

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
PROJEKT202, LLC  
FOR  
DIGITAL CONSULTING SERVICES  
MA 8200 PS190000003**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Projekt202, LLC ("Contractor"), having offices at 1300 Guadalupe Street, Ste 300, Austin, Texas 78701.

**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 Statement of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Statement of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services which shall be set forth in writing in the form of a Statement of Work or a Change Request thereto.
- 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 Statement 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 George Bonelli, Phone: (512) 497-8155, Email Address: [George.Bonelle@projekt202.com](mailto:George.Bonelle@projekt202.com). The City's Contract Manager for the engagement shall be Jeff Moore, Phone: (512) 404-4033, Email Address: [Jeff.Moore@austintexas.gov](mailto:Jeff.Moore@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 shall notify the City Contract manager in advance to obtain approval for the replacement.

**SECTION 2. SCOPE OF WORK**

- 2.1 **Contractor's Obligations.** The Contractor shall fully and timely (within the time specified herein) provide all deliverables described herein and in the Statement of Work in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations that apply to the Contractor in its capacity as an IT Service provider and with respect to the services provided.

- 2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform each of the following tasks as mutually agreed by the Parties in the Statement of Work (Exhibit A):
- 2.2.1 Contractor shall provide web developer services in accordance with the agreed Statement of Work (Exhibit A), in the event Austin Convention Center's Lead Developer is unavailable.
  - 2.2.2 Contractor shall provide web developer services for aspects of project/s as assigned by Lead Developer (or Product Owner or Project Manager, in absence of Lead Developer).
  - 2.2.3 Contractor shall provide programming services (e.g. Ruby/Jekyll/Javascript/CDD) as assigned by Lead Developer (or Product Owner or Project Manager, in absence of Lead Developer).
  - 2.2.4 Contractor shall provide graphic design work and consulting as needed or to function in an advisory capacity to Austin Convention Center's Creative Manager.
  - 2.2.5 Contractor shall provide infrastructure work and/or consulting as requested (e.g. staging pipeline improvements, or content management transition and integration, to include the following technologies: Contentful, AWS, Github, Heroku, CircleCI).
  - 2.2.6 Other tasks not detailed in the Scope of Work but directly related to the tasks shown above may be added subject to mutual agreement of the parties in a Statement of Work, and subject to the provisions of Paragraph 1.2.

### SECTION 3. COMPENSATION

- 3.1 **Contract Amount.** The Contractor will be paid as indicated herein in accordance with the Statement of Work and will be compensated in accordance with the provisions of Paragraphs 3.2 and 3.3. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$50,000 for all fees and expenses for the initial twelve (12) month Contract term. In the event the Parties mutually agree to extend the Term of the Agreement for one or more consecutive twelve (12) month period as described in Section 4 of the Agreement, the Contractor shall be paid an amount not-to-exceed \$50,000 for all fees and expenses for each Term for each twelve (12) month period of the Term extension unless otherwise mutually agreed to by the Parties in writing.
- 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 allowing Contractor to re-submit the required information. The receipt by Contractor of payment from the City shall remain subject to a proper invoice with the required information set forth in this Section. Invoices shall be emailed to the below address:

	City of Austin
Department	Austin Convention Center
Attn:	Accounts Payable, Financial Management Division
Address	500 East Cesar Chavez
City, State, Zip Code	Austin, TX 78701
Email	ACCD.AcctsPayable@austintexas.gov

- 3.2.2 Each itemized invoice shall include the hours worked per role.
- 3.2.3 Invoices for labor shall include a copy of all time-sheets with labor rate and delivery order number clearly identified. Invoices shall also include a tabulation of work-hours at the rates specified in Exhibit A and a description of the tasks completed under Paragraph 2.2 herein. Time billed for labor shall be limited to hours actually worked in support of the Scope of Work herein.
- 3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all authorized expenses at actual cost without markup.
- 3.3 **Taxes.** 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. In the event any such taxes (including any interest, fees, or penalties) are imposed by a taxing authority or such exemption is only partially accepted or rejected by a taxing authority, and thereafter paid by Contractor, the City shall reimburse Contractor within ten (10) days of receipt of an invoice from Vendor together with any records documenting such payment as may be reasonably requested by the City.
- 3.4 **Payment.**
- 3.4.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the invoice, whichever is later.
- 3.4.2 If payment is not timely made, (per this section 3.4), 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 the City may withhold any portion of an invoice due to a good faith bonafide dispute, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved. The City shall notify Contractor of a disputed portion of an invoice within thirty (30) days of receipt of an invoice otherwise, the City waives its right to dispute any such charges due and owing to Contractor under such invoice. Customer shall continue to pay all undisputed invoices or undisputed portions thereof during any dispute. Contractor reserves the right to suspend services and the provision of any deliverables or terminate this Agreement or Schedule hereunder without liability to the City either (i) during the term of any dispute including any mediation proceeding, (ii) in the event Contractor believes that the \$50,000 not to exceed limit described in Section 3.1 of this Agreement has been reached, or (iii) withholds part of any payment otherwise due to Contractor in accordance with section 3.4.3 below.
- 3.4.3 The City may withhold part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- 3.4.3.1 delivery of defective or materially non-conforming services by the Contractor except to the extent such services are rendered incomplete or non-conforming as a result of the suspension or termination as described as described in 3.4.2;
- 3.4.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probably filing of such claims after the City has sent written notice to Contractor for indemnification and the City receives notice from Contractor of its rejection to provide indemnification to the City to the extent Contractor is required to do so under this Contract;
- 3.4.3.3 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; reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract except to the extent resulting from either Party's right to terminate this Contract or Contractor's right to suspend services as provided in this Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; failure of the Contractor to submit proper invoices with all required attachments and supporting documentation;
- 3.4.3.4 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.
- 3.4.3.5 Payment will be made by check unless the parties mutually agree to other form of payment.

3.5 **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. The City shall provide the Contractor with thirty (30) days prior 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. Notwithstanding the foregoing, in any case, the City agrees to pay Contractor for all services for work performed prior to any non-appropriation or this contract being rendered null and void and in accordance with the Contract. Contractor shall have the right to terminate the services provided under this Contract immediately upon receipt of notice from the City that adequate appropriation has not been obtained.

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

3.6.1 **Administrative.**

3.6.2 **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.

### 3.7 **Price Adjustments.**

- 3.7.1 **Requests.** In recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor prior to the commencement of a Renewal Term as set forth in Section 4.1 of this Contract. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line item made pursuant to this provision. Prices for product or services unaffected by verifiable cost trends shall not be subject to adjustment.
- 3.7.2 **Effective Date.** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- 3.7.3 **Adjustments.** A request for price adjustment must be made in writing and submitted to the other Party prior to the commencement of any Renewal Term of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

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

- 3.8.1 The making and acceptance of final payment will constitute:
  - 3.8.1.1 For the City, a waiver of all claims by the City against the Contractor, except for claims (1) which have been previously asserted in writing and not yet settled, (2) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein for the term of such warranty if any, provided such claim is made prior to acceptance or final payment, (3) arising from the Contractor's continuing indemnity and warranty obligations to the extent they survive termination or expiration of the Agreement, (4) arising under the City's right to audit in accordance with the terms of this Contract to the extent such right exists beyond expiration and/or termination of the Agreement; or (5) related to a failure to pay for services rendered or expenses not reimbursed.
  - 3.8.1.2 For Contractor, a waiver of all claims by the Contractor against the City, except for claims (1) which have been previously asserted in writing and not yet settled, (2) asserted by Contractor related to litigation or an action or claim asserted by the City, (3) from failure of Contractor to comply with the terms of any warranty specified herein (3) arising from the City's continuing warranty obligations to the extent they survive expiration or termination of the Agreement, or (4) related to a failure to pay for services rendered or expenses not reimbursed.

## 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. The Contract may be extended beyond the initial term for up to four (4) additional twelve (12) month periods upon mutual agreement of the Parties in writing (each extension shall be referred to as a "Renewal Term").
- 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 including but not limited to payment, demand may be made to the other party in writing 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 which shall be subject to legal adjudication.
- 4.3 **Default.** 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 willful and material misrepresentation in any report or deliverable required to be submitted by Contractor to the City. The City shall be in default under the Contract if the City (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, or (c) fails to pay any fees or invoice when due in accordance with this Contract. A default by either party shall be subject to the non-defaulting party providing written notice of such default and such defaulting party's failure to cure such default within thirty (30) days after receipt of such written notice of default. Any claimed default by a party shall be subject to mutual resolution or adjudication in accordance with the terms of this Contract.
- 4.4 **Termination For Cause.** In the event of a default by a Party, the non-breaching Party shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the breaching Party, within such thirty (30) 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. If Contractor is the breaching Party, 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 non-breaching party may be entitled to recover damages incurred as a result of a party's default subject to the terms and limitations of this Contract including the limitations on liability. In the event of a default by the City for failure to pay any fees or expenses when due, the Contractor shall have the right to terminate the Contract for cause immediately by written notice. 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.** Either Party 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 the effective date of termination stated in the aforesaid notice which shall be no less than thirty (30) days after Contractor's receipt of such notice, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, as mutually agreed in writing by the parties commencing the effective date of termination. The City shall pay the Contractor, 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. INSURANCE**

- 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, upon request, 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 The Certificate of Insurance shall be mailed to the following address:

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

5.1.1.8 It is intended that policies required in the Contract, covering the Contractor, shall be considered primary coverage in respect of Contractor's liability arising out of the performance of the Contract.

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 Adjustments to insurance coverage and limits shall be mutually discussed and agreed.
- 5.1.1.11 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, unless substitute insurance coverage is placed.
- 5.1.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in Contractor's policies.
- 5.1.1.13 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.
- 5.1.1.14 **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.
- 5.1.1.15 **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) with an aggregate limit of \$2,000,000. The policy shall contain the following provisions and endorsements.
  - 5.1.1.15.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
  - 5.1.1.15.2 Contractor/Subcontracted Work.Products/Completed Operations Liability for the duration of the warranty period. Contractor shall require its subcontractors providing services under this Contract to maintain adequate insurance coverage, in accordance with the type and scope of services provided by each subcontractor.
  - 5.1.1.15.3 Waiver of Subrogation in respect of Contractor's liability arising out of the performance of services under the Contract, Endorsement CG 2404, or equivalent coverage.
  - 5.1.1.15.4 Contractor shall provide the City of Austin thirty (30) calendar days' Notice of Cancellation.
  - 5.1.1.15.5 The City of Austin listed as an additional insured in respect of Contractor's liability arising out of the performance of services under the Contract, Endorsement CG 2010, or equivalent coverage.
- 5.1.1.16 **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 and an aggregate of \$1,000,000. 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:



- 5.1.1.16.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.
- 5.1.1.16.2 Contractor shall provide The City of Austin thirty (30) days' Notice of Cancellation.
- 5.1.1.16.3 The City of Austin listed as an additional insured in respect of Subcontractor's liability arising out of the performance of this agreement, Endorsement CA2048, or equivalent coverage.
- 5.1.1.17 **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 with an aggregate of \$1,000,000. The policy shall contain the following provisions and endorsements:
  - 5.1.1.17.1 The Contractor's policy shall apply to the State of Texas.
  - 5.1.1.17.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.
  - 5.1.1.17.3 Contractor shall provide The City of Austin Thirty (30) calendar days' Notice of Cancellation.
- 5.1.1.18 **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall maintain coverage, at a minimum limit of \$2,000,000 per claim and \$4,000,000 annual aggregate, to pay on behalf of the assured sums which the assured shall become legally obligated to pay as damages by reason of negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be maintained for 24 months following the completion of the contract.

Coverage shall include (1) Cyber Liability arising out of technology services Insurance coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (2) breach of network security, (3) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (4) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (5) unauthorized access and use of computer systems, including hackers (6) the transmission of malicious code, and (7) website content, including civil liability for claims of libel, slander, trade libel, defamation, unintentional infringement of copyright, trademark and trade dress and invasion of privacy.

5.1.1.19 Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

5.1.1.20 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents shall be evidenced by the certificate of insurance.

## 5.2 **Equal Opportunity.**

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

## 5.3 **Delays.**

5.3.1 The City may delay scheduled delivery or other due dates with thirty (30) prior 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 Scope of Work or Change order thereto. 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.

5.3.2 Except for a party's payment obligations, 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.

5.4 **Ownership and Use Of Deliverables.** All Deliverables created by Contractor under this Contract (except for any Contractor-Owned Materials incorporated therein) shall upon payment of all fees due and owing under this Contract or a Statement of Work, be owned by The City and considered to be works made for hire (as that term is used in Section 101 of the Copyright Act or other applicable Law). If any such Deliverables created in connection with the Services may not be considered a work made for hire under applicable Law, Contractor hereby irrevocably assigns, and shall assign, to The City without further consideration all of Contractor's right, title and interest in and to such Developed Materials except with regard to any Contractor-Owned Materials incorporated therein.

5.5 **Contractor Owned Materials and License.** Contractor shall be the sole and exclusive owner of the (a) materials it lawfully owned prior to the Effective Date of this Contract (b) materials acquired by Contractor on or after the Effective Date of this Contract, (c) derivative works of Contractor

Owned Materials created by Contractor, and (d) materials developed by Contractor other than in the course of the performance of its obligations under this Contract including United States and foreign intellectual property rights in such Subcontractor Owned Materials (e) any derivative and/or residual ideas and Materials which were created based on the services, but do not contain The City Content (f) Contractor's Intellectual Property used in creating any Deliverables herein and (g) Contractor's Confidential Information as defined in this Contract ("Contractor Owned Materials"). Contractor hereby grants to The City, and The City hereby accepts, a perpetual, non-exclusive, royalty-free, transferrable, sublicensable, worldwide license to use, make derivative works of, sell, offer for sale, Contractor Owned Materials that may be included in one or more of the Deliverables; provided, however, that The City shall not be granted a license to use any bug fixes, patches, or upgrades that Contractor delivers to The City under any Statement of Work for maintenance and support services unless and until The City has made payment in full for any and all such maintenance and support services under the applicable Statement(s) of Work and such license shall be valid only during the term and any extension thereof of the maintenance and support services. All other Contractor Owned Materials shall be considered and treated as Confidential Information and the Intellectual Property Rights of the Contractor.

- 5.6 **Contractor's Tools.** Diagnostics, tools, test equipment and other items used in the performance of Services will remain the exclusive property of Contractor. No title or license to such items is granted to The City. To the extent Contractor performs services at a The City location or other location requested by The City, The City shall allow Contractor immediate access to and recovery of all such items upon Contractor's request.
- 5.7 **Rights to Proposal and Contractual Material.** Upon payment of all fees, all deliverables created by the Contractor in fulfillment of the Scope of Work herein shall be property of the City, except for Contractor Owned Materials embedded therein. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- 5.8 **Ownership of City Content.** The City shall retain all Intellectual Property Rights in any all Intellectual Property owned, held or created by or on behalf of the City prior to or independently of Contractor's performance of the Services under this Contract and all modifications or enhancements thereto and derivative works based thereon, including, by way of illustration but not limitation, information provided by the City to Contractor whether or not incorporated into a Deliverable.

## SECTION 6. WARRANTIES

### 6.1 **Warranty – Services.**

- 6.1.1 The Contractor warrants and represents that all services to be provided to the City under the Contract will be performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices. All Services shall be provided by Contractor on an "as is" and "as available" basis, and Contractor expressly disclaims any and all other warranties of merchantability and fitness for a particular purpose. Further, Contractor makes no warranty of any kind, whether express or implied, with regard to any third-party products, third party content or any software, equipment, or hardware The City may obtain from third parties.
- 6.1.2 The City warrants and represents that it has obtained all consents (licenses, etc.) necessary to allow Contractor to access, use and/or modify (including creating derivative works) hardware, software, and firmware that the City uses as may be necessary for Contractor to perform its obligations under this Contract and any Statement of Work.
- 6.1.3 The City shall be responsible for making, at its own expense and determination, any changes or additions to the City's current information and technology systems (including databases), software, and hardware that may be required to support the performance of

any of the Services or the operation of any of the Deliverables. The City shall be responsible for obtaining or purchasing any and all applicable third-party licenses necessary for Contractor to render the Services or to provide any deliverables required in such Statement of Work including, without limitation, licenses for any third-party software or hardware unless otherwise agreed to in writing between the parties.

## SECTION 7. MISCELLANEOUS

- 7.1 **Compliance with Accessibility Standards.** The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973 to the extent applicable to Contractor in its capacity as an IT Services provider.
- 7.2 **Security.** The Contractor shall work with the City with respect to its security processes and technical limitations such that adequate protection and flexibility can be attained between the City and the Contractor. For example: virus checking and port sniffing – the City and the Contractor shall understand each other's roles and responsibilities.
- 7.3 **Security in Compliance with Chapter 521 of the Texas Business and Commerce Code.** Contractor shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code to the extent applicable to Contractor in its capacity as an IT Services provider, including to the extent applicable, being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.
- 7.4 **Security Incident or Data Breach Notification.** The Contractor shall inform the City of any security incident or data breach.
  - 7.4.1 **Incident Response.** The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
  - 7.4.2 **Security Incident Reporting Requirements.** The Contractor shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
  - 7.4.3 **Breach Reporting Requirements.** If the Contractor has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
- 7.5 **Breach Responsibilities.** this section only applies when a data breach occurs with respect to personal data within the possession or control of Contractor.
  - 7.5.1 The Contractor, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

- 7.5.2 The Contractor, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within as promptly as possible by telephone, unless shorter time is required by applicable law as and to the extent applicable to Contractor in its capacity as an IT services provider, if it confirms that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 7.6 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations.
- 7.7 **Access.** Contractor will be granted access on an as-needed basis to perform work within ACCD systems, as requested by ACCD lead developer, Project Manager, IT Supervisor Sr or IT Division Manager (WebDev Core Team). When resulting work has been completed and Contractor is no longer scheduled to work, access to relevant systems will be revoked. As a rule, Contractor will perform work remotely, using the previously described access method. If Contractor is required to work onsite, all such meetings should be coordinated by the WebDev Core Team. Contractor will not be provided badge access to the parking garage/s or any part of the building. Temporary work location/s may be identified and assigned by the WebDev Core Team as available workspace for required onsite visits.
- 7.8 **Workforce.**
- 7.8.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- 7.8.2 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:
- 7.8.2.1 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
- 7.8.2.2 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.
- 7.8.3 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.
- 7.9 **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) as it applies to Contractors locations.

- 7.10 **Significant Event.** Each party shall immediately notify the other party's respective Contract Managers or designee of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which would have a material effect upon a party's ability to meet its contractual obligations. Significant events may include but not be limited to the following:
- 7.10.1 disposal of major assets;
  - 7.10.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
  - 7.10.3 any significant termination or addition of provider contracts;
  - 7.10.4 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;
  - 7.10.5 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;
  - 7.10.6 reorganization, reduction and/or relocation in key personnel;
  - 7.10.7 known or anticipated sale, merger, or acquisition;
  - 7.10.8 known, planned or anticipated stock sales;
  - 7.10.9 any litigation against the Contractor;
  - 7.10.10 significant change in market share or product focus; or
  - 7.10.11 a disclosure of Confidential Information as defined in Paragraph 7.9 herein.
- 7.11 **Right to Audit.** Contractor shall provide the City's independent third-party auditors who have signed a confidentiality agreement with Contractor, access to the pertinent portions of its regularly kept records to enable the City (through such independent auditors) to conduct appropriate validations ("Audits") of Contractor's invoices to the City. Such records and reports shall be maintained by Supplier at a principal business office of Contractor, at any agreed time during normal business hours. Audits shall (i) be performed at the City's sole cost and expense; (ii) occur no more than once (1) each calendar year during the Term of this Contract, (iii) not be permitted to the extent they have a materially adverse impact on Contractor's ability to perform the Services, (iv) be conducted expeditiously, efficiently, and at mutually agreed upon business hours; and (v) be conducted upon reasonable prior written notice, which shall be at least thirty (30) Business Days.
- 7.12 **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.

7.13 **Indemnity.**

7.13.1 Definitions. For purposes of this Section 7.13, the following definitions shall apply

7.13.1.1 "Indemnified Claims" shall include third-party 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 reasonable independent litigation attorney fees for the following types of Indemnified Claims to the extent solely caused by Contractor attributable to:

7.13.1.1.1 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;

7.13.1.1.2 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), and/or;

7.13.1.1.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment except for reasons due to the delivery of defective or non-conforming services;

7.13.1.1.4 "Fault" shall mean gross negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.13.2 **THE CONTRACTOR SHALL DEFEND INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF THE SOLE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S RESPECTIVE EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT.**

7.13.3 **Indemnification Procedures.**

7.13.3.1 Promptly after a party seeking indemnification under this Section 7.13 obtains knowledge of the existence or commencement of any Claim, the indemnified party will notify the indemnifying party of such Claim in writing; provided, however, that any failure to give such notice will not waive any rights of the indemnified party except to the extent that the rights of the indemnifying party are actually prejudiced thereby. The indemnifying party will assume the defense and settlement of such Claim with counsel reasonably satisfactory to the indemnified party at the indemnifying party's sole risk and expense; provided, however, that the indemnified party (i) may join in the defense and settlement of such Claim and employ counsel at its own expense, and (ii) will reasonably cooperate with the indemnifying party in the defense and settlement of such Claim. The indemnifying party may settle any Claim without the indemnified

party's written consent provided that such settlement (A) includes a release of all covered claims pending against the indemnified party; (B) does not contain an admission of liability or wrongdoing by the indemnified party; and (C) does not impose any obligations upon the indemnified party.

7.13.3.2 If the indemnifying party fails to assume the defense of such Claim or, having assumed the defense and settlement of such Claim, fails reasonably to contest such Claim in good faith, the indemnified party, without waiving its right to indemnification, may assume the defense and settlement of such Claim, and the indemnifying party will reasonably cooperate with the indemnified party in the defense and settlement of such Claim. The indemnified party may settle such Claim without the indemnifying party's written consent unless such settlement (i) does not include a release of all covered Claims; (ii) contains an admission of liability or wrongdoing by the indemnifying party; or (iii) imposes any obligations upon the indemnifying party. The indemnifying party will be liable for any and all costs and expenses incurred by the indemnified party in connection with the defense and settlement of any Claim pursuant to this Section 7.13.

7.13.3.3 Upon a determination of liability in respect of this Section 7.13, the indemnifying party will pay the amount so determined within ten (10) business days after the date of such determination or, if the indemnified party paid such amount, reimburse the indemnified party within ten (10) business days of such payment. If there should be a dispute as to the amount or manner of determination of any indemnity obligation owed under this Agreement, the indemnifying party will nevertheless pay when due such portion, if any, of the obligation that is not subject to dispute.

#### 7.14 **Limitation of Liability.**

7.14.1 The liabilities of the Parties to one another in respect of matters relating to this Agreement are subject to the following provisions and limitations of this Section 7.

7.14.2 Regardless of the legal or equitable basis of any claim, neither party shall be liable for any consequential, special, indirect, incidental, exemplary or punitive damages including without limitation, any damages resulting from inaccurate or loss of profits, revenue or data, failure to achieve cost savings, loss of use of facility or equipment, or the failure or increased expense of operations, arising out of or in any way related to this agreement (including any Statement of Work hereunder or other collateral agreement), even if advised of the possibility of such damages and regardless of the form in which any action is brought (e.g., contract, tort, negligence, or otherwise) or (ii) any third party claims against company, except in the case of liabilities based upon claims for indemnification (section 7) with respect to the amount paid or to be paid to the third party.

7.14.3 With the exclusion of the provisions relating to indemnification and the City's payment obligations, Contractor's aggregate cumulative monetary liability for all claims arising under or relating to this Contract (including any order hereunder or other collateral agreement) notwithstanding the form (e.g., contract, tort, negligence, or otherwise) in which any action is brought, shall be limited and shall not exceed the amount paid by the City under the Statement of Work which the claim arises

7.14.4 The provisions of this Section 7.10 shall not limit liability for any indemnity obligations set forth in this Contract. Further, nothing in this Section 7.10 shall limit the City's payment obligations for services and deliverables provided under this Contract.

7.14.5 If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which Contractor reasonably believes may 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.

7.14.6 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

ATTN: Debbie Gossett, Contract Manager  
500 East Cesar Chavez

Austin, TX 78701

To the Contractor:

projekt202, LLC

ATTN: Stephen Andrews  
5080 Spectrum Drive, Suite 320W,

Addison, Texas 75001

With a copy to:

Attn; Legal Department

Fax No. (201) 631-3269

## 7.15 **Confidentiality.**

7.15.1 In order to provide the deliverables to the City, each party may require access to certain confidential information (including inventions, trade secrets, confidential know-how, confidential business information. Confidential Information excludes any information that is (x) in the public domain through no fault of the receiving party or of any other person or entity that is similarly contractually or otherwise obligated, (y) obtained independently from a third party without an obligation of confidentiality to the disclosing party and without breach of this Agreement or (z) independently developed by the receiving party without the use of or reference to the Confidential Information of the disclosing party. (collectively, "Confidential Information"). Confidential Information also does not include information that is subject to disclosure pursuant to the Texas Public Information Act., currently codified under Chapter 551 of the Texas Government Code. The parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing party and/or its licensors and contractors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing party and/or its licensors and contractors. Each party (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 disclosing party or in a manner not expressly permitted under this Contract, unless the Confidential Information is required for Contractor to provide the services or any deliverables but only to the extent needed. If the disclosing party's Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, the receiving party shall first promptly notify the disclosing party before disclosing such information so as to permit the disclosing party reasonable time to seek an appropriate protective order. The parties agree to use protective measures no less stringent than each party 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.

- 7.15.2 Each party shall take all measures necessary to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in any case, no less than reasonable measures). The obligations under this Section 7.15 shall survive: (x) for five (5) years for Confidential Information other than trade secrets that have been identified in writing by the disclosing party; and (y) indefinitely for information that the disclosing party identifies in writing as a trade secret to the receiving party.
- 7.15.3 Each party agrees that the other party shall have no adequate remedy at law if there is a breach or threatened breach of this Section 7.15 and, accordingly, that either party may be entitled (in addition to any legal or equitable remedies available to such party) to injunctive or other equitable relief to prevent or remedy such breach, without the necessity of proving actual damages or the requirement of posting a bond or other security.
- 7.15.4 Each of the City and Contractor agrees that the City shall not provide, and that Contractor shall not require, any Personally Identifiable Information that the City possesses or maintains in the provision of Services and Deliverables under this Contract. In the event that the City is aware that it has been provided or granted access to any Personally Identifiable Information to Contractor or that Contractor is aware that it has received or has been granted access to such Personally Identifiable Information, the party first becoming aware shall immediately notify the other party of the incident and the parties shall work collaboratively to remedy the situation, including, without limitation, Contractor's immediate return or destruction of any Personally Identifiable Information that it may have received. For purposes of this Agreement, "Personally Identifiable Information" shall include, without limitation, any information about an individual maintained by the City, including (a) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name; and (b) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- 7.16 **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 necessary to comply with public filing requirements, generally accepted accounting principles or required by law.
- 7.17 **No Contingent Fees.** 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.

- 7.18 **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.
- 7.19 **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.
- 7.20 **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.
- 7.21 **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 Contractor may delegate a portion of services obligation provided that Contractor agrees to continue to be responsible for the services provided by such subcontractor. 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.
- 7.22 **Non-Solicitation.** The City and Contractor agree that without prior written approval, neither party shall attempt to employ an employee of the other party or anyone who is directly providing services hereunder during either (i) the performance of services or (ii) for a period of twelve (6) months after completion of services. The foregoing shall not limit either party's right to hire an employee who responds to general public solicitations, such as advertisements for employment in newspapers or job fairs.
- 7.23 **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.
- 7.24 **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.
- 7.25 **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.

## 7.26 **Dispute Resolution.**

7.26.1 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.

7.26.2 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.

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

7.27.1 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.

7.27.2 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.**

7.27.3 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.

**7.28 Subcontractors.**

7.28.1 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.

7.28.2 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.

7.29 **Jurisdiction and Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, excluding, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, and 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.

7.30 **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.

7.31 **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.

- 7.32 **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 as set forth in the aforementioned sections imposing such obligations.
- 7.33 **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. In order to comply with this section, Contractor shall sign and return Exhibit C (Non-Suspension or Debarment Certification).
- 7.34 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
- <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf> .
- 7.35 **Order of Precedence.** In the event of any inconsistency or conflict of terms in this Contract and Exhibit B (Statement of Work), the following is the order of precedence in interpretation: (i) the applicable Statement of Work and (ii) this Contract.

- 7.36 **Counterparts; Execution.** This Contract may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument. Execution may be affected by delivery of facsimiles of signature pages (and the parties shall follow such delivery by prompt delivery of originals of such pages).
- 7.37 **Entire Agreement.** This Contract constitutes the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. This Contract may be modified only in writing and shall be enforceable in accordance with its terms when signed by the party sought to be bound.

IN WITNESS WHEREOF, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

PROJEKT202, LLC

DocuSigned by:

By: \_\_\_\_\_

Signature

*Susan TalHermon*

23B253F4CC504E8...

Name: \_\_\_\_\_

Printed Name

Susan TalHermon

Title: \_\_\_\_\_

Authorized signer

Date: \_\_\_\_\_

1/16/2019

CITY OF AUSTIN

By: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Printed Name

*Dan Dellemonache*

Title: \_\_\_\_\_

*Procurement Specialist III*

Date: \_\_\_\_\_

*1/16/19*

### List of Exhibits

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

## EXHIBIT A

### STATEMENT OF WORK AND PRICING

**Project Name:** Austin Convention Center Department Maintenance and Minor Enhancements

**Project Description:** Provider will provide services relating to the support and maintenance of the existing Austin Convention Center Department web sites and related applications, including upgrades, minor enhancements, and fixes.

**Definitions:**

1. Provider: projekt202 LLC
2. Customer: The City of Austin
3. Standard Rate: Monday through Friday; 8am – 5pm

**Provider activities include:**

- Technical design and development of bug fixes and minor enhancements
- Visual design elements in support of minor enhancements and bug fixes
- Technical system maintenance, as needed
- Project management and oversight

Customer may request support services by Customer's Jira or help ticketing system. Customer may also request support services via a support telephone number during business hours Monday through Friday (excluding holidays), 9 a.m. to 5 p.m. CST/CDT. Provider support services will be directed and prioritized by a designated representative of Customer. In the absence of such direction, Provider shall have the right to prioritize support requests according to the severity of the impact of the problem on Customer. Generally, Provider will prioritize support requests in the following order:

	Priority 1 / High	Priority 2 / Medium	Priority 3 / Low
<b>Incident Example</b>			
	Server down or application error across multiple systems	Application error on a single system	Enhancement or new functionality requests
<b>Business/Financial Risk</b>			
	Issue creates significant business or financial exposure	Issue creates low business or financial exposure	Creates no business or financial exposure
<b>Work-Around Available?</b>			
	No acceptable work-around to the issue	There is an acceptable work-around to the issue	N/A
<b>Working Hours for Problem Resolution</b>			
	M-F 9am–5pm	M-F 9am–5pm	M-F 9am–5pm

Response Time			
	2 hours during business hours Next Business Day after business hours	4 hours during business hours Next Business Day after business hours	5 business days
Status Updates			
	Every 2 hours	Daily	Weekly

Provider will use its reasonable best efforts to respond within Response Times listed in the table above; provided, however, that this shall not be construed to constitute a commitment that the support efforts will be completed within the referenced timeframe or that the support efforts will successfully resolve the issue raised by the support request. After hours planned support can be accommodated as a part of monthly planning, by request at least one week in advance of any such need. Any work requested by Customer to be performed outside of the normal business hours listed above with less than one (1) week notice will be charged at 1.5 times the hourly rate defined in the Pricing section below.

#### Assumptions:

- Customer will be able to make key decisions in a timely manner, including but not limited to approving design features, finalizing all requirements and business rules, and replying to pertinent questions.
- Customer will provide an adequate amount of time from key personnel throughout the project.
- Customer will provide adequate level of requirements for any requested changes.
- Any additional labor requested but not included in the scope of this Statement of Work will constitute a change request which must be approved by both parties via a change control process.
- Customer employees will be available daily during business hours to provide required information.

#### Pricing:

Provider will provide the services and deliverables described above on a time basis. Provider estimates the following effort from each role:

Role	Standard Rate
Program Manager	\$177 per hour
Solution Architect	\$213 per hour
Sr. Developer	\$189 per hour
Developer	\$174 per hour
Sr. UX Designer	\$189 per hour
UX Designer	\$176 per hour
Sr. Experience Researcher	\$194 per hour
Experience Researcher	\$176 per hour
QA Analyst	\$154 per hour

**Travel:**

- All Provider travel shall be pre-approved, in writing by the Customer's Contract Manager 14 calendar days prior to the earliest travel date. Provider's pre-approved travel and expenses are not included in the total cost of this Statement of Work and will be invoiced as they are incurred. The Customer will not be responsible for travel expenses not pre-approved or not compliant with 3.5.2: Travel Expenses.

**Research Expenses**

- Expenses incurred in the research process are not included in the total price estimate and will be passed on to Customer. These costs include but are not limited to participant recruitment and honoraria, transcription, remote testing tools, video production, hard drives for recordings and are billed as incurred.
- All Provider research expenses shall be pre-approved, in writing by the Customer's Contract Manager prior to incurring the expense.
- The Provider shall submit a copy of the Provider's invoice, or receipt, which indicates the amount paid by the Provider for the research expenses or materials.



**EXHIBIT B**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**

**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** 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 and agrees:

- (B) (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. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER 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, veteran status, 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 OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter. For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**

**Minimum Standard Non-Discrimination 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.

*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 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 A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**


Our firm understands that non-compliance with Chapter 5-4 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.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, 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 payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 16 day of January, 2019

CONTRACTOR      Projekt202

Authorized Signature  DocuSigned by:  
23B253F4CC504E8...

Title	Authorized signer
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**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: Projekt202

Signature of Officer or  
Authorized  
Representative:

DocuSigned by:  
*Susan TalHermon*  
23B253F4CC504E8...

Date: 1/16/2019

Printed Name: Susan TalHermon

Title: Authorized signer



## City of Austin Purchasing Office

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

DATE: June 1, 2018

DEPT: Austin Convention Center

TO: Purchasing Officer or Designee

FROM: Kelly Jones, ACCD

PURCHASING POC: Gil Zilkha, CTM

PHONE: (512)404-4351

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure 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?
- 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:**
    - Why is the vendor the most qualified to provide the services?
    - Does this vendor have a history of working with the City? If so, was it on this particular service?
    - Will this procurement be component of a larger service or phases of service?
    - Is the vendor a City of Austin local vendor?
    - Does the vendor hold an M/WBE certification with the City, a HUB certification with the State of Texas, or any other minority or women owned certifications?
    - What qualifications, certifications, or specialized training does the vendor have?
    - What is the impact if a contract is not secured with this particular vendor (loss of project timeline, loss of funding etc.)?
    - What other vendors can provide these services and why are they not the best fit for the contract?
  - **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: Industry standard pricing

\* 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.



A contract is needed with Projekt202 to assist Austin Convention Center Department with website development, programming, graphic design work, and consulting services to enhance the user experience, web infrastructure design and future digital services initiatives. Projekt202 is a registered vendor with the City and has previously worked with the City of Austin's Innovation Office. Projekt202 has staff available with a wide range of skill sets available for utilization by the City including specialized training in web development platforms, programming languages, design methods and infrastructure engineering.

The Austin Convention Center Department website redesign requires a varied range of technical and architectural skill sets it doesn't otherwise have with its current workforce and which is rarely obtained through the hiring of one employee. Projekt202 was selected after several failed attempts to onboard temporary City employees with suitable skill levels. Previous temporary employees lacked the skills necessary to do the work which will make Austin Convention Center's websites an effective sales, marketing and communication tool for our customers.

Failure to have access to necessary skill sets to enhance ACCD's web presence may negatively impact how Austin residents, the global community, and clients obtain information about ACCD. ACCD will also experience in an increase in time lost resulting from the search and onboarding of temporary employees.



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): PROJEKT202, LLC for (Description of Procurement): DIGITAL CONSULTING

SERVICES.

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 \$50,000.

☒ This is a multi-term contract request for 12 (# months for base term) in the amount of \$ 50,000 with 4 (# of renewal options) for \$50,000 each for a total contract amount of \$250,000

19/25/18

Recommended  
Certification

Kelly Jones 6/1/18  
Originator Date

Approved  
Certification

[Signature] 6/1/18  
Department Director or designee Date

Purchasing Office  
Review

[Signature] 1/16/19  
Assistant City Manager / General Manager Date  
or designee (procurement requiring Council approval)

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

[Signature] 1/16/19  
Authorized Purchasing Office Staff Date

[Signature] 1/16/19  
Purchasing Officer or designee Date

April 10, 2018

Mr. Jeff Moore  
IT Supervisor Sr. - Application & Business Process Development  
Austin Convention Center Department  
City of Austin  
500 E. Cesar Chavez St  
Austin TX 78701

Dear Mr. Moore:

projekt202, LLC is uniquely qualified to provide consulting services as a technical and user experience advisor to the Austin Convention Center Department. projekt202 has been researching, designing, collaborating, developing, building, and launching complex software for both the start-up, the small company as well as the highly complex enterprise customer. We have provided these services for many customers throughout a wide range of their digital properties ranging from websites, mobile applications, and enterprise applications for over fifteen years. For your reference, we have provided, with this letter, a list of some of our recent clients, for a more comprehensive list of our clients, please do not hesitate to contact us.

We have developed a best practice business-process methodology specific to the development of software that accounts for the user experience, first and foremost, and then accounts for business process and other related functional needs.

Working closely with the personnel from all levels of our clients' organizations, we have successfully improved their workflows, delivered software and related business results and how they interact with their customers, clients, employees, and users. projekt202 has delivered high-quality software and built such strong relationships what we have been working with many of our clients for many years. We strive to continually bring high-value to their software dollar by driving key business results.

We believe projekt202 combines the best of developer talent, process methodology, project management skill, industry knowledge, and software expertise to give our clients the greatest chance at continued successful implementations.

Sincerely,

George Bonelli  
Business Development Director  
projekt202  
1300 Guadalupe St / Ste 300  
Austin, TX 78701  
mobile: (512) 497-8155  
[www.projekt202.com](http://www.projekt202.com)

For your reference, we have provided below, with this letter, a list of some of our recent clients, including several in the event industry (**bolded**). For a more comprehensive list of our clients, please do not hesitate to contact us or visit our website at <https://projekt202.com/clients/>.

Projekt202 list of clients:

**Tickey City**  
**TicketNetwork**  
**TopGolf**  
City of Austin  
Fiserv  
Dell  
Samsung  
CapitalOne  
7-11  
JCPenny  
Schwab  
Mercedes-Benz/Daimler  
Sabre  
Fed-Ex  
Neiman Marcus  
Southwest Airlines  
Amazon  
HP  
PWC  
YPO