



Amendment No. 2
of
Contract No. PA180000083
for
Outreach Services for Increased Certifications and Minority Participation on City Projects
between
the Asian Contractor Association
and the
City of Austin

- 1.0 The City hereby exercises this unilateral extension option for the subject contract. The extension option will be effective October 24, 2020 to October 23, 2021. Two options remain.
- 2.0 The total Contract amount is increased by \$100,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Contract Amount for the term	Total Contract Amount
10/24/2018 – 10/23/2019	\$100,000.00	\$100,000.00
Amendment No. 1: Option 1 10/24/2019 – 10/23/2020	\$100,000.00	\$200,000.00
Amendment No. 2: Option 2 10/24/2020 – 10/23/2021	\$100,000.00	\$300,000.00

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

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

JAMES T
Printed Name:
HOWARD
Authorized Representative

Digitally signed by JAMES T
HOWARD
DN: cn=JAMES T HOWARD,
o=CITY OF AUSTIN, ou=FINANCE,
email=JIM.HOWARD@AUSTINTEX
AS.GOV, c=US
Date: 2020.10.16 11:34:29 -05'00'

Sign/Date: _____

Cyrenthia Ellis
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
to
Contract No. PA180000083
for
Outreach Services for Increased Certifications and Minority Participation on City Projects
between
the Asian Contractor Association
and the
City of Austin

- 1.0 The City hereby exercises this Unilateral Extension Option for the subject contract. This extension option will be effective October 24, 2019 through October 23, 2020. Three options will remain.
- 2.0 The total contract amount is increased by \$100,000 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 10/24/2018 – 10/23/2019		
	\$100,000.00	100,000.00
Amendment No. 1: Option 1 – Extension 10/24/2019 – 10/23/2020	\$100,000.00	\$200,000.00

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

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

Printed Name: John Besser
Authorized Representative

Sign/Date: *John Besser* 10/11/19

John Besser
Purchasing Specialist III
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

**Contract Between the City of Austin
and
the Asian Contractor Association
for
Outreach Services for Increased Certifications and Minority Participation on City Projects
Contract Number PA180000083**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and the Asian Contractor Association ("ACA" or "Contractor"), having offices at 4201 Ed Bluestein Blvd., Suite 2105, Austin, Texas 78721.

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 Aletta Sung, Executive Director, Phone: (512) 300-7644, Email Address: asiancontractor@gmail.com. The City's Contract Manager for the engagement shall be Thomas Owens, Phone: (512) 512-974-7732, Email Address: thomas.owens@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

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

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks as outlined in Exhibit A – Scope of Work.

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 annual amount not-to-exceed \$100,000 for all fees and expenses per year, in twelve (12) equal installments of \$8,333.33, upon satisfactory submission of deliverables and invoicing as described in section 3.2.

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	Small and Minority Business Resources
Attn:	Thomas Owens
Address	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767

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

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

3.2.4 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 Travel/Reimbursable Expenses. There are no travel, lodging, per diem or any other expenses or costs in connection with the Contract for which reimbursement may be claimed by the Contractor.

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. This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect for an initial term of twelve (12) months, and may be extended automatically beyond the initial term for up to four (4) additional twelve (12)-month periods at the City's sole option unless the Contractor is notified in writing no less than ninety (90) days prior to the contract's expiration.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period.

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

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

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

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

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

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

SECTION 5. OTHER DELIVERABLES

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

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.

5.1.2.5 **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 **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.

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

SECTION 6. WARRANTIES

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

6.1.1 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.

6.1.2 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.

6.1.3 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 **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.

7.2 **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:

- 7.2.1 disposal of major assets;
- 7.2.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.2.3 any significant termination or addition of provider contracts;
- 7.2.4 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;
- 7.2.5 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;
- 7.2.6 reorganization, reduction and/or relocation in key personnel;
- 7.2.7 known or anticipated sale, merger, or acquisition;

- 7.2.8 known, planned or anticipated stock sales;
- 7.2.9 any litigation against the Contractor; or
- 7.2.10 significant change in market share or product focus.

7.3 **Audits and Records.**

7.3.1 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.

7.3.2 Records Retention:

7.3.2.1 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.

7.3.2.2 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.

7.3.3 The Contractor shall include sections 7.3.1 and 7.3.2 above in all subcontractor agreements entered into in connection with this Contract.

7.4 **Indemnity.**

7.4.1 Definitions:

7.4.1.1 "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:

7.4.1.1.1 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;

7.4.1.1.2 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),

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

7.4.2 **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.**

7.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform

thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.6 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: Lynnette Hicks, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Asian Contractor Association

ATTN: Aletta Sung, Contract Manager

4201 Ed Bluestein Blvd., Suite 2105

Austin, TX 78721

7.7 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.

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

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

7.10 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee

guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

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

7.12 **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.

7.13 **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.

7.14 **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.

7.15 **Dispute Resolution.**

7.15.1 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.

7.15.2 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.

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

7.16.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.16.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's**

MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

7.16.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.17 Subcontractors.

7.17.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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

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

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

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

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

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

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

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

7.18 **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.

7.19 **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.

7.20 **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.

7.21 **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.

7.22 **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.

7.23 **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

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

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

Scope of Work, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

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

7.24.2 the Supplemental Purchase Terms and Conditions;

7.24.3 the Standard Purchase Terms and Conditions;

7.24.4 the Offer and exhibits.

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

ASIAN CONTRACTOR ASSOCIATION

By: [Signature]
Signature

Name: Aletta Sung
Printed Name

Title: Executive Director

Date: 9-12-2018

CITY OF AUSTIN

By: [Signature]
Signature

Name: Cyrenthia Ellis, PMP, CTPM
Printed Name

Title: Procurement Manager

Date: 10/24/2018

List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Non Discrimination Certification, Section 0800
Exhibit C	Non-Suspension or Debarment Certification

Exhibit A
Scope of Work
Asian Contractor Association (ACA)

1. Objectives

- 1.1 Conduct outreach to recruit and inform new or existing minority and women-owned businesses of the benefits of certification with the City's MBE/WBE Procurement Program, thereby increasing the number of City-certified MBE/WBE firms.
- 1.2 Contribute to retaining City MBE/WBE certified firms to help preserve gains in MBE/WBE recruitment by contacting lapsed firms to learn why they did not re-certify, reminding them of the services available, and offering assistance in re-establishing certification.
- 1.3 Inform MBE/WBE firms of City contracting opportunities.
- 1.4 Provide workshops and one-on-one technical assistance to enhance the capacity of firms seeking to contract with the City as a prime contractor or subcontractor.

2. Organization Specific Services

- 2.1 Contractor shall conduct certification outreach activities aimed at increasing the number of firms certified by the City. Certification outreach activities shall include the following:
 - 2.1.1 Contacting a target of twenty-four (24) new/lapsing Asian firms or individuals who wish to establish businesses during the contract period to encourage them to apply for certification. "New firm" is defined as any minority or women owned firm in construction and related industries that is not currently certified and has not been previously certified within the last three (3) years. Form letter, fax, or email, are acceptable methods of making contact with new firms. Contractor shall direct firms expressing interest in becoming certified to the Certification Division of the Small and Minority Business Resources Department (SMBR), or shall offer firms an opportunity to visit with the Contractor representative in their office. City Certification staff will provide Contractor the key information and materials regarding the requirements and process for obtaining certification. Contractor shall include in its monthly activity report, a list of firms contacted, including their name, address, telephone number, fax, and email address. The report will also specify the results achieved (i.e. referred to City, provided application, declined applying for certifications, reasons for not seeking certification, etc.).
 - 2.1.2 On a quarter1y basis, Contractor shall follow up with Asian firms whose MBE/WBE Certification has expired to encourage them to apply for recertification. At the end of each quarter, the City's Contract Manager will provide a listing of firms whose certification has expired. Contractor shall contact all firms on the list and refer them to SMBR's Certification Division for recertification assistance. By the end of the following quarter, Contractor shall include in its monthly activity report a list of the firms contacted, including their name, address, telephone number, fax and email address. The report will also specify the results achieved (i.e. referred to City, firm declined recertification, reasons for losing certification, not seeking certification, etc.).
 - 2.1.3 In coordination with the City's Contract Manager, Contractor shall sponsor a business development networking event for a target of ten (10) Asian firms and individuals who wish to become contractors. Contractor shall include on the meeting's agenda information on becoming certified with the City. Contractor shall provide each participant with a certification application packet provided by SMBR. Contractor shall submit with its monthly activity report, the event agenda, sign-in sheets, and any handouts distributed to attendees. Contractor shall include on sign-in sheets, the name, address, telephone number, fax, and email address for each attendee.
- 2.2 Contractor shall conduct procurement opportunity outreach activities aimed at increasing minority firm participation on City projects as follows:

- 2.2.1 Host two (2) networking events with Asian businesses to promote and encourage MBE/WBE firms to bid on key City projects identified by the SMBR Director or City's Contract Manager. Contractor shall target participation from potential subcontractors; and general contractors/prime bidders, who are bidding on City of Austin projects. Contractor shall submit the sign-in list of attendees with its monthly activity report. The sign-in list will include attendees' name, address, telephone number, fax, and/or email address for each attendee.
- 2.2.2 Contact those Asian firms who are listed on Availability Lists for key City projects identified by the SMBR Director or City's Contract Manager and encourage the firms to consider bidding on the projects. The number of projects will not exceed five (5) per year and will not include projects that have contracted with an MBE/WBE outreach coordinator. Contractor shall include in its monthly activity reports, the name of the projects being bid and the name of the firms, the addresses, telephone numbers, fax and email addresses of the firms on the Availability List that were contacted.
- 2.2.3 Develop and maintain a directory of all certified Asian firms in construction and related industries that is organized by categories of work performed. Contractor shall maintain this document in electronic format and update it monthly to reflect any changes in firms. Contractor shall distribute this document to prime contractors as a resource for increasing the visibility of City-certified Asian firms involved in construction and related industries. Contractor shall submit with its monthly activity reports, a copy of the initial document and subsequent updates in electronic format and the distribution list including the name, address, telephone number, and fax or email address.

2.3 Contractor shall provide contractor support services aimed at increasing participation on City projects as indicated below.

Note: Contractor shall include the following language on its written materials (or written materials of any third party retained by the Contractor) related to the City's process or procedures: "City rules and regulations change from time to time. Please contact the City for the most up-to-date rules and regulations regarding this topic before relying on this information."

- 2.3.1 Develop and administer a survey questionnaire to obtain information from certified Asian firms in construction and related industries.

Prior to conducting the survey, Contractor shall submit the survey questionnaire to the City's Contract Manager for approval. The survey should not duplicate the questions or surveys used during the outreach phase of the City's disparity study. Contractor shall conduct in-depth interviews with every certified firm to obtain information on technical assistance and training needs; barriers to doing business with the City; bidding on City contracts; and operational development needs. After completion of the survey, Contractor shall summarize survey findings and recommendations and submit this summary with the next monthly activity report. Contractor shall complete the survey and report no later than the end of the first quarter (December 31). The Contractor shall utilize the report for the planning of training and technical assistance during the contract year. Contractor shall submit a copy of the survey including a report of findings and recommendations, and implementation plan with its monthly activity report no later than the second quarter (March 31). Contractor shall also include a listing of survey participants' names, address, email, telephone number in its monthly activity report.

- 2.3.2 Operate a "Plans Room" to receive and organize plans and specifications regarding construction projects for construction contractors and subcontractors to review, check-out, and use for bidding purposes. Contractor shall maintain operating hours for the Plans Room for a minimum of twenty (20) hours per week and publish hours and days of operation on its website. For each of the firms receiving the service Contractor shall maintain a log and include in its monthly activity reports, the name of the project(s) reviewed, name of the firm, address, telephone number, fax, and email address.
- 2.3.3 Distribute referral, procurement, project opportunity, and training information to contractors periodically (weekly or monthly depending on the nature of the information). Contractor shall include in its monthly activity reports a description of the information provided, name of the firm, address, telephone number, fax, and email address.

- 2.3.4 Provide technical assistance/consultation to a minimum of twelve (12) unique Asian firms during the annual contract term regarding contracting or subcontracting on City projects in accordance with the City's MBE/WBE program. Contractor shall include in its monthly activity reports, a description of the provided service, name of the firm, address, telephone number, fax, and email address.
- 2.3.5 The Contractor shall publish a quarterly trade association newsletter to be emailed to Asian contractors and interested parties. The newsletter will be specific to the trade association and provide information to contractors, members and potential members that market the services of the organization. Contractor shall include in its newsletter a message from President, helpful tips, and an update on the Contractors activities. Contractor shall make its newsletter available on its website. Contractor shall submit a copy of the newsletter with its monthly activity reports.
- 2.3.6 Maintain and develop web site information. The Contractor shall publish on its web site information about the trade association and its services, and information of interest and relevance to the construction industry. Contractor shall include a link to the SMBR website. Further, Contractor shall select and highlight at least four (4) Asian contractors on this web site. Contractor shall develop and maintain its website on an ongoing basis.
- 2.3.7 Contractor shall distribute materials translated into Chinese and Vietnamese for certification outreach and the promotion of City procurement opportunities to City-certified Asian firms who are working in the construction-related industry. Contractor shall post the materials in English and the translated language on its website. Contractor shall also submit this material for publication in at least one community newspaper or publication on a semi-annual (twice per year) basis. Contractor shall submit with its monthly activity reports, a copy of the translated materials (English and translated versions) and the distribution list including the name, address, telephone number, fax, and email address.
- 2.3.8 Develop and publish a minimum of three detailed reference documents that provide key information on topics such as: Plan Reading and Estimating; Understanding Bonding; Bidding and Value Engineering; Your Rights and Obligations as a Subcontractor Under Texas Contract Law; Building Permit Process for Contractors and Engineers; City of Austin Procurement Process. Contractor shall complete a document every four months during the contract year. Each document upon completion will be posted on the ACA website and distributed in electronic format to all Asian contractors in construction and related industries. Contractor shall include in its monthly activity report, an electronic copy of each document and the distribution list including the name, address, telephone number, and fax or email address in electronic format.
- 2.4 On a semi-annual basis, Contractor shall participate in a meeting with City Project Managers and SMBR staff to discuss relevant program initiatives, process issues and possible solutions. These meetings will be scheduled for the end of the second quarter (March 2019) and the end of the fourth quarter (September 2019). The results of these meetings will be used by staff to identify possible process improvements.
- 2.5 The Contractor shall distribute informational brochures and flyers for the monthly SMBR Information Meetings via emails and at the organization's networking or membership events. These informational materials will be provided by SMBR. The Contractor shall include in its monthly activity reports, information regarding when the materials were distributed and any associated activity.

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

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 12th day of September, 2018

CONTRACTOR
Authorized
Signature

Title

Asian Contractor Asso.
[Signature]
Executive Director

Exhibit C
City of Austin, Texas
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:

Asian Contractor Association

Signature of Officer or
Authorized
Representative:



Date:

9-12-2018

Printed Name:

Aletha Sung

Title

Executive Director



City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Non-Competitive)

DATE: 08/08/2018

DEPT: SMBR

TO: Purchasing Officer or Designee

FROM: Thomas Owens

PURCHASING POC: Kim Larsen

PHONE: 512, 974-7732

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 unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

The City has selected a vendor for contract award and declares the competitive solicitation procedures in Local Government Code Chapter 252.022 to be exempt for this procurement. This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this request:

- ☐ 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 a municipality.
- ☐ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
- ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
- ☒ A procurement of personal, professional, or planning services
- ☐ Other exemption from Chapter 252.022: _____

2. Describe this procurement

- What it is for and why it is needed?

This contract establishes a partnership between the Small & Minority Business Resources Department (SMBR) and the Minority Trade Association (ACTA) to provide outreach, information, technical assistance and training to Minority-Owned and Women Owned businesses that will lead to increased certifications and minority participation on city projects. The contract has the following objectives:

1. Conduct outreach to recruit and inform new or existing minority and women-owned businesses of the benefits of certification with the City's MBE/WBE Procurement Program, thereby increasing the number of City- certified firms.
2. Contribute to retaining City MBE/WBE certified firms to help preserve gains in MBE/WBE recruitment by contacting lapsed firms to learn why they did not re-certify, reminding them of the services available, and offering assistance in re-establishing certification.
3. Inform MBE/WBE firms of City contracting opportunities.
4. Provide workshops and one-on-one technical assistance to enhance the capacity of firms seeking to contract with the city as a prime contractor or subcontractor.

- Describe the following (as applicable):

- **For Public Calamity, Public Health and Safety, Unforeseen Damage to Public Machinery or Equipment, or Critical Business Need Exemptions:**

- Provide description of the event leading to the procurement and a business justification for this purchase.
- What would be the impact to department operations and the community if this purchase was not made?
- How and why this vendor was selected?

- **For Professional, Personal, or Planning Service Exemptions:**

- The Asian Contractor Association (ACTA) has been in operation for over 17 years and during this time has developed the knowledge and expertise to effectively assist their target population. ACTA is very knowledgeable of the MBE/WBE Procurement operations and requirements through their regular participation in meetings and events conducted by SMBR and related City departments. They have developed the experience and expertise to successfully assist members of their ethnic group by communicating key information to them in their native language and translating such information into reference documents that can be used on an ongoing basis. ACTA also provides outreach information aimed at increased certifications and more participation on city projects. In addition, they provide one-on-one technical assistance and targeted training to enhance the capacity of their target population. This is a local vendor who is MBE certified with the City of Austin. Loss of funding from this contract will result in operational difficulties for this minority trade association. The ACTA is the only Asian American Construction Trades Association that we are aware of in Austin and the surrounding area.

- **For Other Exceptions from Chapter 252.022:**

- Explain the circumstances of the procurement.

- **Prices were determined to be reasonable based on the following (select all that apply):**

- ☐ Prices are established under a current Cooperative contract.

Notes: At a minimum, note the contract number, contract title, cooperative entity, and government or entity who created the contract.

- ☒ Prices are the same or similar to current City contract.

Notes: At a minimum, note the City of Austin contract number and title.

- ☐ Prices are the same or similar to current contract with another government.

Notes: At a minimum, note the contract number, title and government that created the contract.

- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.

Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).

- ☐ Prices are established by law or regulation.

Notes: At a minimum, note the legal or regulatory reference that established the prices.

- ☐ Other means of determining Price Reasonableness.

Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Place holder for department
procurement description area

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- ☒ Scope of Work or Statement of Work (if applicable)
 - ☐ Vendor's proposal/quote (if applicable)
 - ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
 - ☐ Professional resumes, certifications, and/or licenses (Professional, Personal or Planning Services Only)
 - ☐ Other supporting documentation
4. Because of the above facts and supporting documentation, the City of Austin exempts this procurement from Local Government Code Chapter 252 and intends to contract with:
- (Vendor Name): Asian Contractor Association (ACTA) for
- (Description of Procurement): Sole Source
5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:
- ☒ This is a one-time request for \$ 100,000.00
- ☐ This is a multi-term contract request for _____ (# months for base term) in the amount of \$ _____ with _____ (# of renewal options) for \$ _____ each for a total contract amount of \$ _____.

Recommended
Certification

Edgy 8/8/18
Originator Date

Approved
Certification

[Signature] 8/20/18
Department Director or designee Date

Ray Baray 8/15/18
Assistant City Manager / General Manager Date
or designee (procurement requiring Council approval)

Purchasing Office
Review

Kim Larsen 8/22/2018
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review
(If required due to signature authority level)

Dorell Gordon-Brown 12-14-18
Purchasing Officer or designee Date