted assignment or delegation by the Consultant 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.

7.16 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 Consultant 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.

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

7.18 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.

7.19 Dispute Resolution.

7.19.1 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.

7.19.2 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 Consultant 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 Consultant 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.

7.20 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

7.20.1 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.

7.20.2 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 Consultant 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.**

7.20.3 If any service is needed to perform the Contract and the Consultant does not perform the service with its own workforce or if supplies or materials are required and the Consultant does not have the supplies or materials in its inventory, the Consultant 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 Consultant 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.

7.21 Subconsultants.

7.21.1 If the Consultant identified Subconsultants in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Consultant 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 Consultant shall not initially employ any Subconsultant except as provided in the Consultant's Plan. The Consultant shall not substitute any Subconsultant 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 Subconsultant shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subconsultant. If a Plan has been approved, the Consultant 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.

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

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

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

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

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

7.21.2.5 require that the Subconsultant indemnify and hold the City harmless to the same extent as the Consultant is required to indemnify the City.

7.21.3 The Consultant shall be fully responsible to the City for all acts and omissions of the Subconsultants just as the Consultant is responsible for the Consultant's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subconsultant any contractual relationship between the City and any such Subconsultant, 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 Subconsultant except as may otherwise be required by law.

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

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:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

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

M. ARTHUR GENSLE, JR., AND ASSOCIATES,
INC. DBA GENSLE

By: 
Signature

Name: Alan Colyer
Printed Name

Title: Principal

Date: May 8, 2018

CITY OF AUSTIN

By: 
Signature

Name: Roger Strickland
Printed Name

Title: Procurement Specialist IV

Date: May 9, 2018

List of Exhibits

| | |
|-----------|--|
| Exhibit A | Non-Discrimination and Non-Retaliation Certification, Section 0800 |
| Exhibit B | Consultant's Proposal |

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

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Consultant, 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 Consultants 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 Subconsultants 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, Consultant 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 Consultant will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Consultant 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 Consultant 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.

Consultant agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Consultant 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 Consultant's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Consultant's policy, but will also supersede the Consultant's policy to the extent of any conflict.

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

Dated this 8th day of May, 2018

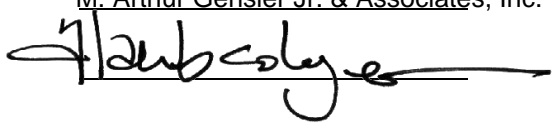
| | |
|-------------------------|---|
| CONSULTANT | <u>M. Arthur Gensler Jr. & Associates, Inc.</u> |
| Authorized Signature |  |
| Title | <u>Principal</u> |

EXHIBIT B - CONSULTANT'S PROPOSAL

711 Louisiana
Suite 300
Houston TX 77002
USA

Tel 713.844.0000
Fax 713.844.0001



March 27, 2018

Mr. Mark Tester
Director
Austin Convention Center
500 East Cesar Chavez
Austin, TX 78701

Subject: Continuation of Consulting Services

Dear Mr. Tester:

On behalf of Gensler, I would like to submit this proposal for continuation of consulting services to the Austin Convention Center Department. Having worked closely with you and your team for the past 30 months in the development and promotion of the Convention Center's Long Range Master Plan, Gensler is uniquely qualified and has the specialized and intellectual knowledge to support the Department's efforts to promote the master plan's recommendations related to district improvements and expansion of the Convention Center.

We anticipate the potential for continued services in two areas:

1. Revisions to the Long Range Master Plan document based on input from the Department, City leaders and the citizens of Austin.
2. Public engagement activities related to Issue #13 of COA Resolution No. 20151112-033 which states *"Plans for continued engagement of the City Council and Austin Community to ensure that the Convention Center expansion is designed as an aesthetically pleasing enhancement which incorporates features that would be meaningful for both the activities of the Convention Center and the overall Austin Community."*

Item 1 above is fairly straightforward although the extent of any future revisions is unknown at this time.

Item 2 above may include, but not limited to, preparing presentations for the Department's use; making presentations on behalf of the Department; participation in meetings with COA leaders and civic groups; and, the facilitation of vision sessions and planning workshops.

In lieu of specific tasks at this time or timeline for providing the above services, Gensler will execute the requested services on an as-directed basis by the Department. The following table identifies the labor rates for professional categories associated with the anticipated tasks.

| Project Role | 2016 Rate |
|---------------------------|-----------|
| Senior Planning Principal | \$240.00 |
| Project Manager | \$190.00 |
| Junior Planner | \$120.00 |
| Administrative Assistant | \$90.00 |

Austin Convention Center

March 27, 2018

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Consultants. No outside consultants or consultant services are anticipated. If, at a later time, Gensler and the Client determine together that a specialty consultant is needed, then a consultant agreement for Additional Services will be executed for the Client's approval and signature.

Reimbursable Expenses. Reimbursable expenses incurred during the execution of Basic Services are anticipated to be minimal, primarily transportation and printing costs. Compensation for Reimbursable Expenses incurred by Gensler in connection with the Project shall be based on amounts invoiced to Gensler.

This is an important project for the City of Austin. Gensler considers itself fortunate to be a part of the Austin Convention Center Department's team. If you have any questions about the scope and direction described above, please don't hesitate to call or email.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan B. Colyer", followed by a long horizontal flourish line.

Alan B. Colyer
Principal



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/26/2018

DEPT: Austin Convention Center

TO: Purchasing Officer or Designee

FROM: Kelly Jones

BUYER: Roger Stricklin

PHONE: (512) 404-4351

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

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

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

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

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

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

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

M. Arthur Gensler, Jr. and Associates Inc. has been working under contract with ACCD since September 2016 to provide consulting services regarding the pending convention center expansion. Gensler was also contracted by ACCD to serve as a consultant in the development of the Convention Center's Long-Range Master Plan. Because of their direct and active involvement, Gensler is uniquely qualified, with specialized knowledge, garnered critical intelligence, and has a detailed understanding of the technical elements related to the expansion project. The tasks performed by Gensler under this agreement will be in support of the City's resolution 20151112-033.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

Gensler, as the consultant hired to create ACCD's Long-Range Master Plan, has the specialized and intellectual knowledge required to facilitate community engagements; prepare presentations for ACCD's use; make presentations on behalf of ACCD; participate in meetings with City Council, City Executive Management, Civic groups and the citizens of the City of Austin; and facilitate vision sessions and planning workshops.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with M. Arthur Gensler, Jr. and Associates, Inc. which will cost approximately \$ 50,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

Keay Jones 03/27/2018
Originator Date

Approved
Certification

[Signature] 3/27/18
Department Director or designee Date

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

Purchasing Review
(if applicable)

[Signature] _____
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Purchasing Officer or designee Date

02/26/2013