



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: 7/2/2019
TO: Memo to File
FROM: Brenita Selement, Procurement Specialist II
RE: MA 5500 NA190000033

This Contract was created and administered by Economic Development Department. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Contract other than creation of the payment mechanism for accounting purposes.

**SERVICE CONTRACT BETWEEN
THE CITY OF AUSTIN and the AUSTIN YOUNG CHAMBER OF COMMERCE**

This Service Contract ("Contract") is between the City of Austin ("City"), a home-rule municipality incorporated in the State of Texas, and the Austin Young Chamber of Commerce ("Contractor"), a 501(c) membership organization located at 3300 North Interstate Highway 35, 7th Floor, Austin, TX, 78722.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES.

- 1.1. **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained in this Contract, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2. **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City will negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3. **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, will participate in meetings and conference calls for status reporting as needed, will promptly review any written reports submitted by the Contractor, and will review and approve all invoices for payment, as appropriate. The City's Contract Manager will give the Contractor timely feedback on the acceptability of progress and task reports. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture.
- 1.4. **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement will be Alyssia Woods, Phone: (512) 810-8005, Email: alyssia@austinyoungchamber.org. The City's Contract Manager for the engagement for Austin Fast Start and general Contract matters will be Blake Smith, (512) 974-7618, Email: blake.smith@austintexas.gov and for [Re]verse Pitch will be Natalie Betts (512)-974-9235, Email: Natalie.betts@austintexas.gov.

SECTION 2. SCOPE OF WORK

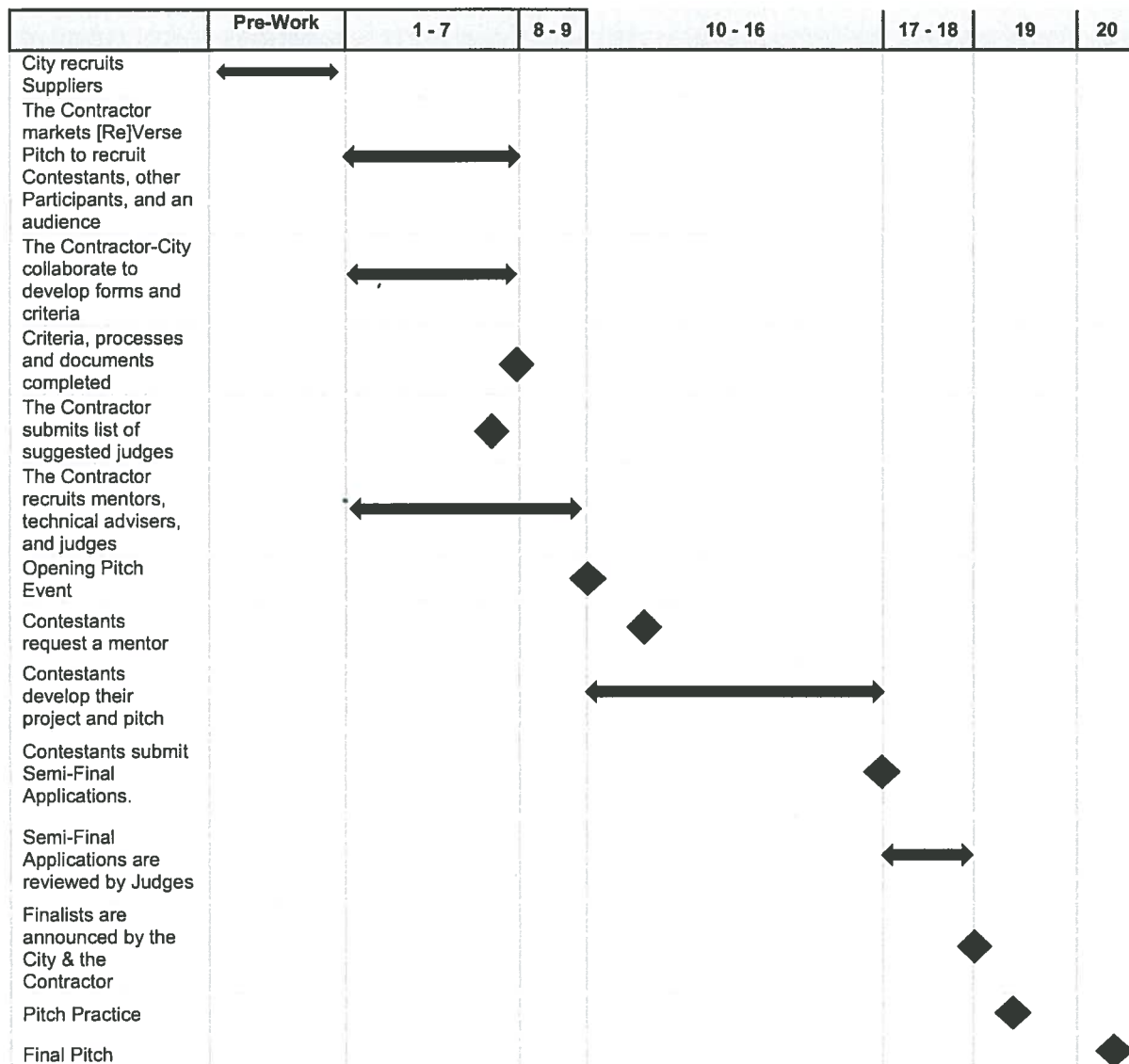
- 2.1. **Austin Fast Start small business pitch competition events –**
 - 2.1.1. Background – In 2017-18, the City partnered with the Contractor to create a series of small business pitch competition events called Austin Fast Start. These events have been very successful, therefore the City is entering into this Contract with the Contractor to provide three additional Austin Fast Start events during 2018-19.
 - 2.1.2. The Contractor shall plan, organize, and host three Austin Fast Start small business pitch competition events on a schedule to be mutually agreed between the Contractor and the City's Small Business Program (SBP), a division of the Economic Development Department.
 - 2.1.3. The Contractor staff shall moderate each Austin Fast Start event.
 - 2.1.4. Each event will focus on a particular industry, to be mutually agreed between the Contractor and SBP.
 - 2.1.5. The location for each Austin Fast Start event shall be selected by the Contractor and shall align with the industry that is the topic of that event, subject to SBP approval.

- 2.1.6. The Contractor shall be responsible for coordination and payment of the venue, catering, and all other logistics necessary to deliver the Austin Fast Start events.
- 2.1.7. The Contractor shall recruit a panel of three to five judges for each Austin Fast Start event.
 - 2.1.7.1. Judges shall be successful business people or topic experts with the knowledge and experience required to evaluate the pitches from the perspective of a lender, investor or partnering business owner. Judges should have no business, financial, or other relationship to contestants.
 - 2.1.7.2. The Contractor shall submit the proposed process for selecting judges within 10 business days of the execution of this Contract.
 - 2.1.7.3. The Contractor shall submit judges' names and bios at least 10 business days prior to each event.
- 2.1.8. Each Austin Fast Start event shall feature four pitch Contestants:
 - 2.1.8.1. Within 10 business days of the execution of this Contract, the Contractor shall submit a proposed Contestant application process for SBP's approval.
 - 2.1.8.2. Target quantity of applications of Contestants for each event shall be at least 10 qualifying businesses.
 - 2.1.8.3. After the application period closes for the pitch, the Contractor shall submit a package of all submitted contestant applications within five business days.
 - 2.1.8.4. The Contractor shall select four pitch Contestants at least two calendar weeks before each event and shall notify SBP of the selections.
 - 2.1.8.5. Potential Contestants must be in the process of starting a business, or in the early stages of operating a business (no more than two years) within Austin city limits.
 - 2.1.8.6. The Contractor shall be responsible for scheduling and communicating with Contestants and Judges.
 - 2.1.8.7. Contestants shall have five minutes to "sell the audience" on the value of their product or service, or the need the product or service addresses.
 - 2.1.8.7.1. Contestants shall deliver a presentation and/or provide a demonstration of the product.
 - 2.1.8.7.2. Five to eight minutes shall be allotted following each Contestant's pitch for audience and Judges' questions, Contestant answers, and suggestions for improvement from the audience.
 - 2.1.8.8. The method for capturing and documenting the audience and Judges scoring system to ensure equitable competition shall be discussed and chosen by mutual agreement between SBP and the Contractor prior to the first event.
 - 2.1.8.9. The winner shall receive a \$2,500 cash prize paid by the Contractor. SBP will confirm payment with the winner on receipt of the Contractor's event report.
- 2.1.9. The Contractor shall market and promote Austin Fast Start events to attract audiences and recruit businesses from the targeted industries to be pitch Contestants.

- 2.1.9.1. Target attendance for each event shall be an audience of at least 50, which the Contractor shall document with a sign-in sheet at each event to confirm attendance and submit to SBP.
- 2.1.9.2. The Contractor shall be responsible for all communications, RSVPs, etc. with audience attendees.
- 2.1.9.3. Marketing efforts shall be designed to attract a diverse audience and diverse Contestants. The Contractor shall submit a one-page summary of media outlets.
- 2.1.9.4. SBP will also promote Austin Fast Start through its ongoing marketing efforts.
- 2.1.9.5. All advertisements and promotional materials shall include the SBP logo and phrase "Austin Fast Start is a partnership between the City of Austin's Small Business Program and the Austin Young Chamber of Commerce," unless the item is too small to allow the phrase or logo to be printed legibly.
- 2.1.10. The Contractor shall build a contact list of registrants, attendees (online RSVPs plus walk-in attendees) and Contestants for each Austin Fast Start event and deliver to SBP in an Excel spreadsheet. The contact list shall include each attendee's and Contestant's name, business name, mailing address, email address and phone number.
- 2.1.11. The Contractor may seek in-kind contributions from sponsors to be awarded to Austin Fast Start winners, in addition to the prize money, and/or to supplement event-related expenses. Entities that sell, distribute, promote, and/or advertise alcohol, tobacco, and adult-oriented companies, products, or organizations in any manner are strictly prohibited from becoming sponsors.
- 2.2. **[Re]Verse Pitch Competition –**
 - 2.2.1. Background – The [Re]Verse Pitch Competition is a social innovation program, managed by the City that helps turn valuable raw materials that are currently leaving local businesses, non-profits, and institutions as waste into the raw materials for new or expanding social enterprises. A social enterprise is an organization that applies commercial strategies to maximize improvements in financial, social and environmental well-being.
 - 2.2.2. [Re]Verse Pitch has five types of participants:
 - 2.2.2.1. Suppliers – Businesses, non-profits, or institutions that produce a waste product, and who are seeking a local end market business partner that can reuse or recycle the waste product. (Example: In an earlier competition, a seafood restaurant sought a local partner that could reuse the large volume of oyster shells it produced.)
 - 2.2.2.2. Contestants – An individual, team, or business that creates a concept, process and business model for the marketable reuse of a Supplier's waste products. Contestants may form teams with more than one individual and submit as Contestant teams. Hereafter, "Contestant" refers to both individual Contestants and Contestant teams. The Contestants will work with Mentors and Technical Advisors to develop repurposing business ideas and compete for Innovation Prizes to help start the new venture. Innovation Prize winners will use their prize funding to start and/or grow the business pitched in the competition in the Austin City limits.
 - 2.2.2.3. Mentors – Mentors shall be entrepreneurs, business owners, or seasoned business executives that are willing to volunteer up to seven hours of time to mentor a Contestant over the course of the competition. Mentors will advise the Contestants on the financial and commercial aspects of the reuse project.

- 2.2.2.4. Technical Advisers – Individuals with specific expertise who advise Contestants on that topic. Technical Advisers will be available to answer Contestants' questions on their subject matter as needed during the competition. (Example: In earlier competitions, Technical Advisors with experience in sustainability, marketing, e-commerce, materials science, and logistics were available to assist Contestants.)
- 2.2.2.5. Judges – Lenders, angel investors, venture capitalists, accelerator or incubator directors, or other equivalent private sector entrepreneurial leaders that will evaluate the viability of a reuse business idea and entrepreneur team. Judges shall evaluate each finalist Contestant's pitch and select the winner(s) based on pre-established criteria.
- 2.2.3. The [Re]Verse Pitch process takes approximately 20 weeks and involves the following stages:
 - 2.2.3.1. Recruiting of Suppliers, Contestants, Mentors, Technical Advisors and Judges.
 - 2.2.3.2. Development of Contestants' mentor-request forms, Semi-Final Applications, as well as the establishment of criteria and processes for selecting finalists and the winner(s), which must be approved by the City Contract Manager before finalization.
 - 2.2.3.3. An Opening Pitch event at which Suppliers describe their waste product and need to an audience of potential Contestants.
 - 2.2.3.4. Contestants then have one week to request to be matched with a Mentor. The Contractor shall provide each Contestant with a mentorship guidebook, email introductions to their mentor, and a Semi-Final Application, which they complete to inform the Judges about their proposed reuse project. The mentorship guidebook has been developed by the City, and the City will provide it to the Contractor for distribution to Contestants.
 - 2.2.3.5. Contestants develop their project and pitch, consulting with their Mentors and Technical Advisers as needed.
 - 2.2.3.6. Contestants submit their Semi-Final Application for review and selection. This step is referred to as the Semi-Final round.
 - 2.2.3.7. Semi-Final Applications are reviewed by the Judges, and they select the finalists, who are then announced by the City and the Contractor.
 - 2.2.3.8. Finalists are given an opportunity to attend a Pitch Practice session.
 - 2.2.3.9. A Final Pitch is held with the finalists, Judges and an audience. The winner(s) is/are selected by the Judges using a selection criteria developed by the Contractor and approved in writing by the City Contract Manager. The audience may select People's Choice honorable mention recipient(s).
 - 2.2.3.10. The first half of the winner(s)' prize funding is made available once the winner signs a prize winner agreement with the City, which will be developed by the City. The winner must then raise matching funds and/or meet certain performance measures in order to receive the remaining prize money. The City will oversee compliance with all cash prize requirements and the disbursement of prize funds. The Contractor shall oversee disbursement of any in-kind sponsor-provided prizes.
- 2.2.4. An approximate timeline for [Re]Verse Pitch is as follows:

Event/Activity	Prep Weeks	Event Weeks
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2.2.5. The Contractor shall work with the City Contract Manager to develop Contestant selection criteria, finalist and winner selection criteria, Semi-Final Application, and finalist selection processes, and documents necessary to deliver [Re]Verse Pitch.

2.2.5.1. The finalist and winner selection processes must consider business viability, Zero Waste, and economic development criteria, and must include input from Suppliers.

2.2.5.2. The Semi-Final Application shall include a one-page executive summary (using a provided template), a pro forma financial statement (using a provided template), a budget for proposed use of the prize funds, and a photograph or rendering of a prototype of the reused or recycled content product (if applicable), unless otherwise approved by the City Contract Manager in writing.

2.2.5.3. The goal shall be to finalize all criteria, processes and documents no later than 20 calendar days prior to the Opening Pitch event. All criteria, processes, and documents referenced in this section must be approved by the City Contract Manager before finalization.

- 2.2.6. The Contractor shall coordinate the City's annual [Re]Verse Pitch Competition for 2019, which includes scheduling and hosting the Opening Pitch and Final Pitch events as public events.
 - 2.2.6.1. The location for the events will be determined by the Contractor, subject to City approval.
 - 2.2.6.2. The Contractor shall be responsible for coordination and payment of the venue, catering, staffing, and all other logistics necessary for delivery of the events.
 - 2.2.6.3. The Contractor shall ensure that all events and activities promote and follow the Zero Waste plans and goals of the City. At a minimum, this shall include:
 - 2.2.6.3.1. Ensuring that recycling and composting containers are provided at each event;
 - 2.2.6.3.2. Ensuring that reusable, recyclable, or compostable items shall be used instead of disposable items, wherever possible;
 - 2.2.6.3.3. Using non-perishable items or items purchased in bulk with limited or no disposable packaging, where possible;
 - 2.2.6.3.4. Ensuring that refreshments be structured to reduce food waste, wherever possible;
 - 2.2.6.3.5. Ensuring any leftover refreshments be handled according to the United States Environmental Protection Agency ("EPA") Food Waste Hierarchy (See <https://www.epa.gov/sustainable-management-food/food-recovery-hierarchy>). Leftovers should only be composted as a last resort;
 - 2.2.6.3.6. Ensuring that all disposable items used on site be compostable or recyclable. No styrofoam or expanded polystyrene foam products are allowed;
 - 2.2.6.3.7. Ensure that recycling and composting containers, and the associated collection services, are provided to attendees at all venue(s) and events. Each venue must have recycling services, but composting may not be present. If venue does not offer compost collection service, the Contractor must develop an alternative collection method to divert organic material from the landfill at the Contractor's expense and handling;
 - 2.2.6.3.8. Ensure that the interior compost receptacles are green and interior recycling containers are blue or have blue signage, and ensure that signs with images of accepted materials are posted by or on containers throughout rented, designated area of venue; and
 - 2.2.6.3.9. Ensure that the interior landfill receptacles are grey or black or have grey or black signage, are clearly labeled, and are always adjacent to recycling and compost containers.
 - 2.2.6.4. Competition events shall be scheduled at a time to maximize attendance, subject to City approval.
 - 2.2.6.5. Events shall not be scheduled during holidays or competing with other major events in the city, such as SXSW.
- 2.2.7. The Contractor shall recruit the following [Re]Verse Pitch participants:
 - 2.2.7.1. Note: the City will recruit Suppliers; the Contractor shall only be responsible for communicating with and coordinating Suppliers' appearance at the Opening Pitch event.
 - 2.2.7.2. The Contractor shall recruit Contestants.

- 2.2.7.2.1. The Contractor shall have a minimum recruitment goal of 35 Contestants participating in the competition, measured by the number of Contestants who complete a Mentor request by the Competition's deadline (approximately one week after the Opening Pitch). Please see section 2.2.2.2 for the definition of Contestants. This goal refers to Contestants recruited, not individuals (Example: If one team of four people is recruited, the Contractor would need to recruit 34 more Contestants to meet the goal).
- 2.2.7.2.2. Contestants must attend the Opening Pitch event to be eligible to compete. For teams, one team member may attend to represent the Contestant.
- 2.2.7.2.3. The Contractor shall communicate with Contestants regarding [Re]Verse Pitch requirements, deadlines, the teams' status, event details, and any other relevant information. The Contractor shall provide a copy of the City's prize winner agreement to all Contestants no later than a week after the Opening Pitch, and confirm with all selected finalists that they have read and understood its contents prior to the Final Pitch.
- 2.2.7.2.4. The City may host additional educational events for Contestants. The Contractor shall communicate with Contestants about these events and include them in any relevant calendars or event timelines. The Contractor shall not be responsible for planning or executing these additional educational events.
- 2.2.7.2.5. The Contractor shall host a Pitch Practice session for each finalist, approximately one week prior to the Final Pitch in front of pitch experts and/or mock judges to help the finalists practice their pitches and receive constructive feedback for improvement.
- 2.2.7.3. The Contractor shall recruit a minimum of five Judges for the Final Pitch event.
 - 2.2.7.3.1. The Contractor shall submit a list of the suggested Judges and their bios to the City for approval at least 20 calendar days prior to the Opening Pitch event.
 - 2.2.7.3.2.
 - 2.2.7.3.3. Judges shall not have any conflicts of interest with Contestants. If a Contestant with whom a Judge has a business, financial, or other relationship enters the Competition, the Judge should recuse him or herself. The Contractor shall communicate this requirement to Judges.
 - 2.2.7.3.4.
 - 2.2.7.3.5. The Contractor shall communicate with Judges regarding their responsibilities for scoring finalist entries.
- 2.2.7.4. The Contractor shall recruit Mentors.
 - 2.2.7.4.1. The Contractor must ensure that one volunteer Mentor is available for each Contestant.
 - 2.2.7.4.2. The City will provide the Contractor with a contact list of past Mentors.
 - 2.2.7.4.3. The Contractor shall match a Mentor to each Contestant that submits a request by the deadline and introduce Mentors to their assigned Contestant via email in a timely manner. AYC shall provide Mentors with a mentorship guidebook. The mentorship guidebook has been developed by the City and will be provided to the Contractor for distribution to Mentors.

- 2.2.7.4.4. The Contractor shall communicate with Mentors regarding their responsibilities to and limitations with the Contestants.
- 2.2.7.4.5. The Contractor shall communicate with Contestants about the responsibilities of Mentors, and identify an alternative Mentor for a Contestant as soon as possible if the Contestant reports that a Mentor is not fulfilling their responsibilities (i.e. not being available to meet or provide feedback).
- 2.2.7.5. The Contractor shall recruit Technical Advisors, as needed.
 - 2.2.7.5.1. The City will provide the Contractor with a list of past Technical Advisors and providing introductions as necessary.
 - 2.2.7.5.2. The Contractor shall communicate with Technical Advisors regarding their responsibilities to and limitations with the Contestants.
- 2.2.7.6. The Contractor shall recruit, coordinate, and communicate with any additional volunteers, as needed to support [Re]Verse Pitch.
- 2.2.8. The Contractor shall coordinate with Judges to select Contestants who shall compete as finalists in the Final Pitch event.
 - 2.2.8.1. Judges shall review the Semi-Final Applications and select finalists based on criteria developed in conjunction with and approved in writing by the City Contract Manager.
 - 2.2.8.2. At the Final Pitch event, finalists shall deliver a five to seven minute presentation, which may include a demonstration of the product, to "sell" the judging panel on why their business idea best meets the selection criteria described above. Each finalist presentation shall be followed by at least four minutes for questions from the Judges.
 - 2.2.8.3. To ensure equitable competition, the method for capturing and documenting the audience's and Judge's scoring system shall be discussed and chosen in at least 15 business days in advance of the Final Pitch event by mutual agreement between the City and the Contractor and approved in writing by the City Contract Manager.
 - 2.2.8.4. The winner(s), as determined by the Judges, shall receive a cash prize, to be paid directly to the winner(s) by the City, subject to a prize winner agreement. The City plans to award at least one \$10,000 cash prize. If funds are available from the City, the City will award a second cash prize.
 - 2.2.8.5. The Contractor shall seek in-kind contributions from sponsors to be awarded to [Re]Verse Pitch winners, in addition to the prize money, and/or to supplement event-related expenses. Entities that sell, distribute, promote, and/or advertise alcohol, tobacco, and adult-oriented companies, products, or organizations in any manner are strictly prohibited from becoming sponsors.
- 2.2.9. The Contractor shall market and promote [Re]Verse Pitch public events to attract audiences.
 - 2.2.9.1. Target attendance for the Opening Event shall be an audience of at least 100 and for the Final Pitch shall be an audience of at least 70.
 - 2.2.9.2. The Contractor shall be responsible for all communications, RSVPs, etc. with audience attendees.

- 2.2.9.3. Marketing efforts shall be designed to attract a diverse audience and diverse participants in terms of race, ethnicity, gender, sexual orientation, socio-economic status, age, physical abilities, or other dimensions in all four roles (Mentors, Technical Advisors, Judges, Contestants) that the Contractor is responsible for recruiting.
- 2.2.9.4. The logo developed for [Re]Verse Pitch Competition by the City shall be used in the Contractor's marketing efforts. This logo will be provided by the City to the Contractor within 30 business days of Contract execution.
- 2.2.9.5. The City will promote the [Re]Verse Pitch Competition through its ongoing marketing efforts.
- 2.2.9.6. The City will provide the Contractor with administrative access to the reversepitch.org website for event information, marketing, and registration information. The City will continue to own and be responsible for the website and domain fees for <http://reversepitch.org>. This access shall be used solely for the purposes of the Competition and may not be used or sold by the Contractor for any other purposes, business or otherwise.
- 2.2.9.7. The City will provide the Contractor with a contact list of promotional partners, sponsors, Mentors, Technical Advisors, Judges, and other interested entities from the prior [Re]Verse Pitch Competitions. Any contact information provided to the Contractor by the City is to be used solely for the purposes the Competition and may not be used or sold by the Contractor for any other purposes, business or otherwise.
- 2.2.9.8. The City retains all rights to the [Re]verse Pitch name, logo, website, and any other content related to this event and provides permission to use these assets only for the promotion of this competition, subject to City approval. The use of the City seal and any other City logos shall only be used with City approval and only on materials directly advertising the Competition.
- 2.2.9.9. All advertisements and promotional materials shall include the phrase "the [Re]Verse Pitch Competition is a partnership between the City of Austin, the Austin Young Chamber of Commerce, the UT Herb Kelleher Center, and the US Business Council for Sustainable Development," or their logos, with the addition of any other project partners if they arise. If item is too small to allow the phrase or logos to be printed legibly, the Contractor shall propose an alternative method of recognizing the project partners to be approved by the City in writing.
- 2.2.10. The Contractor shall track attendance at all [Re]Verse Pitch events and require attendees to sign in.
 - 2.2.10.1. The Contractor shall build a contact list of attendees, registrants (individuals who RSVP but do not attend), and Contestants for each [Re]Verse Pitch event and deliver the list to the City Contract Manager in a Microsoft Excel spreadsheet.
 - 2.2.10.2. The contact list shall include each attendees' and Contestants' name, business name, email address, and phone number.
- 2.2.11. The City will provide information, feedback, and guidance on the Contractor's responsibilities based on the City's experience with the [Re]Verse Pitch Competition to the best of its ability.

SECTION 3. COMPENSATION.

- 3.1. **Contract Amount.** In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$48,500.00 for all fees and expenses as follows:

<u>3 Austin Fast Start Pitch events</u>	
Prize money	\$7,500
Event coordination	<u>\$22,500</u>
Sub Total	\$30,000

<u>1 [Re]Verse Pitch Competition</u>	
Marketing	\$3,000
Recruiting Bonus*	\$2,500
Event coordination	<u>\$13,000</u>
Sub Total	\$18,500

Total Contract \$48,500

*To be paid to the Contractor if a stretch goal of receiving 25 Semi-Final Applications is met or exceeded.

3.2. **Payment schedule**

3.2.1. Austin Fast Start –SBP shall pay the Contractor as follows:

Payment 1, on submittal of Contestant applications and judges selection processes for Event 1:

Event Coordination, Event 1	\$5,000
Prize, Event 1	<u>\$2,500</u>
Total	\$7,500

Payment 2, on completion of Event 1:

Event Coordination, Event 1	\$2,500
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Payment 3:

Event Coordination, Event 2	\$5,000
Prize, Event 2	<u>\$2,500</u>
Total	\$7,500

Payment 4, on completion of Event 2:

Event Coordination, Event 2	\$2,500
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Payment 5:

Event Coordination, Event 3	\$5,000
Prize, Event 3	<u>\$2,500</u>
Total	\$7,500

Payment 6, on completion of Event 3:

Event Coordination, Event 3	<u>\$2,500</u>
Total	\$2,500

3.2.2. [Re]Verse Pitch – The City will pay the Contractor as follows:

Payment 1, on completion of approved "criteria and process" documents:

Event Coordination	<u>\$2,000</u>
Total	\$2,000

Payment 2, on completion of approved Mentor, Technical Advisor, and Judge Recruitment

Event Coordination	<u>\$2,500</u>
Total	\$2,500

Payment 3, on completion of Opening Pitch:

Event Coordination	\$3,000
Marketing, Event 1	<u>\$1,500</u>
Total	\$4,500

Payment 4, on completion of Recruiting Bonus*:

Recruiting Bonus	<u>\$2,500</u>
Total	\$2,500

Payment 5, on completion of Final Pitch:

Event Coordination	\$5,500
Marketing, Event 2	<u>\$1,500</u>
Total	\$7,000

*To be paid to the Contractor if a stretch goal of receiving 25 Semi-Final Applications is met or exceeded.

3.3. **Reporting and Invoicing**

3.3.1. The Contractor shall invoice the City according to the payment schedules outlines in Sections 3.2.1 and 3.2.2 above.

3.3.2. The Contractor shall invoice for Austin Fast Pitch and [Re]Verse Pitch activities separately. Invoices shall be submitted by email to:

3.3.2.1. Austin Fast Pitch: Blake Smith, blake.smith@austintexas.gov
Veronica Samo, veronica.samo@austintexas.gov

3.3.2.2. [Re]Verse Pitch: Natalie Betts, natalie.betts@austintexas.gov
Nathan Shaw-Meadow, nathan.shaw-meadow@austintexas.gov
Blake Smith, blake.smith@austintexas.gov

3.3.2.3. The City will remit payments to the address specified in the Contractor's profile in the City's Vendor Connection portal. Invoices shall contain the following information at a minimum or they will not be processed and will be returned to the Contractor:

- A unique invoice number;
- The City-provided purchase order or delivery order number and the City Contract number, if applicable;
- The name of the Contract Manager;
- The Contractor's name; and
- If applicable, the Contractor's tax identification number, which must exactly match the information in the Contractor's registration with the City.

3.3.3. Invoices for Austin Fast Start events shall be supported by the following documentation:

3.3.3.1. The contact list of event attendees and Contestants for the event being invoiced.

3.3.3.2. Copies of contestant applications for each event and any documentation supporting the selection process.

3.3.3.3. Examples and a summary of outlets (advertisements, emails, social media posts, etc.) used to promote event attendance.

- 3.3.3.4. A list of in-kind support from sponsors.
- 3.3.4. Invoices for [Re]Verse Pitch events shall be supported by the following documentation:
 - 3.3.4.1. Payment 1: Contestant selection criteria, finalist and winner selection criteria, Semi-Final Application, application and selection process description, and documents necessary to deliver [Re]Verse Pitch, approved in writing by the City Contract Manager.
 - 3.3.4.2. Payment 2: Proof of completion of recruitment of Mentors, Technical Advisors, and Judges for the Competition, to include their qualifications and written approval from the City Contract Manager.
 - 3.3.4.3. Payment 3: The contact list of event attendees, registrants and Contestants for the Opening Pitch, examples and a summary of outlets (advertisements, emails, social media posts, etc.) used to promote diverse event attendance & participation, and a list of in-kind support from sponsors.
 - 3.3.4.4. Payment 4: Copies of at least 25 Semi-Finalist Application submissions that were submitted by the Competition's deadline by at least 25 Contestants, as defined in Section 2.2.2.2.
 - 3.3.4.5. Payment 5: The contact list of event attendees, registrants and finalists at the Final Pitch, examples and a summary of outlets (advertisements, emails, social media posts, etc.) used to promote diverse event (as defined in Section 2.2.9.3) attendance & participation, a list of in-kind support from sponsors, a brief written narrative describing the Pitch Practice sessions held, copies of Judges scoring sheets, and copies of all Semi-Finalist Applications.
- 3.3.5. All proper invoices received by the City will be paid after the City has accepted the deliverables and approved the invoice for payment. The City has 30 days from the approval of an invoice to make payment.
- 3.3.6. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.
- 3.3.7. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - 3.3.7.1. delivery of defective or non-conforming deliverables by the Contractor, incomplete or non-conforming reports or an invalid invoice;
 - 3.3.7.2. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - 3.3.7.3. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - 3.3.7.4. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - 3.3.7.5. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - 3.3.7.6. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation;
 - 3.3.7.7. or failure of the Contractor to comply with any material provision of the Contract Documents

- 3.3.8. Notice is given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of City Code §2-8-3 concerning the right of the City to offset indebtedness owed the City.
- 3.4. **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City will provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 3.5. **Final Payment and Close-Out.** The making and acceptance of final payment will constitute: a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION.

- 4.1. **Term of Contract.** This Contract shall be effective on execution by both parties, and shall terminate when the final payment is completed for work performed in accordance with Section 2, Scope of Work.
- 4.2. **Right to Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3. **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Section 4.2, Right to Assurance, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 4.4. **Termination for Cause.** In the event of a default by the Contractor, the City will have the right to terminate the Contract for cause, by written notice effective 10 calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within this 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City will be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three years and any Offer submitted by the Contractor may be disqualified for up to three years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5. **Termination without Cause.** The City will have the right to terminate the Contract, in whole or in part, without cause any time with 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such

exceptions, if any, specified in the notice of termination. The City will pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

- 4.6. **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES.

- 5.1. **Insurance.** The following insurance requirement applies. (Applicable to Contracts for services that are performed at City facilities or at sites designated by the City and for supplies that are delivered to City facilities by the Contractor personnel). (Revised 6/01/98).

5.1.1. General Requirements.

- 5.1.1.1. The Contractor shall at a minimum carry insurance in the types and amounts indicated in this Contract for the duration of the Contract and during any warranty period.
- 5.1.1.2. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within 14 calendar days after written request from the City.
- 5.1.1.3. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- 5.1.1.4. The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City will not relieve or decrease the liability of the Contractor under this Contract and shall not be construed to be a limitation of liability on the part of the Contractor.
- 5.1.1.5. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 5.1.1.6. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 5.1.1.7. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / Contract number, the Buyer's name, and the Contractor's email address, and shall be mailed to the following address:

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

- 5.1.1.8. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 5.1.1.9. If insurance policies are not written for amounts specified in Section 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability

Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

- 5.1.1.10. The City will be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
 - 5.1.1.11. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
 - 5.1.1.12. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
 - 5.1.1.13. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
 - 5.1.1.14. The Contractor shall endeavor to provide the City 30 calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- 5.1.2. Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- 5.1.2.1. Worker's Compensation and Employers' Liability Insurance: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - 5.1.2.1.1. Waiver of Subrogation, Form WC420304, or equivalent coverage
 - 5.1.2.1.2. Thirty (30) days' Notice of Cancellation, Form WC420601, or equivalent coverage
 - 5.1.2.2. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements:
 - 5.1.2.2.1. Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - 5.1.2.2.2. Independent Contractor's Coverage.
 - 5.1.2.2.3. Products/Completed Operations Liability for the duration of the warranty period.
 - 5.1.2.2.4. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
 - 5.1.2.2.5. 30 calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
 - 5.1.2.2.6. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.3. Business Automobile Liability Insurance: The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall include these endorsements in favor of the City of Austin:

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

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

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

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

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

5.2. **Equal Opportunity.**

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

5.2.2. Americans with Disabilities Act (ADA) Compliance: No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA, 42 U.S.C. §12101 *et seq.*

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

5.4. **Delays.**

5.4.1. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under Section 7.20, Dispute Resolution. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- 5.4.2. Force Majeure. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a Conference will be held within three business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.
- 5.5. **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City will become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Public Information Act, Chapter 552, Texas Government Code.
- 5.6. **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES.

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

SECTION 7. MISCELLANEOUS

7.1. Subcontractors.

- 7.1.1. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- 7.1.1.1. Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 7.1.1.2. Prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - 7.1.1.3. Require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - 7.1.1.4. Require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - 7.1.1.5. Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 7.1.2. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay

or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

- 7.1.3. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 days after receipt of payment from the City.

7.2. **Workforce.**

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

- 7.2.2. The Contractor, its employees, subcontractors, and subcontractor's employees may not while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

- 7.2.2.1. Use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

- 7.2.2.2. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

- 7.2.3. If the City notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 7.3. **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

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

- 7.4.1. Disposal of major assets;

- 7.4.2. Any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

- 7.4.3. Any significant termination or addition of provider contracts;

- 7.4.4. The Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

- 7.4.5. Strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

- 7.4.6. Reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

- 7.4.7. Known or anticipated sale, merger, or acquisition;
- 7.4.8. Known, planned or anticipated stock sales;
- 7.4.9. Any litigation filed by a member against the Contractor; or
- 7.4.10. Significant change in market share or product focus.

7.5. **Right To Audit.**

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

7.5.2. The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

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

7.7. **Each Party To Assume Liability for Wrongdoing of its Employees and Agents.** The parties to this Contract are a local government unit of the State of Texas and a qualified charitable non-profit association. Each party recognizes the unique liabilities, immunities and defenses related to its actions to execute this agreement. The Contractor shall be liable for the negligent acts, omissions and other wrongdoings of its employees, subcontractors and agents and shall assume the expense of any defense or costs. To the extent allowed by Texas law, the City agrees that it is responsible for its own proportionate share of liability for its negligent acts and omissions and other wrongdoings of its employees and agents.

7.8. **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within 10 calendar days after receipt of notice by the Contractor. Such notice to the City will state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9. **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered 3 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

To the Contractor:

City of Austin, Small Business Program
ATTN: Blake Smith
P O Box 1088
Austin, TX 78767
blake.smith@austintexas.gov

Austin Young Chamber of Commerce
ATTN: Alyssia Woods
3300 North Interstate Highway 35, 7th Floor,
Austin, TX, 78722
allyssia@austinyoungchamber.org

- 7.10. **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 7.11. **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12. **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City will have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.13. **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City 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 will be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.14. **Prohibition against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

- 7.15. **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16. **Assignment-Delegation.** The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; the intention of the parties is that there be no third party beneficiaries.
- 7.17. **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.18. **Modifications.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.19. **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code ("UCC"), as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
- 7.20. **Dispute Resolution.**
- 7.20.1. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.20.2. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC).

The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

7.21. **Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

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

7.21.2. The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, City Code Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable, if areas of subcontracting are identified.**

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

7.22. **Jurisdiction and Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Contract, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County, Texas.

7.23. **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24. **Holidays:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November

Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.25. **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.26. **Non-Suspension or Debarment Certification.** The City 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 Contractor certifies that it and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.27. **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.ci.austin.tx.us/purchase/standard.htm>

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

AUSTIN YOUNG CHAMBER OF COMMERCE

CITY OF AUSTIN

By: Alyssia Woods
Signature

By: [Signature] For Rebecca Giello
Signature

Name: Alyssia Woods
Printed Name

Name: Rebecca Giello
Printed Name

Title: Executive Director

Title: Interim Director

Date: 10/15/18

Date: 11/2/18

APPROVED AS TO FORM

By: R. Rigott
Signature

Name: Ron Rigott
Printed Name

Title: Assistant City Attorney

Date: Oct. 16, 2018

List of Exhibits

Exhibit A Non Discrimination Certification

Exhibit A
City of Austin, Texas
Human Rights Commission
NON-DISCRIMINATION CERTIFICATION

I hereby certify that our firm conforms to the City Code, Chapter 5-4 as reiterated below:

TITLE 5, Chapter 5-4: Discrimination in Employment by City Contractors. Sec. 5-4-2 Requirements of contractors:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to insure 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, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training or any other terms, conditions, or privileges of employment.
- (3) To post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Austin Human Rights Commission setting forth the provision 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, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which such 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 the policies and provisions of this chapter.
- (6) To cooperate fully with the City and the Austin Human Rights Commission in connection with any investigation or conciliation effort of the Austin Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practice is being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they not engage in any discriminatory employment practice as defined in this chapter.

Dated this 15 day of October, 2018

Company's Name Austin Young Chamber

Signature Alyssia Woods Printed Name Alyssia Woods

Title Executive Director