

**Contract Between the City of Austin
and
The University of Texas at Austin
for
Strategic Business Consulting Services
NA180000127**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and the University of Texas at Austin, IC2 - Austin Technology Incubator ("Contractor"), having offices at 2815 San Gabriel Street, Austin, TX 78703.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

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

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

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

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Mitchell Jacobson, Phone: (512)-974-6381, Email Address: mjacobson@ati.utexas.edu. The City's Contract Manager for the engagement shall be David Colligan, Phone: (512) -974-6381, Email Address: david.colligan@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described herein and in Exhibit A 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 Contractor shall perform each of the tasks outlined in Exhibit A.

SECTION 3. COMPENSATION

3.1 Contract Amount. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$250,000 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 Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Economic Development
Attn:	David Colligan
Address	PO BOX 1088
City, State, Zip Code	Austin Texas 78767

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

3.2.3 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 Contractor to such extent as may be necessary on account of:

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

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

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

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

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

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

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

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

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

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

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

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

3.6.1 The making and acceptance of final payment will constitute:

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

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

SECTION 4. TERM AND TERMINATION

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

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

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

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

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

cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirements apply. The City accepts The University of Texas System Office of General Counsel proof of self-insurance in Exhibit D.

5.1.1 General Requirements.

5.1.1.1 The Contractor 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 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 fourteen (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 hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor 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.

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

5.1.2.1.2 Contractor/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 Contractor 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 Contractor'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 Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

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

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

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

5.5 **Delays.**

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

5.5.2 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.

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

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

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

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

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

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

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

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

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

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

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

SECTION 7. MISCELLANEOUS

7.1 Workforce.

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

7.1.2 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:

7.1.2.1 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

7.1.2.2 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 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.

7.2 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.

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

7.3.1 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 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;

7.3.5 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;

7.3.6 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 Contractor; or

7.3.10 significant change in market share or product focus.

7.4 Audits and Records.

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

7.4.2 Records Retention:

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

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

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

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

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

7.7 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 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 Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Kim Larsen, Procurement Specialist II

To the Contractor:

The University of Texas at Austin

IC2 - Austin Technology Incubator

ATTN: Mitchell Jacobson, Contract Manager

P O Box 1088
Austin, TX 78767

2815 San Gabriel Street
Austin, TX 78703

7.9 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.

7.10 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.

7.11 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.

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

7.13 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 Contractor shall render the Contract voidable by the City.

7.14 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.

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

7.16 **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 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.

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

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

7.20 **Subcontractors.**

7.20.1 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:

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

7.20.1.2 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;

7.20.1.3 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;

7.20.1.4 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

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

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

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

7.21 **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.

7.22 **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.

7.23 **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.

7.24 **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.

7.25 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.

7.26 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.

THE UNIVERSITY OF TEXAS AT AUSTIN

DocuSigned by:

By: Linda Shaunessy

Signature

Name: Linda Shaunessy

Printed Name

Title: Businesss Contracts Administrator

Date: 2018-07-31 | 11:14:02 PDT

CITY OF AUSTIN

By: Kim Larsen

Signature

Name: Kim Larsen

Printed Name

Title: Procurement Specialist II

Date: 8/1/2018

By: Cyrenthia Ellis

Signature

Name: Cyrenthia Ellis, PMP, CTPM

Title: Procurement Manager

Date: 8/1/2018

List of Exhibits

Exhibit A	Contractor's Proposal
Exhibit B	Non-Discrimination and Non-Retaliation Certification
Exhibit C	Non-Suspension or Debarment
Exhibit D	University of Texas System Letter of Self-Insurance

EXHIBIT A CONTRACTOR'S PROPOSAL

About the Austin Technology Incubator (ATI)

The Austin Technology Incubator (ATI) is a non-profit program at the University of Texas (UT) which has had a successful relationship with the City of Austin for twenty years. ATI is the longest-established venture incubator in the U.S. ATI supports the City of Austin's economic development goals of creating jobs and investment through entrepreneurship development and start-up support, and promotes education and resource development these small businesses need to thrive. Over our almost 30-year tenure in Austin, we have migrated from our initial focus on IT and communications technologies and have allowed other incubators and accelerators in Austin focus on startups with these technology foci. In turn, ATI has recently focused its efforts on significant problems identified by our local City leadership, linked to key goals such as sustainability, transportation, water, clean energy, zero waste, and life sciences. Solutions to these problems come at the interface of engineering innovation or scientific advancement and the creation of technology-based products. We refer to startups focusing on this interface as "deep tech" companies. ATI has successfully developed and implemented a methodology to 1) identify promising "deep tech" solutions with capable company leadership, 2) link these to community expertise and mentors, 3) create clear and fundable business value propositions and 4) attract venture capital and other funding to these deep tech companies in the Austin region. In a recent study conducted by The University of Texas Bureau of Business Research, ATI companies have accomplished the following metrics between 2005-2017 (the period covering the most recent two Directors of ATI – Isaac Barchas and Mitch Jacobson):

- Obtained >\$1,172,000,000 in funding
- Recorded 20 significant financial exits including:
 - 3 IPOs
 - 2 reverse public mergers
 - 8 of the 15 private acquisitions totaling >\$433,000,000
- Created or maintained a steady state of >2,300 direct and indirect jobs per year
- Continued to reside in the Austin metro area - >90%
- Created direct impact of >\$1,606,000,000 in the region (without adding other tax, revenue and expenditure multipliers)
- Impacted the Austin metro economy per year (as an average):
 - >\$134,000,000 in economic impact
 - >2,300 direct and indirect jobs

These numbers far outpace the majority of incubators and accelerators in the US and compare well with leading incubators such as Mass Challenge, TechStars, the University of California and Carnegie Mellon University. Specifically, over the past five years of our contract, ATI has incubated 188 graduate companies that have created over 2,000 direct jobs. ATI estimates the contract has provided >\$660,000,000 in economic impact over the five-year period, or >\$69 per City dollar invested. Additionally, ATI is also the major source of technology commercialization in Austin: 94% of the capital raised by Texas startups with UT-Austin tech licenses (>\$250,000,000) has been raised by ATI companies.

Alignment with City Objectives

EXHIBIT A
CONTRACTOR'S PROPOSAL

As a conduit between the University, City and the community, ATI also serves as a 'living lab' aligning its activities with the City's goals and initiatives. A great example of the living lab in action is demonstrated by one of our portfolio companies, Smarter Sorting, which has developed a technology solution to divert household hazardous waste from the land fill or incinerator thus creating new market opportunities surrounding a traditional waste product. Through a pilot partnership with the City of Austin, Smarter Sorting has successfully demonstrated their technology while helping the City to meet its environmental and waste reduction goals and save money. In addition, the hardware solution has created jobs requiring a wide range of skills including manufacturing, field installation and training, and software / data. The diverted materials are sold to the public at Habitat for Humanity stores at prices well below retail. Deep-tech focused companies like Smarter Sorting illustrate the value to the community beyond the traditional technology solutions now abundant in the Austin entrepreneurial ecosystem; continued support by the City to incubate these deep-tech companies directly impacts the City's goals while also creating good jobs accessible by a diverse socioeconomic workforce.

ATI's Cleantech and Life Science Incubators have also been instrumental in supporting the City's commitment to environmental sustainability and community health. During the past contract term, ATI launched additional transportation / mobility and water incubators to further align itself with the City's growing emphasis on "Smart City" initiatives. Further, through collaboration with Austin Community College's Bioscience Incubator, ATI has engaged with 67 companies with regards to incubation and is working to recruit 17 companies from outside of Texas to the Austin area. Through the next contract term, ATI intends on strengthening the existing channels between the University and the City. Leveraging the talented faculty, staff, and students of the University to support the City's initiatives is a real Win-Win for both parties as well as the community. ATI's deep-tech areas of focus and commercialization efforts of the University align very well with the City's target markets (See Figure 1 below).

Figure **1**

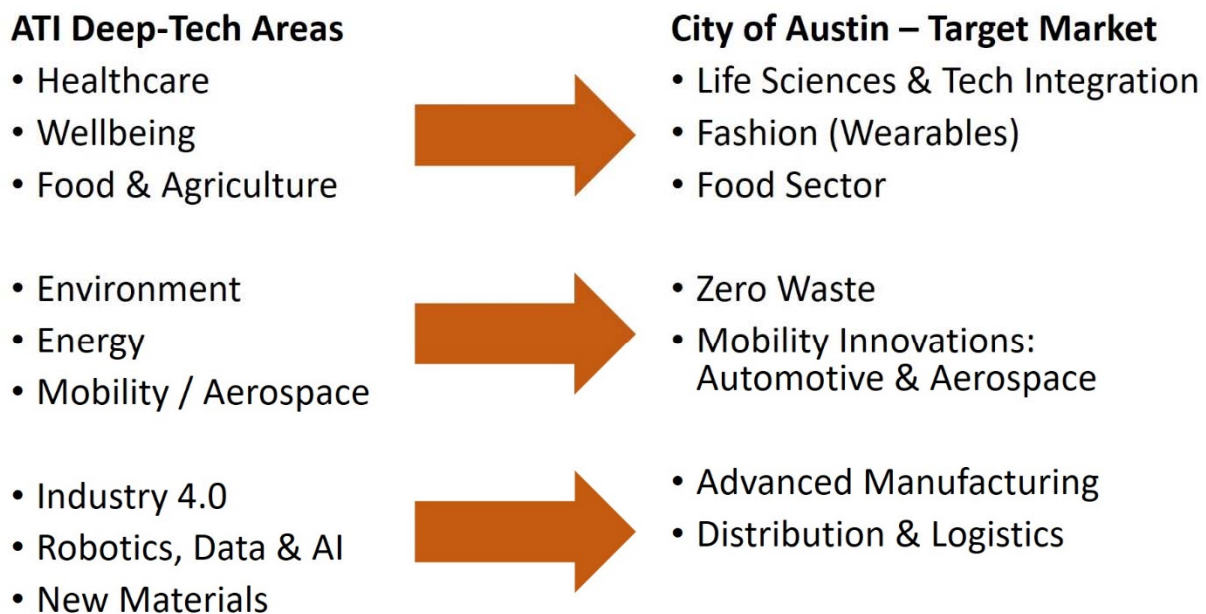


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Figure 1: ATI Deep-Tech Areas Alignment with City of Austin Target Markets

ATI will further build out the 'Living Lab' with the following University institutes and centers:

Life Sciences

- Drug Dynamics Institute
- Dell Medical School
- ACC Bioscience Incubator
- UT Robotics
 - ReWire Lab
- Institute for Cellular and Molecular Biology
- Food+City
- College of Natural Sciences
 - Fashion Design + Materials

Smart Infrastructure

- Center for Transportation Research
- Energy Institute
- Department of Mechanical Engineering
 - Goodenough Battery Team
 - Webber Energy Group
- Center for Water and the Environment
- Center for Aeromechanics Research
- Center for Space Research
- Center for Next Generation Photovoltaics I/UCRC
- Industry
- UT Robotics
- Advanced Manufacturing + Design Center
- Digital Lab
- Center for Mechanics of Solids, Structures & Materials
- Microelectronics Research Center
- Nanomanufacturing Systems for Mobile Computing and Mobile Energy Technologies (NASCENT) Center
- Texas Materials Institute
- Construction Industry Institute
- Design Thinking curriculum out of the Fine Arts College

FY 2017-2018 Proposal

Under the recommended agreement, ATI is requesting \$250,000 from the City of Austin during FY17-18 to fund:

ATI Contract Deliverables Schedule

EXHIBIT A CONTRACTOR'S PROPOSAL

ATI will invoice the City of Austin on a quarterly basis for activities pursuant to its proposal (Exhibit A) completed in the previous quarter. Upon invoicing, ATI will provide the City with a quarterly report that includes documentation of the proposal's activity area. The report should show that ATI is on track to complete the annual milestones in the proposal by meeting or exceeding quarterly milestones. If ATI is behind schedule, the report should include an explanation of the delay and a plan for ensuring the annual milestone is met in the upcoming quarters. Reporting requirements and quarterly milestones expectations are provided below.

Strategic Business Consulting: ATI will provide at least 50 hours of strategic business consulting services to at least 25 deep-tech startup companies. These services include, but are not limited to, strategic business review and advice, assistance developing finance strategies and investor communications, country-wide exposure to potential investors and grant opportunities, pitch competitions, applicable workshops, business seminars and conferences, student intern resources, senior executive talent database access and relationship-building, and connections upon request with a network of over 350 mentors and advisors.

Reporting Requirement:

- Number of hours of strategic business consulting provided
- Number of deep-tech start-up companies who received services.

Quarterly Milestones:

- 12.5 hours of strategic business consulting companies
- 6 companies receiving services.

Marketing and Education Campaign: ATI will develop a marketing and education campaign that will reach at least 100 businesses to highlight Austin as a center of entrepreneurial activity and promote local companies in its practice area industries. This campaign will include 10 networking and educational events in Austin and the showcasing of ATI's capabilities at major conferences and trade shows.

Reporting Requirement:

- Documentation of participation in networking and educational events, and major conferences and trade shows.
- Documentation of number of businesses reached through marketing and education campaign.
- Copies of marketing and education campaign materials.

Quarterly Milestones:

- 25 businesses reached through marketing and education
- 2 events

Two New Areas of Focus in Circular Economy and Agriculture Tech: ATI currently has practice areas in the Bio/ Life Sciences, Energy, Transportation/Mobility, and Water Technologies. ATI is asking the City of Austin to fund two new areas of focus for ATI in the areas of Circular Economy (zero waste, reuse, recycling, e-waste) and Agriculture Tech in addition to continuing to fund our Bio/Life Sciences Incubator.

EXHIBIT A CONTRACTOR'S PROPOSAL

We are proposing to launch a Circular Economy incubator in partnership with Austin Resource Recovery. Launching a Circular Economy incubator would further the City's Zero Waste goal by supporting emerging innovators with disruptive deep-tech software, hardware, and products that can enable new or improved forms of waste diversion, reduction, or reuse. For ATI, adding a new area of focus means developing expertise in each area, hiring on new consultants with specific expertise, adding marketing in that area, making sure at least 10 portfolio companies fall within a given sector, identifying a community of mentors in these business areas, and building a community and business eco-system to support this area of importance for the incubator, start-ups, mentors, and investors. We are also tackling the technology and science around the nexus of energy, water and food and therefore launching an AgTech incubator to meet the demand of those types of new technologies that we are starting to see.

Reporting Requirement:

- Copies of the marketing added to support the Circular Economy and Agriculture Tech Areas of Focus.
- List of companies within the Circular Economy and Agriculture Tech portfolios.
- Written narrative explaining the community and relationship building activities within these practice areas.

Quarterly Milestones:

- 2 portfolio companies in the Circular Economy Portfolio added
- 2 portfolio companies in the Agriculture Tech Portfolio added

Practicum in Entrepreneurship: ATI is proposing to develop a practicum in entrepreneurship to address the circular economy reverse pitch put on by the City of Austin. (<http://reversepitch.org/>) Essentially, this is a short, 3-hour course to form at least 3-5 teams who will create solutions / businesses to compete in the City's Reverse Pitch. The curriculum would be developed in FY17-18 with the first course aligning with the 2019 [Re]Verse Pitch Competition.

Note: Practicum should be open to entire community and not be exclusive to ATI members or UT students, faculty, or alumni.

Reporting Requirement:

- Written curriculum for practicum.

Quarterly Milestones:

- Draft curriculum provided by Q3
- Final curriculum completed and accepted by Q4

Huston-Tillotson University Internship Program: In addition to the above, ATI is proposing a relationship with Huston Tillotson University, to hire student interns into our ATI business intern program on a semester by semester basis. We do this with UT Austin students now and have for over 25 years and it proves to be an amazing real-life experience and resume builder.

Reporting Requirement:

EXHIBIT A CONTRACTOR'S PROPOSAL

- Number of student interns from Huston-Tillotson hired.

Quarterly Milestones: N/A (COA expects at least 1 HTU intern hired during contract year)

MECA Chamber Outreach Program: We are also proposing working directly with the MECA Chambers to integrate business people and technologists into our "ATI Incubator System". What that means is to make sure these chambers know who we are and what we do by inviting interested chamber members to join our ATI mentor network, invite their members to the many start-up events and workshops that we produce and partner with other organizations, and invite at least 25 start-up technologists to submit businesses that ATI can be a resource for or give these entrepreneurs the direction they need within the Austin entrepreneurial eco-system that we always do for many entrepreneurs and have over our 29 years of existence. ATI will measure its success based on the number of MECA Chamber members or referrals attending ATI events, becoming ATI mentors, and entering into the ATI incubator.

Reporting Requirement:

- Documentation of invitations to MECA Chambers to events and workshops & invitations to mentor network.
- Number of MECA Chamber members or referrals attending ATI events, becoming ATI mentors, and entering into the ATI incubator

Quarterly Milestone:

- Invitations to each MECA Chamber for each ATI event hosted in the previous quarter

Long-Term Funding & Sustainability Strategy

We very much appreciate the relationship that we have had with the City of Austin over the past 10 years and hope to continue that relationship for many years to come. That said, we know it is important as a non-profit organization to have a long-term funding strategy. As a reminder, ATI is the longest continually running business technology incubator in the United States and has been in business since 1989. So, we have always had a diversified funding strategy as a non-profit organization, knowing that government funding is not necessarily consistent and sustainable. ATI's annual budget has ranged from \$1.0m - \$2.5m per year over the past 10 years and it is our goal to continue in this upper range and above so that we can continue to expand into industries that are important to the City of Austin, The University of Texas, The Austin Chamber of Commerce and the entrepreneurial eco-system in Central Texas that continues to expand and grow. At \$250,000, the contribution from the City of Austin is about 18% of our \$1.4m budget this fiscal year. We also receive funding from The Texas State Energy Conservation Office, The US Department of Energy, The US Department of Commerce, US Department of Defense, NREL's IN2 Program, The Austin Community College BioScience Incubator, NSF's I-Corp Go Program, The Kauffman Foundation, and corporations like Wells Fargo, BP, Shell, National Grid and others. We also charge an annual fee for our services to the companies that join ATI and take a 2% equity stake in each company. This 2% usually winds down to less than ½ % based on the dilution that occurs as each company raises

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more funds as they are growing. We have had pretty good but inconsistent success from liquidity events like acquisitions and even a few Initial Public Offerings over the past 10 years. This equity agreement is treated as a “gift” back to ATI and The University of Texas. It should be noted that although we are a part of the University of Texas at Austin, we are treated as an “institute” or “lab” on campus and therefore receive no money from UT Austin and are expected to fund ourselves. As noted, we have done this successfully since 1989 and based on our funding and sustainability strategy, we expect to be around for a very long time.

Our strategy of sustainable funding and expansion is to continue to serve the Stakeholders that we list above but to also expand our funding with new relationships with many more public and private corporations and new grants from corporate foundations, family offices and foundations, competitive grants from state and federal government opportunities, along with partnerships and fee for services with other organizations like Earth Day Texas (EarthX). For example, we would like to work with different departments within the City of Austin, like Austin Resource Recovery. Based on our community, state and national standing, reputation, and the work that we do and accomplish, we feel very confident in our plan.

Deep-Tech Focus

Deep-tech innovations are defined as disruptive solutions built around unique, protected or hard-to-reproduce technological or scientific advances. Universities perform 15% of American research and development, and startup companies based on university innovation accounted for 45% of initial public offering value in 2015 (Source: ATI analysis of IPO and NSF data). As a result, cultivating university innovation as the foundation of the technologies underlying Austin's economy is critical.

From a recent BCG report, “Over the past decade, a powerful wave of innovation based on digital platforms and apps has arisen and become synonymous with the tech industry. Investors and companies are now looking for the next source of deep technological innovations (deep-tech), which will fuel the next industrial revolution.” Austin now has a plethora of accelerators or incubators supporting digital platforms and apps, however, ATI is unique in supporting the deep-tech community; these companies require greater patience, longer times to market, and greater capital intensity. Because of its relationship with the University and experience with local, state and federal agencies, ATI is well suited to assist with deep-tech commercialization. Focusing on the next industrial revolution results in Austin companies that have greater potential for sustained employment across a wider range of pay grades.

ATI “Client Service” Model

Our client service model involves three core components: Access to the ATI professional staff; access to ATI's network of mentors, advisors and service providers; and access to capital. This approach has proven to be successful in an ever-changing ecosystem and effective at producing real economic impact through the development of substantial technologies. The core components are further expanded upon below.

Business counseling: ATI staff has over 95 collective years of relevant experience in business model development and design, as founders, executives, academics, and consultants. Each member company receives regular "strategy session" reviews with the ATI directors and other members of ATI's professional

EXHIBIT A

CONTRACTOR'S PROPOSAL

staff with relevant expertise. These strategy sessions determine the program of work between the Incubator and the member company. The Incubator's professional staff also engages directly in business building work with the member companies, including investor and partner relationships. ATI professionals also work intensively with member companies to help them develop their financing strategies, including the development of investor communications. ATI selects outstanding students from across UT-Austin, and occasionally other universities, to work as interns. These student interns perform project work, such as building financial models, building and adjusting business plans and pitch decks, and market and competitive research, due diligence materials. These student interns are supervised directly by the Incubator's professional staff.

Entrepreneurial support (mentors): A cornerstone of ATI's client service model is our extensive network of mentors, advisors, and trusted service providers. ATI currently manages an expert network of more than 350 mentors and advisors, which enables us to deploy industry-specific talent against the unique challenges that our member companies face. ATI mentors and advisors include experts from local, state and federal government, the University of Texas, and many various industries. Additionally, ATI helps clients leverage service providers (including entrepreneur-friendly law and accounting providers) and testing and validation resources, such as Pecan Street, Inc. and Southwest Research Institute.

Access to capital – ATI's core value proposition to early-stage startups is "we get you funded." When, after extensive work with ATI staff and mentors, ATI companies have developed and validated a scalable business model, they receive facilitated access to our network of investors. ATI partners with investors ranging from individual angel investors to top-quartile venture capital firms. Combined, these represent billions in assets under management and are located not only in Austin, but also throughout the United States. ATI staff and interns work with member companies to identify target investors, prepare tailored investor pitches, and provide warm introductions and recommendations. Our track record getting companies funded puts us among the top incubators in the US. During the last 12 years, ATI companies have raised over \$1.1b.

Incubation Model

ATI employs a proven incubation model that includes Opportunity Identification, Incubation, Exposure, Demonstration and Ecosystem Building. The approach leverages the unique capabilities and resources of ATI in identifying and developing deep technologies within the Austin and extended university ecosystems. Each of the primary components of the incubation model is further detailed below.

1. Innovation identification and commercialization: leverage university partners and other sources of breakthrough innovation

ATI has an unrivalled track record of identifying promising university innovation and translating that innovation into startups that create wealth and jobs. Metrics produced by our program include:

- Our summer student accelerator – called SEAL, for Student Entrepreneur Acceleration and Launch – has produced companies that have raised over \$30 million in investor capital.
- 94% of the capital raised by Texas startups with UT-Austin tech licenses (nearly \$200 million) has been raised by ATI companies.
- 31% of the awards from the UT System Horizon Fund, which covers 14 institutions including UT-Austin, have gone to ATI companies.

EXHIBIT A CONTRACTOR'S PROPOSAL

As a result of these metrics, ATI has been recognized by the Kauffman Foundation, the Blackstone Charitable Foundation, The US Department of Energy, and the State of Texas as a leader in university innovation identification and commercialization.

ATI also partners with leading university innovation commercialization programs, including:

- 3 Day Startup (over 250 programs on 6 continents, co-founded by ATI)
- NSF I-Corps (the leading federal innovation support program, now led by an ATI alumna)
- Founder.org (global acceleration program for student-led startups)
- Clean Tech Open (international acceleration program with over 2,000 candidate startups per year)
- SXSW Interactive & SXSW ECO (premiere national innovation conference with participation by hundreds of startups and industry leaders)

During this next contract period, ATI will apply these proven methodologies to generate breakthrough innovation in energy, transportation, water, waste, agtech and health sciences. The graphic in Figure 2 below, lays out our novel approach:

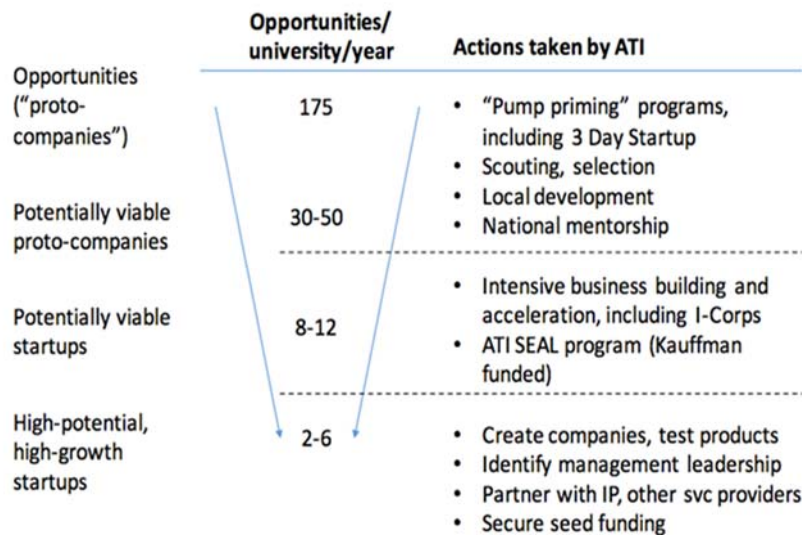


Figure 2: ATI Deep-Tech Pipeline Process

2. Incubation: cultivate breakthrough innovations into scalable companies funded by the private capital markets

ATI is the longest-established venture incubator in the nation (Source: Xconomy), and is a recognized national leader in startup incubation, specifically in the incubation of impact-driven startups that attract private capital and create jobs and wealth:

ATI will employ our proven incubation organizational model of:

- Director – industry knowledge, strategic startup advice, network.

EXHIBIT A
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- Mentors – industry, technology and investing experts and executives assist with due diligence of candidate companies, incubator strategy, strategic advice for member companies, introductions for member companies to potential customers, investors, technology partners, go-to-market partners and advisors.
- Associates – typically 3-5 students from the University of Texas at Austin, generally graduate students from engineering, business or natural sciences disciplines assist with due diligence, strategic advice and program management.
- Partner Organizations – partnering with key innovation and commercialization organizations in the community to make sure member companies have structural access to privileged commercialization opportunities. Additionally, ATI helps clients leverage service providers (including entrepreneur-friendly law and accounting providers) and testing and validation resources, such as Pecan Street, Inc. and Southwest Research Institute.

3. Demonstration: create test, validation, and demonstration resources to allow proof-of-concept development for the scaling enterprises

A major barrier to the adoption of deep-tech innovations is the development, testing and demonstration of technology prototypes. Our successful partnering with industry and government sponsors has validated the importance of an explicit “demonstration” component to cluster formation. A valuable strategy to help de-risk the decision to try a new innovation is to explicitly demonstrate safety and operational performance in a scenario as close to the real-life, municipally-deployed scenario as possible.

For our energy cluster, these demonstration capabilities have been transformative. One of the most impactful components of this capability has been the “Beta Test” program hosted at the City of Austin electric utility. This Beta Test program provides access to expertise, test facilities, and translational funding to vetted energy technology solutions that could impact Austin Energy. The program is nationally unique and a distinctive feature of the Austin energy/clean tech cluster.

Of the 16 Beta grantees ATI has worked with since 2008, 75% are active or have been acquired. The active grantees have raised tens of millions of dollars in investor capital and now employ over 100 people in the Austin-Round Rock MSA. The most notable, Ideal Power Converters, used the Beta Test program and followed that with a test demonstration with the City of Austin. These proofs validated Ideal Power in the commercial market. Based on these proofs, Ideal Power has gone on to list as a public company, with a market capitalization of \$71 million and 21 employees in Austin.

4. Ecosystem building: catalyze a rich network of talent, for-profit partners, and not-for-profit/government partners

- ATI has been engaged in building and sustaining technology ecosystems in Central Texas for more than 29 years.
- It is ATI’s experience that using the “excuse” of supporting emerging startups is a highly effective way to get such a diverse set of academic, non-profit, government and corporate partners to work together – not just to help a specific startup, but to work directly with each other on additional programs, business opportunities, technology development, thought leadership, etc.

EXHIBIT A
CONTRACTOR'S PROPOSAL

- Beginning with the Clean Energy Incubator in 2001, ATI has led the development of a world-class cleantech ecosystem anchored by partnerships with Austin Energy, Pecan Street, The Clean Tech Open, SXSW Eco and CleanTX.
- ATI's health sciences incubator similarly has established a highly respected ecosystem and the new bioscience incubator providing startups access to much needed laboratory resources. ATI is well positioned to commercialize opportunities through partnerships with Dell Medical School and Austin Community College.

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

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

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

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

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

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

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

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

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation

of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

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

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

Sanctions:

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

Term:

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

Dated this 15 day of July, 2018

CONTRACTOR

Authorized
Signature

Title

Linda Greenawald

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

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

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

Contractor's Name: _____

Signature of Officer or
Authorized
Representative: _____

Date: _____

Printed Name: _____

Title _____

THE UNIVERSITY OF TEXAS SYSTEM

Office of General Counsel

201 WEST SEVENTH STREET AUSTIN, TEXAS 78701-2981

TELEPHONE (512) 499-4462

FAX (512) 499-4523

Daniel H. Sharphorn
Vice Chancellor and General Counsel

MEMORANDUM

TO: Whom It May Concern

FROM: Daniel H. Sharphorn

DATE: September 23, 2015

SUBJECT: Insurance and Indemnification of The University of Texas System

The following information accurately summarizes the current state of affairs with respect to certain insurance and indemnification matters governing the academic and health institutions of The University of Texas System.

The University of Texas System is composed of 15 institutions, as well as UT System Administration. As an agency of the State of Texas, The University of Texas System is precluded from granting full indemnity in an agreement with another entity. This preclusion has two bases, the first of which is the Texas Constitution. Primarily, Article 3, Sections 50-52, of the Constitution generally provide that the State has no power to give, lend, or pledge the credit of the State to any person, association, or corporation.

The second basis for the preclusion is the doctrine of sovereign immunity, which, although abrogated in other states, continues to be the rule in Texas. A governmental unit, such as a University of Texas System institution, is immune from suit and liability unless the State (i.e. the Legislature) consents to the suit. *Dallas Area Rapid Transit v. Whitley*, 104 S.W. 3d 540, 542 (Tex. 2003). Legislative consent to suit, whether expressed by statute or otherwise, must be given in clear and unambiguous language. *University of Texas Medical Branch v. York*, 871 S.W. 2d 175, 177 (Tex. 1994).

Insurance and Indemnification of The University of Texas System

Page 2

September 23, 2015

Employees of The University of Texas System are provided workers' compensation insurance coverage under a self-insured, self-managed program as authorized by the Texas Labor Code, Chapter 503.

The University of Texas System purchases automobile liability insurance for all University-owned, -hired and non-owned vehicles with limits of at least \$250,000 per person and \$500,000 per accident for bodily injury and \$100,000 for property damage. As discussed below, these damage limits are set by statute. The University of Texas System retains the right to self-insure automobile liability in the future if it is deemed to be in its best interest.

Because of the doctrine of sovereign immunity, The University of Texas System, an agency of the State of Texas, does not purchase general liability or employer's liability insurance for alleged torts committed by its employees who act within the scope of their employment, except in limited circumstances. However, the Texas Tort Claims Act ("the Act"), Chapter 101 of the Texas Civil Practice and Remedies Code, does provide a limited waiver of sovereign immunity for claimants who make tort claims under its provisions. These claims fall into two general areas: (i) injuries arising out of use of publicly owned motor vehicles and motor-driven equipment and (ii) injuries arising out of conditions or use of property.

The University of Texas System's liability under the Act is limited. Under the Act, liability in cases of personal injuries or death is limited to a maximum amount of \$250,000 per person and \$500,000 for each single occurrence. The maximum amount of liability for injury to or destruction of property is \$100,000 for each single occurrence.

This memorandum is intended only for use by The University of Texas System institutions and UT System Administration and their intended recipients. Subject to applicable law, this memorandum may not otherwise be disclosed by the recipient to third parties without the prior consent of the Office of General Counsel of The University of Texas System. This memorandum may be relied on as accurate only as of the date it is issued. The University of Texas System assumes no obligations to update this information and the recipient acknowledges that this information may be subsequently rendered inaccurate by statutory changes and other matters beyond the control of The University of Texas System.



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 03/08/2018

DEPT: Economic Development

TO: Purchasing Officer or Designee

FROM: Global Business Expansion

BUYER: David Colligan

PHONE: (512) 974-6381

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.

The Austin Technology Incubator (ATI) is a non-profit program at UT which has had a successful relationship with the City of Austin for twenty years. ATI is the longest-established venture incubator in the U.S. ATI supports the City of Austin's economic development goals of creating jobs and investment through entrepreneurship development and start-up support, and promotes education and resource development these small businesses need to thrive. ATI also provides a crucial task of attracting additional venture capital to the region. Under the recommended agreement, ATI will deliver the following services for quarterly measurement: Strategic Business Consulting, Marketing and Education Campaign, Industry Diversification, Practicum in Entrepreneurship, Internship and Multi-ethnic Chamber Outreach Programming.

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).

Through its affiliation with the City of Austin, ATI services include, but are not limited to, strategic business review and advice, assistance developing finance strategies and investor communications, student intern resources, business seminars, senior executive talent database access and relationship-building, angel groups and venture capital firm partnerships, and connections with a network of over 350 mentors and advisors. Over the past five years of our contract, ATI has incubated 188 graduate companies that have created over 2,000 jobs. ATI estimates the contract has provided \$220,000,000 in economic impact over the five-year period, or \$69 per City dollar invested. Additionally, ATI companies have raised an estimated \$900,000,000 in funding in the past decade. ATI is also the major source of technology commercialization in Austin: 94% of the capital raised by Texas startups with UT-Austin tech licenses (nearly \$200 million) has been raised by ATI companies.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Austin Technology Incubator which will cost approximately \$ 250,000.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

David Golliger 2/8/18
Originator Date

Approved
Certification

Heather Helle 3/8/18
Department Director or designee Date

Neil Stork 3/8/18
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

Kim Larsen 8/1/2018
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

Cynthia Ellis 8/1/18
Purchasing Officer or designee Date

02/26/2013