

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
CBT NUGGETS LLC
For
Online Training Licenses
MA 8200 NA200000097**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and CBT Nuggets, LLC ("Contractor"), having offices at 1550 Valley River Drive Eugene, OR 97401.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision of the City and subject to the provisions of the Contract, including the Exhibits, the Contractor is engaged to provide the Services set forth in Exhibit A.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all applicable and reasonable technical and professional support in delivering the Services.

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

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Matthew L. Bromley, Phone: 541-743-8956, Email Address: legalteam@cbtnuggets.com. The City's Contract Manager for the engagement shall be Ramona Aguilar, Phone: 512-404-4067, Email Address: Ramona.Aguilar@austintexas.gov. The City and the Contractor will undertake all reasonable efforts to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager of the replacement.

SECTION 2. SCOPE OF WORK

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

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

2.2.1 Provide the services set forth in Exhibit A, CBT Nuggets IT Training Subscription Agreement.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$17,970.00 for all fees and expenses, as outlined in Exhibit A and Exhibit C, Contractor's Quote dated 03/23/2020.

3.2 Invoices.

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

| | |
|---------------|-----------------------------------|
| | City of Austin |
| Department | Austin Convention Center |
| Attn: | Accounts Payable |
| Email Address | ACCD.AcctsPayable@austintexas.gov |

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

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the invoice date.

3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

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

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

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

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

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

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

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

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

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twelve (12) months.

The Contract may be extended beyond the initial term for up to two (2) additional twelve (12) month periods upon mutual agreement of the Parties and subject to Contractor's commercial price list.

4.1.1 This is a twelve (12) month Contract. Prices are firm for the first twelve (12) months.

4.2 **Right to Assurance.** Whenever one Party to the Contract in good faith has reason to question the other Party's intent or ability to perform, demand may be made to the other Party for written assurance of the intent or ability to perform. In the event that no assurance is given within the reasonable time period specified after demand is made, which shall not be less than 30 days, the demanding Party may treat this failure as an anticipatory repudiation of the Contract.

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

4.4 **Termination for Cause.** In the event of a default by a Party ("Defaulting Party"), the non-defaulting Party ("Non-Defaulting Party") shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless the Defaulting Party, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the Non-Defaulting Party's reasonable satisfaction that such default does not, in fact, exist. Following an uncured default, 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.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof. For avoidance of doubt, the City shall not be entitled to any refund of any amounts paid under this Contract in the event that the City terminates the Contract without cause.

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

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance.** Insurance is not required for this contract.

5.2 **Equal Opportunity.**

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

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but

not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 Delays.

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. The Contractor shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.5 Texas Public Information Act.

5.4.1 In accordance with Texas Government Code Sec. 552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:

5.4.1.1 Preserve all contracting information related to the Contract as provided by the records retention requirements in Section 7.3 (Audits and Records) of the Contract;

5.5.1.2 Promptly provide to the City any contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and

5.5.1.3 On completion of the Contract, either:

5.4.1.3.1 Provide at no cost to the City all contracting information related to the Contract that is in the custody or possession of Contractor; or

5.4.1.3.2 Preserve the contracting information related to the Contract as provided by the records retention requirements in Section 7.3 (Audits and Records) of the Contract.

5.4.2 The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

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

SECTION 6. WARRANTIES

6.1 Warranty – Price.

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

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

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

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

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

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

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources.

SECTION 7. MISCELLANEOUS

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

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

7.2.1 disposal of major assets;

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

7.2.3 any significant termination or addition of provider contracts;

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

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

7.2.6 reorganization, reduction and/or relocation in key personnel directly performing services under this contract;

7.2.7 known or anticipated sale, merger, or acquisition;

7.2.8 known, planned or anticipated stock sales;

7.2.9 any litigation against the Contractor where such notice to the City is required by applicable law; or

7.2.10 material change in Contractor's offered products or services that materially impact Contractor's performance hereunder.

7.3 Audits and Records.

7.3.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce written records of the Contractor directly related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract, until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, or as stated in Contractor's Privacy

Policy whichever is longest. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.3.2 Records Retention:

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

7.3.2.2 Contractor shall retain Records in compliance with its Privacy Policy, this Contract and applicable law.

7.3.3 Only to the extent that Contract enters in subcontractor agreements specifically to perform the services herein, the Contractor shall include sections 7.3.1 and 7.3.2 above in the applicable subcontractor agreements entered into directly to perform services under this Contract.

7.4 **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.

7.5 **Indemnity.** Contractor shall defend, protect, indemnify and hold the City harmless from any and all claims, actions, damages or other liabilities arising out of third Party claims that the CBT Nuggets Content, and Contractor's delivery thereof, infringes on any third Party patent, copyright, trademark, trade secret or other intellectual property rights, so long as the claims do not arise from the City's or any of its Learner's breach of Paragraph 1 or Paragraph 5 of Exhibit A, CBT Nuggets IT Training Subscription Agreement.

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

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

To the City:
City of Austin, Purchasing Office
ATTN: Brenita Wilkison, Contract Administrator
P O Box 1088
Austin, TX 78767

To the Contractor:
CBT Nuggets LLC
ATTN: General Counsel
1550 Valley River Drive
Eugene, OR 97401

7.8 **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 may 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 in compliance with its Privacy Policy, 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.

7.9 **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.

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

7.11 **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.

7.12 **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.

7.13 **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.

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

7.15 **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.

7.16 **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.

7.17 **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.

7.18 **Dispute Resolution.**

7.18.1 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.

7.18.2 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.

7.19 **Jurisdiction and Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the Parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of either Party to seek and secure injunctive relief from any competent authority as contemplated herein.

7.20 **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.

7.21 **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.

7.22 **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.

7.23 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to Parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

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

7.24.1 This Contract;

7.24.2 Exhibit A, CBT Nuggets IT Training Subscription Agreement;

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

CBT NUGGETS LLC

By: Matt
Signature

Name: Matthew Bromley

Printed Name

Title: General Counsel

Date: Apr 2, 2020

CITY OF AUSTIN

By: Brenita Wilkison
Signature

Name: Brenita Wilkison

Printed Name

Title: Procurement Specialist III

Date: Apr 2, 2020

List of Exhibits

| | |
|-----------|---|
| Exhibit A | CBT Nuggets IT Training Subscription Agreement |
| Exhibit B | Non-Discrimination Certification, Section 0800 |
| Exhibit C | CBT Nuggets LLC Quote dated 03/23/2020 ("Contractor's Quote") |

EXHIBIT A
CBT NUGGETS IT TRAINING SUBSCRIPTION AGREEMENT

RECITALS:

A. CBT Nuggets is engaged in the business of creating and selling information technology training solutions, the “CBT Nuggets Content,” “CBT Content” or “Content”, including but not limited to the CBT Nuggets Learner-facing applications and course delivery platforms, individual videos within a series, entire series, series packages, supplemental materials, Learner resources, quiz questions, proprietary instances of the virtual lab and/or streaming subscription access to any portions thereof.

B. Specific to this Exhibit A Agreement (“Agreement”), CBT Nuggets offers streaming subscriptions to access the CBT Nuggets Content offered by CBT Nuggets through its website (the “Website”) or its mobile applications (“Apps”) (collectively the “Services”).

C. City desires to access the CBT Nuggets Content and, as applicable, to make the CBT Nuggets Content available to City’s employees (individually “Learner” and collectively the “Learners”), and CBT Nuggets desires to provide the same pursuant to the terms and subject to the conditions of this Agreement.

D. City and its Learners should carefully read the CBT Nuggets Privacy Policy (the “Privacy Policy”) (located at <http://www.cbtnuggets.com/privacy>), as City’s and its Learners’ legal rights, and access to Content, is subject to City’s and its Learners’ acceptance and adherence to the Privacy Policy. This Agreement hereby incorporates the Privacy Policy into the Contract by reference.

AGREEMENT:

The Parties agree as follows:

1. Grant of License.

1.1 During the Term of this Agreement (defined in Paragraph 2), CBT Nuggets grants City **30** revocable, non-royalty bearing, non-assignable (except as explicitly permitted herein), non-exclusive, non-sublicensable licenses to access, view and to use the CBT Nuggets Content. The licenses are solely for use by City and its Learners.

1.2 City and its Learners may not copy, reproduce, reverse engineer, translate, port, modify or make derivative works of the CBT Nuggets Content in whole or in part. City and its Learners may not rent, sell, assign, lease, sublicense, market, publish, display, distribute or transfer the CBT Nuggets Content in any manner not expressly authorized by this Agreement without the prior written consent of CBT Nuggets. City shall communicate to all Learners the restrictions and limitations of the license as set forth in this Paragraph 1.

1.3 Each license is a single user license and the single user license must be connected to a named user (Learner). The email address attached to each license must be specifically associated solely with that individual Learner. City may reassign to a new Learner any single user license that has been held by another Learner for at least thirty (30) days prior to any such assignment. Each Learner, and each Account Administrator, is expressly governed by the applicable terms of this Agreement.

1.4 Upon City’s discovery and/or the request of CBT Nuggets, the City agrees to promptly remedy any violation of this Paragraph 1 and to provide CBT Nuggets with sufficient evidence that City is in compliance with this Paragraph 1. Failure to reasonably cooperate with such requests shall be deemed a violation of this Paragraph 1.

1.5 CBT Nuggets reserves the right to suspend or terminate any Learner’s access to the CBT Nuggets Content if, at its sole discretion, CBT Nuggets believes the Learner or City is in violation of this Agreement. Upon the occurrence of any suspension or termination event, no refund will be made to City of any amounts previously paid to CBT Nuggets.

2. Cost and Term of the Agreement.

2.1 City shall pay CBT Nuggets the total sum of **USD \$17,970.00** for the licenses.

2.2 The Term of this Agreement commences as of the Effective Date, and shall continue for one (1) year, on which date the Contract, including this Agreement, shall terminate unless the Parties otherwise agree in writing.

2.3 Prices described in this Paragraph 2 do not include any taxes that may apply. As applicable, City shall pay any sales tax, use tax, excise, duty or any other form of tax relating to City's receipt of access to the CBT Nuggets Content.

3. Billing Terms and Conditions. The billing terms and conditions for this Agreement are as follows:

3.1 If City is issuing a purchase order for the CBT Nuggets IT Training Subscription, CBT Nuggets shall provide City with an invoice representing the total amount owed by City, as provided in Paragraph 2.

3.2 City shall pay each invoice, in full, no later than 30 days after the invoice date.

3.3 This Agreement is not an invoice.

3.4 Except as specifically provided in Exhibit B, City may not terminate this Agreement prior to the expiration of the Term of this Agreement, and shall be responsible for promptly paying the full amount of each invoice for the full Term of this Agreement, unless the Parties otherwise agree in writing.

3.5 During the Term of this Agreement, City may purchase additional licenses for additional Learners. The terms of each additional license and the corresponding usage by each additional Learner shall be expressly governed by the terms of this Agreement. In the event City purchases additional licenses, unless the Parties otherwise agree in writing, the installment payment amount and total amount due described in Paragraph 2 shall be increased proportionately.

3.6 To the extent permitted under law, City agrees to pay the reasonable fees of any collection agency, and all costs and expenses, including reasonable attorney's fees, which may be incurred in a collection effort to recover past due amounts under this Agreement.

4. Disclaimer of Warranties. The CBT Nuggets Content is provided to City on an "AS IS" and "WITH ALL FAULTS" basis. The CBT Nuggets Content is complex and may contain nonconformities, defects or errors. CBT Nuggets does not warrant that the CBT Nuggets Content will be error free. **CBT Nuggets does not make any warranty, express or implied, and hereby disclaims any and all warranties, including but not limited to, warranties of merchantability and fitness for a particular purpose.**

5. Intellectual Property. All right, title and interest in and to the CBT Nuggets Content, and the content, materials and data contained therein, and any derivative works thereof is expressly reserved by CBT Nuggets. No portion of the CBT Nuggets Content may be copied, reproduced, distributed, displayed, transferred or assigned without the express prior written consent of CBT Nuggets.

6. Limitation on Damages. UNDER NO CIRCUMSTANCES WILL CBT NUGGETS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, COMPENSATORY, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY PROVISION OF THIS AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND/OR OTHER TORTS.

7. Limitation of Liability and Remedies. NOTWITHSTANDING ANY DAMAGES THAT THE CITY MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED IN PARAGRAPH 6 AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE AGGREGATE LIABILITY OF CBT NUGGETS AND AFFILIATES OF CBT NUGGETS UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY THE CITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. Electronic Signature. A Party's electronic signature shall be construed to be an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document.

9. **Amendments.** This Agreement may be amended only by an instrument in writing executed by the Parties.

10. **Warranty of Authority.** Each signatory executing this Agreement expressly represents and warrants that the signatory is duly authorized to do so and that the execution and delivery of this Agreement is the lawful and voluntary act of the Parties. Each signatory shall indemnify the other Parties to this Agreement from any loss or damage resulting from a breach of this Warranty of Authority.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

CBT NUGGETS, LLC

CITY OF AUSTIN

DATED: Apr 2, 2020

DATED: Apr 2, 2020

By: 

By: 

Print Name: Matthew Bromley

Print Name: Brenita Wilkison

Email: mbromley@cbtnuggets.com

Email: brenita.selement@austintexas.gov

Title: General Counsel

Title: Procurement Specialist III

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

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

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

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

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

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

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

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

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

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

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

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

Sanctions:

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

Term:

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

Dated this _____ day of Apr 2, 2020, _____

CONTRACTOR
Authorized
Signature

CBT NUGGETS LLC



Title

General Counsel



EXHIBIT C

Quote

CBT Nuggets LLC
1550 Valley River Drive
Eugene, OR 97401, USA
+1 541-284-5522 | sales@cbtnuggets.com

Order Number: 2093521
Account Owner: Debbie Gossett
Offer Valid: 03/23/2020

Bill To:
Debbie Gossett
Attn: Accounts Payable
Austin Convention Center
500 E CESAR CHAVEZ ST
AUSTIN, TX, 78701-4121
United States

Ship To:
Debbie Gossett
Attn: Accounts Payable
Austin Convention Center
500 E CESAR CHAVEZ ST
AUSTIN, TX, 78701-4121
United States

| PRODUCT | QTY | LIST PRICE | BILLING TERM | SUBSCRIPTION PERIOD | TOTAL |
|-----------------------|-----|------------|--------------|--------------------------|----------|
| Learner - IT Training | 30 | \$599 | 1 year | 06/24/2020 to 06/24/2021 | \$17,970 |

Subtotal: \$17,970.00

Total Price (in USD): \$17,970.00

Order Terms and Conditions

CBT Nuggets online streaming licenses are single user licenses, and each license must be connected to a single named user and a single unique email address. Administrators can assign any available license to any user, making that person a Learner. Once a license is assigned, it may only be reassigned if it has been held by a Learner for at least thirty (30) days prior to the reassignment.

Unless Customer and CBT Nuggets otherwise agree in writing, Customer acknowledges that the licenses and/or products obtained through this order are subject to the applicable CBT Nuggets [License Agreement](#), [Billing Agreement](#) and [Privacy Policy](#) (Terms).

Customer may not submit a signed quote in lieu of a valid purchase order binding a legal entity for orders of or exceeding USD \$25,000.00.

CBT Nuggets expressly rejects all additions, exceptions, or changes to the Terms, whether contained in any printed or electronic purchase order received from Customer. CBT Nuggets' inclusion of any Customer supplied purchase order number on any invoice, quote or receipt is strictly for the purpose of reference, and is not an acceptance of any Customer terms and conditions.

As applicable, regardless of whether included herein, sales tax may be added to the invoice if CBT Nuggets is required to collect such taxes in your jurisdiction.

Brenita Wilkison
Brenita Wilkison (Apr 2, 2020)

AUTHORIZED SIGNATURE

Brenita Wilkison

PRINTED NAME

Procurement Specialist III

TITLE

Apr 2, 2020

DATE

Unless Customer and CBT Nuggets otherwise agree in writing, by signing above Customer agrees to the above Order Terms and Conditions and to remit full payment on Net 30 commencing on the invoice date.