

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
KINGSLEY ASSOCIATES  
For  
KINGSLEY INDEX OCCUPANT SATISFACTION ASSESSMENT SOFTWARE  
Contract Number: 7500 NA200000120**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Kingsley Associates ("Contractor"), having offices at 44 Montgomery Street, Suite 1430 San Francisco, CA 94104.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

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

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. 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.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Jim Woidat, Phone: 415-777-1140, Email Address: jwoidat@kingsleyassociates.com. The City's Contract Manager for the engagement shall be Marty James, (512) 974-3519, Email Address: Marty.James@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations. The Contractor shall continue to provide the City of Austin Building Services Department all associated program tasks and functionality as described in the Contractors "Occupant Satisfaction Assessment Service Order" Offer.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid an amount as follows:

Initial Term: \$20,500.00

Option 1: \$20,500.00

Option 2: \$21,000.00

Option 3: \$21,500.00

Option 4: \$22,000.00

The total contract amount shall not exceed \$105,500.00.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**3.2.2 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 itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Building Services
Attn:	Accounts Payable
Address	411 Chicon
City, State, Zip Code	Austin, TX 78702
E-Mail	<a href="mailto:BSDAPInvoices@austintexas.gov">BSDAPInvoices@austintexas.gov</a>

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

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

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

### **3.3 Payment.**

**3.3.1** All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

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

**3.3.3** The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

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

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

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

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

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

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

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

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

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

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

## **SECTION 4. TERM AND TERMINATION**

4.1 The Contract shall become effective on June 20, 2020 and shall remain in effect for an initial term of 12 months. The Contract may be extended automatically beyond the initial term for up to four (4) additional 12 month periods at the City's sole option unless the Contractor is notified in writing no less than 60 days prior to the contract's expiration.

4.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

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

4.1.3 This is a 12-month Contract. Prices are firm for the first twelve (12) months. Annual Contract renewals shall be priced according to Section 3.1-Contract Amount.

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

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

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

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

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

## **SECTION 5. OTHER DELIVERABLES**

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

### **5.1.1 General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

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

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

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

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.2 **Right of Inspection and Rejection.** If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

5.2 **No Replacement Of Defective Tender.** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

5.3 **Equal Opportunity.**



5.3.1 **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.

5.3.2 **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.

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

## 5.5 **Delays.**

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

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

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

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

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

## 5.7 **Texas Public Information Act.**

5.7.1 All material submitted by the Contractor to the City related to the Contract shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.7.2 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:

5.7.2.1 Preserve all contracting information related to the Contract as provided by the records retention requirements in Section 17 (Audits and Records) of the Contract;

5.7.2.2 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

5.7.2.3 On completion of the Contract, either:

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

5.7.2.3.2 Preserve the contracting information related to the Contract as provided by the records retention requirements in Section 17 (Audits and Records) of the Contract.

5.7.3 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.

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

## **SECTION 6. WARRANTIES**

### 6.1 **Warranty – Price.**

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

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

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

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

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

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

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

## **SECTION 7. MISCELLANEOUS**

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

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

7.2.1 disposal of major assets;

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

7.2.3 any significant termination or addition of provider contracts;

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

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

7.2.6 reorganization, reduction and/or relocation in key personnel;

7.2.7 known or anticipated sale, merger, or acquisition;

7.2.8 known, planned or anticipated stock sales;

7.2.9 any litigation against the Contractor; or

7.2.10 significant change in market share or product focus.



### 7.3 **Audits and Records.**

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

#### 7.3.2 Records Retention:

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

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

7.3.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

### 7.4 **Indemnity.**

#### 7.4.1 Definitions:

7.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

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

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

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

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

To the City:

City of Austin, Purchasing Office

ATTN: Claudia Rodriquez

P O Box 1088

Austin, TX 78767

To the Contractor:

Kingsley Associates

ATTN: Jim Woidat

44 Montgomery Street, Suite 1430

San Francisco, CA 94104

7.7 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.8 **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.

7.9 **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.

7.10 **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.

7.11 **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.

7.12 **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.

7.13 **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.

7.14 **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.

7.15 **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.

7.16 **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.

7.17 **Dispute Resolution.**

7.17.1 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.

7.17.2 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.

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

7.18.1 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.

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

7.18.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own 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.

#### 7.19 **Subcontractors.**

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

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

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

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

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

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

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

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

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

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

7.21 **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.

7.22 **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.

7.23 **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.

7.24 **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.

7.25 **Incorporation of Documents.** **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

7.26 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Contractor's Offer, 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.

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



7.26.2 the Standard Purchase Terms and Conditions;

7.26.3 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

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

KINGSLEY ASSOCIATES

By: Lisa L. Green  
Signature

Name: Lisa L. Green  
Printed Name

Title: Vice President

Date: May 1, 2019

CITY OF AUSTIN

Digitally signed by Claudia Rodriguez  
By: Date: 2020.05.08 10:29:49 -05'00'  
Signature

Name: Claudia Rodriguez  
Printed Name

Title: Procurement Specialist IV

Date: May 08, 2020

#### List of Exhibits

Exhibit A	Kingsley Associates Proposal dated 02/11/2020 ("Contractor's Proposal")
Exhibit B	Non-Discrimination Certification
Exhibit C	Non-Suspension or Debarment Certification



Business intelligence for the real estate industry.

February 11, 2020

Walter Drane  
City of Austin  
Department of Building Services - Deputy Officer  
505 Barton Springs Road  
Austin, TX 78704

Dear Walter:

Kingsley Associates is the real estate industry's leading provider of research and performance benchmarking solutions. Our benchmark, the Kingsley Index™, is the most comprehensive performance-benchmarking database in the real estate industry. Compiled from over 30 years of analyzing the performance of industry leaders, our proprietary index is the standard for measuring tenant satisfaction.

Kingsley Associates is engaged by 9 of the 10 largest office owners and we survey more than one billion square feet of office space annually. We are unparalleled in our ability to customize benchmarks to match unique portfolio compositions as part of our customized programs.

The Kingsley Index includes benchmark data from only the last 24 months, which ensures updated, meaningful assessments against a similar peer group. Our response rates are the highest in the industry, and our technology not only makes it easier for tenants to access and complete the survey via any device, but we also make every effort to ensure that a higher number of invitations get through to tenants and they are not flagged as spam.

If you should have any questions regarding our capabilities or the Kingsley Index, please do not hesitate to contact me directly.

Sincerely,

**Jim Woidat**

Principal  
Kingsley Associates  
44 Montgomery Street, Suite 1430  
San Francisco, CA 94104



# Occupant Satisfaction Assessment SERVICE ORDER

PREPARED FOR:



Building Services Department

February 11, 2020

Contact:

Lisa Green

[lgreen@kingsleyassociates.com](mailto:lgreen@kingsleyassociates.com)

415.777.1140

## PROGRAM SUMMARY



Optimizing service delivery, operations, and occupant satisfaction is critical to enhancing workplace productivity and prioritizing capital improvements. High occupant satisfaction can be leveraged to strengthen employee engagement and lower expenses. Accordingly, the City of Austin Building Services Department has engaged Kingsley Associates since 2016 to conduct their *Occupant Satisfaction Assessment*. The program will continue to evaluate the perceptions of occupants by measuring and benchmarking areas such as:

- Overall occupant satisfaction
- Perceptions of building features and amenities
- Satisfaction with facility and property management services
- Priority areas for attention and improvement

Kingsley Associates' research and analysis will provide the City of Austin Building Services Department with an objective evaluation of occupant perceptions and quality of operations. Kingsley Associates will provide user-friendly reports to ensure the results are easily understood and interpreted. This assessment will identify solutions and provide an action plan to help the City of Austin Building Services Department deliver efficient and sustainable operations and asset management services.

## ADVANTAGES OF USING KINGSLEY ASSOCIATES

With a depth and breadth of insight unmatched in the industry, Kingsley Associates brings thought leadership and exceptional client service to every engagement. Further, our talented team of professionals and advanced research tools ensure a valuable, meaningful partnership. Additional benefits of selecting Kingsley Associates include:

### Superior tools and technology

- **Sophisticated benchmarking capabilities:** The Kingsley Index™ is the industry's largest and most sophisticated performance benchmarking database. To ensure the most apples-to-apples comparison, Kingsley Associates develops highly customized Kingsley Index™ benchmarks for each client.
- **Real-time survey monitoring:** The Kingsley Portal will keep the City of Austin Building Services personnel updated throughout the entire survey process. This web-based tool can be accessed to view survey response rates and a dashboard of results which shows scores in key performance indicator areas. In addition, the Kingsley Portal can be used to update contact information, view respondent transcripts, and access reports.

### Results-oriented deliverables

- **Actionable and easy-to-understand reports:** Kingsley Associates delivers user-friendly reports designed to assist with action planning at every level. Both strategic and tactical, the reports provide clear direction for the improvement of building and organizational performance.
- **Online action planning tool:** If requested, Kingsley Associates will facilitate the action planning process for the City of Austin Building Services Department's *Occupant Satisfaction Assessment* via a proprietary web-based tool. This optional program facilitates the development of performance improvement plans at the building level, thereby maximizing the value derived from conducting the occupant survey program.

**World-class service and analysis**

- **Depth of analysis:** As the industry leader, Kingsley Associates excels in analyzing survey results to reveal the factors that are truly driving occupant satisfaction. In addition, Kingsley Associates provides strategic recommendations to improve performance and service delivery.
- **Full-service approach:** Kingsley Associates takes a full-service, client-centric approach, flexible to the City of Austin Building Services Department's desired outcomes. In addition, a Kingsley Associates senior executive is deeply involved in each project to ensure that the City of Austin Building Services Department's needs are always met, if not exceeded.

OCCUPANT SATISFACTION ASSESSMENT SERVICE ORDER - FEES		
PROJECT SCOPE		
<ul style="list-style-type: none"> <li>• Approximately 27 buildings</li> <li>• Survey to run once per year, for a period of five survey programs.</li> </ul>		
PROJECT COMPONENTS	ANNUAL PROJECT FEE	INITIAL
<ul style="list-style-type: none"> <li>• Project design, administration, and implementation</li> <li>• Customized web-based survey delivered to building occupants via email invitations               <ul style="list-style-type: none"> <li>○ Optional survey redesign (limited to first year of contract)</li> <li>○ Limited survey edits in subsequent years (up to three question additions / removals per contract year)</li> </ul> </li> <li>• Access to the online Kingsley Portal               <ul style="list-style-type: none"> <li>○ Real-time performance dashboards and survey response rates</li> <li>○ Occupant alert notifications and transcripts with verbatim comments</li> <li>○ Live Portal training webinar for the City of Austin Building Services Department personnel</li> </ul> </li> <li>• Comparisons to customized Kingsley Index™ benchmarks, where available</li> </ul>	<b>Project fees</b> Years 1-2: \$20,500 per year Year 3: \$21,000 Year 4: \$21,500 Year 5: \$22,000	
OPTIONAL COMPONENTS		
• Additional level(s) of reporting	\$3,500 per level	
• Results Analysis and webinar / on-site presentation of results	\$6,500 / \$5,000	
• Online Action Planning	\$2,500	
• Additional survey edits (in excess of three question additions / removals)	Determined based on request	
• Additional survey language translation beyond English	\$750 per language	
• Additional survey question translations via Kingsley Associates' translation service	\$0.30 per word (\$75 minimum)	
• Open-ended comment translation back into English for reporting via Kingsley Associates' translation service	\$0.30 per word (\$75 minimum)	

**Note:** Pricing is subject to change in accordance with changes to scope or methodology. City of Austin Building Services Department shall pay fifty percent (50%) of the project fee simultaneously with the launch of the survey and fifty percent (50%) of the fee upon report delivery. Any travel-related expenses are not included in the estimate above and are to be paid by the City of Austin Building Services Department. Reports will be generated in and delivered to the City of Austin Building Services Department in electronic (PDF) format. Should the City of Austin Building Services Department require printed copies of the report(s), Kingsley Associates may be able to provide them at a discounted rate.



**OCCUPANT EXPERIENCE ASSESSMENT SERVICE ORDER - BUSINESS TERMS****1. PROJECT TERMS**

- 1.1 Service Order Effective Date:** Date on which Client executes this Service Order and the anniversary of this date thereafter.
- 1.2 Survey Completion Date:** Date on which Kingsley stops collecting survey responses and the survey is no longer accessible to respondents or twenty (20) weeks after Service Order Effective Date, whichever comes first.
- 1.3 Term:** This Service Order includes five survey periods and shall commence on the Service Order Effective Date and expire December 31, 2025.

**2. PAYMENT OF PROJECT FEES**

- 2.1 Initial Term and Renewal Term Payments:** Client shall pay fifty percent (50%) of the project fee simultaneously with the launch of the survey and fifty percent (50%) of the fee upon report delivery. All invoices must be paid in USD and by a single check, wire transfer, or ACH payment within thirty (30) days after receipt of an invoice from Kingsley. Failure to complete payment within thirty (30) days past invoice due date will grant Kingsley Associates the right to suspend use of the Kingsley Portal until payment has been received by Kingsley Associates.
- 2.2 Fee Calculations:** The initial number of properties will be determined by Client on the Service Order Effective Date. If applicable, the fees will be adjusted by any fluctuation in the number of properties between the Service Order Effective Date and Survey Completion Date, potentially impacting the remaining balance due on the Survey Completion Date. No properties can be added after the Survey Completion Date.
- 2.3 Fee Adjustments:** If there is a change in scope or services after the Survey Completion Date, fees will be adjusted accordingly and an invoice or credit will be issued for the adjustment.
- 2.4 Multiple Payments:** Should Client pay with multiple checks, wire transfers, or ACH payments, Client will be billed an additional administrative accounting fee of 2% of the fees (which amount shall be invoiced along with project expenses).

**3. RENEWAL PROVISIONS**

- 3.1 Automatic Renewal:** This Service Order does not automatically renew following the Initial Term.
- 3.2 Price during Renewal Term:** In addition to any price adjustments due to changes in scope or methodology, Kingsley reserves the right to change the price of the services for each Renewal Term. Kingsley must give written notification via email of any change in price at least ninety (90) days in advance of the Renewal Term starting.
- 3.3 Termination:** Either party may terminate this Service Order by providing written notice to the other party no less than sixty (60) days prior to the start of the upcoming Renewal Term. The notice of termination to Kingsley must be given in writing via email to: [notices@kingsleyassociates.com](mailto:notices@kingsleyassociates.com). Other termination rights are in the Master Services Agreement. This Service Order shall automatically terminate upon any termination of the Master Services Agreement.

**4. MASTER SERVICES AGREEMENT**

- 4.1** This Service Order is issued pursuant to and subject to the Master Services Agreement between the parties executed \_\_\_\_\_ (Client to fill in the date the Master Services Agreement is executed).

**5. OTHER TERMS**

- 5.1** Any travel-related expenses are not included in the estimate above and are to be paid by Client.
- 5.2** Additional fees will apply should Kingsley Associates be required to perform database administration on the Client-provided contact database that will be used for survey distribution, data tracking, and analysis. Should Client request that Kingsley regenerate any deliverables or analysis due to inaccuracies in the Client-provided database or Client-requested revisions based on new criteria provided by Client subsequent to receipt of deliverables, Kingsley will charge \$250 per hour to recreate the deliverables.

**AGREEMENT OF BUSINESS TERMS AND AUTHORIZATION OF PROJECT**

Authorized Signature  
City of Austin Building Services Department

\_\_\_\_\_  
Date

Authorized Signature  
Kingsley Associates

\_\_\_\_\_  
Date

## Master Services Agreement Cover Sheet

This Master Services Agreement (“**Agreement**”) is entered into and effective as of \_\_\_\_\_ (the “**Agreement Effective Date**”) by and between Kingsley Associates (“**Kingsley**”) and the party identified below as Kingsley’s client (“**Client**”). This Agreement includes the body of this Agreement and encompasses any and all executed Client Service Orders.

### Kingsley Associates (“Kingsley”)

Authorized Signature:

---

Printed Name:

**John Falco**

Title/Position:

**Principal**

Date of Signature:

---

### Kingsley Contact Information

Mailing Address:

**229 Peachtree St NE**

**Suite 1100**

**Atlanta, GA 30303**

Contact Name:

**John Falco**

Contact Title/Position:

**Principal**

Contact Phone Number (cell preferred):

**(770) 335-0452**

Contact Email Address:

**jfalco@kingsleyassociates.com**

---

\_\_\_\_\_  
 (“Client”)

Authorized Signature:

---

Printed Name:

---

Title/Position:

---

Date of Signature:

---

### Client Contact Information

Mailing Address:

---

---

Contact Name:

Contact Title/Position:

Contact Phone Number (cell preferred):

Contact Email Address:

---

## **Background Information**

- A. Kingsley provides proprietary research, data analysis and strategic consulting solutions and associated information services to its clients. Kingsley's principal information services are various types of surveys that use Kingsley's proprietary survey methodologies, technologies and delivery mechanisms, including access to The Kingsley Index™.
- B. This Agreement sets forth the terms and conditions that will govern Kingsley's provision of certain information services to Client covered in Client Service Orders.

In consideration of the rights and benefits that they will each receive under this Agreement, Kingsley and Client (collectively, the "Parties" and individually a "Party") agree as follows:

### **1. KINGSLEY SERVICES.**

1.1 **Provision of Services to Client.** Client hereby engages Kingsley to provide Client with the information services set forth on Client Service Orders executed by the Parties during the term of this Agreement (the "Services") and Kingsley hereby agrees to provide Client with the Services. When and as Kingsley agrees to provide Client with additional Services during the term of this Agreement, the Parties will execute an addendum to the applicable Client Service Order(s) or create a new Client Service Order that describes the Services to be provided. The Client Service Orders are incorporated by this reference into this Agreement.

1.2 **General Limitations on Use of Services.** Except as otherwise approved by Kingsley in writing in advance, Client may use the Services solely for Client's internal business purposes and in accordance with any guidelines provided by Kingsley. Client may not: (a) sell, resell, license, sublicense, or lease the Services to any third party; (b) give third parties access to the Services except as Kingsley may approve in advance; (c) use the Services to provide services to or for any third party; (d) use the Services to develop solutions that compete with the Services; or (e) use or attempt to use the Services for any purposes that are contrary to applicable laws and regulations. Client will ensure that only authorized employees are able to access the Services.

### **2. TERM OF AGREEMENT.**

2.1 **Term of Agreement.** The term of this Agreement shall start as of the Agreement Effective Date and shall continue until all Client Service Orders have expired. Section 9 describes certain situations where a Party may terminate the Agreement early.

### **3. PAYMENTS, EXPENSES.**

3.1 **Fees, Charges and Expenses.** Client will be responsible for all fees, charges, costs and expenses and other financial obligations described in each Client Service Order ("Fees"). The Client Service Orders set out the payment terms applicable to Fees. All Fees must be paid in U.S. dollars.

3.2 **Taxes.** The Fees shall be paid by Client free and clear of any deduction or withholding on account of taxes. Client shall be responsible for all sales, use, value-added, ad valorem, export or import or other taxes (including fees, tariffs, levies, duties or charges in the nature of a tax) imposed by any governmental entity upon the sale, use or receipt of the Services (other than taxes based solely on Kingsley's income). If and when Kingsley has the legal obligation to collect such taxes, Kingsley will invoice Client the amount of such taxes, and Client will pay such amount unless Client provides Kingsley with a valid tax exemption certificate authorized by the appropriate taxing authority. Client will provide Kingsley with official receipts issued by the appropriate taxing authority or such other evidence as is reasonably requested by Kingsley to establish that such taxes have been paid. The Parties shall reasonably cooperate to more accurately determine each party's tax liability and to minimize such liability to the extent legally permissible.

### **4. PROPRIETARY RIGHTS.**

4.1 **Rights of Parties.** As between Client and Kingsley, all right, title and interest, and all Intellectual Property, in and to the Services, including all survey methodologies and technologies (for example, The Kingsley Index™), belong solely to and are owned solely by Kingsley. Client will own its individual tangible or electronic survey results, subject to Kingsley's rights in Section 5.4. All rights, including modifications and customizations to the Services, that arise out of suggestions from Client shall be owned by Kingsley. Each Party agrees that it will not adopt, use or register any acronym, trademark, trade name or other marketing or brand name of the other Party or any confusingly similar word or symbol as part of its own name or as part of the name of any products that it markets.

As used in this Agreement, “**Intellectual Property**” means trademarks, trademark applications, tradenames, logos, copyrights, patents, patent applications, trade secrets and other proprietary rights.

## 5. **CONFIDENTIALITY; DATA RIGHTS.**

5.1 **Non-Disclosure; Non-Use.** Each Party agrees not to disclose, communicate, publish, disseminate, or make accessible, in any manner, the other Party’s Confidential Information to any person or entity except in accordance with this Agreement and applicable law. Each Party will take reasonably diligent measures to protect the confidentiality of, and avoid the unauthorized disclosure or use of, the other Party’s Confidential Information. This obligation continues indefinitely, unless applicable law requires a shorter duration, in which case these obligations continue through the date that is five (5) years after the termination of this Agreement. “**Confidential Information**” of a Party is any information that the Party designates or marks as confidential as well as any information that under the circumstances the other Party should reasonably assume to be confidential.

5.2 **Return or Destruction of Confidential Information.** Upon termination of this Agreement (except as necessary for a Party to perform any post-termination obligation under this Agreement) or sooner if requested, each Party will: (i) discontinue all use of the other Party’s Confidential Information; (ii) return to the other Party all manifestations (e.g. documents, files) of the other Party’s Confidential Information; (iii) erase or destroy any Confidential Information of the other Party contained in computer memory or data storage apparatuses; and (iv) remove Confidential Information of the other Party from any software that incorporates or uses such Confidential Information in whole or in part.

5.3 **Compelled Disclosures.** If a Party is required (by oral questions, interrogatories, requests for information or documents in a court or administrative proceeding, subpoena, civil investigative demand or other similar process including the Texas Public Information Act (Tex. Govt. Code 552)) to disclose any of the other Party’s Confidential Information, that Party will provide the other Party with prompt notice of the request or requirement so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement.

5.4 **Data Rights and Obligations.** In order for Kingsley to provide its Services to Client, Client may need to provide Kingsley with Personal Data (as defined below) of survey respondents (e.g. name, email address, mailing address). Client agrees that Kingsley may use this Personal Data to generate benchmarks, provided that any survey response data used in the benchmarks shall be aggregated and shall not contain personally identifiable information. Kingsley may retain this Personal Data for as long as necessary for Kingsley to be able to fulfill the purposes outlined in the project scope, subject to the requirements of applicable law. Client is responsible for obtaining any legally required consents from data subjects to disclose their Personal Data to Kingsley. Client shall not provide Kingsley with any Personal Data that is not needed by Kingsley to provide the Services. The Parties agree to comply with all requirements of applicable data privacy laws and regulations. Kingsley is certified under the EU-US Privacy Shield. Kingsley’s Privacy Policy can be found at <http://kingsleyassociates.com/website-privacy-policy/>. “**Personal Data**” is information relating to an identified or identifiable natural person. An identifiable natural person is a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

## 6. **COMMUNICATION.**

6.1 **Representation and Warranties Regarding the Use of Text Messaging and Emails.** Client desires that Kingsley utilize text messaging / email to communicate with certain individuals who may or may not respond to the surveys Kingsley sends (“Potential Respondent” or “Potential Respondents”) in performing its obligations under the Agreement. Kingsley is agreeable to utilizing texting / email technology subject to the terms and conditions herein. Client represents and warrants that it has lawfully secured any and all rights to supply Kingsley with any third party Personally Identifiable Information (“Third Party PII”), including cellular telephone numbers and email addresses, in order to be contacted by Kingsley through various distribution methods, including, but not limited to, email and text message in order to perform the Services under the Agreement. In addition, Client represents and warrants that by providing Kingsley with any Third Party PII, it has complied with the requirements of any state, federal, local and / or foreign law including but not limited to TCPA, CAN-SPAM Act, and the GDPR.

6.2 **Use of Text Messaging and Email.** Kingsley agrees to utilize text messaging and / or emails to communicate with the Potential Respondents in performing its Services under the Agreement. Client shall be responsible for providing the cellular telephone numbers (or other device contact information) and / or email addresses for its Potential Respondents to Kingsley for purposes of such communication.

6.3 **Removal from Text Messaging / Email.** Kingsley shall provide a methodology by which any Potential Respondents who desire to opt-out of receiving text messages and / or emails from Kingsley (or its contractors or agents) may do so. Kingsley shall be responsible for complying with any Potential Respondents' requests to be eliminated from future text message and / or email communications, and Kingsley shall, via the Kingsley Portal ("Portal"), inform Client of any Potential Respondents who elect to opt-out from such text messaging and / or email. Potential Respondents' opt-out status is accessible within the Portal. The opt-out status within the Portal shall serve as the sole notification from Kingsley to Client. Potential Respondents who opt-out via phone call shall have their opt-out status updated by Kingsley within the Kingsley Portal. Client is solely responsible for accessing the Portal to determine any Potential Respondent(s) opt-out status.

**Indemnification Related to Text Messaging.** In the event any Potential Respondent has informed Kingsley of its desire to opt-out from receiving text messages and / or emails (an "Opt-Out Potential Respondent" or "Opt-Out Potential Respondents"), Kingsley shall defend, indemnify and hold harmless Client, along with its officers, directors and employees from any liabilities, losses or claims asserted against Client from such Opt-Out Potential Respondents related to text messaging and / or emails delivered by Kingsley after the date such Potential Respondents opt-out.

## 7. **LEGAL COMPLIANCE OBLIGATIONS.**

7.1 **Compliance with Applicable Law.** In performing their obligations and exercising their rights under this Agreement, the Parties will comply with applicable laws and regulations.

7.2 **Data Breaches.** Except for an actual or suspected unauthorized acquisition, use, alteration, disclosure, compromise or loss of any Personal Data (a "**Data Breach**") that results directly from the gross negligence or intentional wrongdoing of Kingsley, Kingsley has no responsibility for, and Client releases Kingsley from, all liability for, any Data Breach that is associated with or that is in connection with Kingsley's use of Personal Data in a manner permitted by this Agreement or Client's use of the Services where Kingsley has no direct control.

## 8. **PERFORMANCE STANDARDS AND OTHER RESPONSIBILITIES.**

8.1 **Limited Warranty.** Kingsley warrants that it will provide the Services in a professional manner and in full compliance with the terms of this Agreement. Client's sole remedy for any breach of the warranty in this Section is for Kingsley to provide any Services. This warranty shall not apply if the warranty breach was caused by or attributable to Client's breach of this Agreement or Client's use of the Services in an unreasonable or unauthorized manner.

8.2 **Client Responsibilities.** Client will perform the tasks and provide the information, data, assistance and support reasonably necessary for Kingsley to provide the Services and Client's failure to do so could lead, in Kingsley's sole discretion, to an increase in Fees applicable to Client or to Kingsley terminating this Agreement or any Client Service Order for material breach by Client.

8.3 **Disclaimer of Certain Warranties.** Kingsley disclaims any warranty that the Services will be fit for a particular purpose or that they will be merchantable or that the Services will meet Client's requirements, other than those expressly agreed to by Kingsley in this Agreement.

8.4 **Force Majeure.** Kingsley will not be liable for any loss or delay resulting from any event that is beyond the reasonable control of Kingsley including acts of God, fire, flood, epidemic, pandemic or quarantine restrictions, catastrophic weather events, other natural disasters, terrorism, war or military hostilities, loss of internet, broadband or Wi-Fi connectivity or services, unexpected scarcity or unavailability of parts or components, inability of carriers to make scheduled deliveries, labor stoppage, strikes, riots, or civil commotion, freight or other embargoes.

8.5 **Entire Agreement.** This Agreement and the Client Service Orders constitute the entire agreement between the Parties concerning the subject matter hereof and supersede all written or oral prior agreements or understandings. All Client Service Orders are incorporated into this Agreement as if set forth herein in full. In the event of any conflicts between the terms of this Agreement and the terms of any Client Service Order, the terms of this Agreement shall control unless expressly stated otherwise.



## 9. TERMINATION.

9.1 **Termination for Cause.** Either Party may terminate this Agreement for cause if the other Party materially breaches this Agreement and fails to cure or remedy the breach within 30 days of receiving written notice of the breach from the non-breaching Party. Neither Party shall have the opportunity to cure a breach of this Agreement if the other Party reasonably concludes that the breach, by its nature, cannot be cured (e.g. a wrongful disclosure of Confidential Information). If the Agreement is terminated for cause, any Client Service Order in effect will also terminate.

9.2 **Obligations of Client on Termination.** Upon any termination of this Agreement, Client will remit to Kingsley all unpaid Fees and expenses through the date of termination for each Client Service Order. If Client terminates early other than for cause as described in Section 9.1, Client may be required to pay an additional fee to cover the actual cost of the work completed up to the point of termination, if invoiced fees do not already cover the cost, and to reimburse Kingsley for any expenses already incurred by Kingsley in connection with Services already requested by Client. In addition, upon the conclusion of any Service, Client shall promptly remit all Fees invoiced by Kingsley with respect to such Services pursuant to terms in each Client Service Order. Should Client select a multi-year engagement and not fulfill the entire term as described in each Client Service Order, Client will be responsible for paying any discounts to Kingsley.

9.3 **Data Access Upon Termination.** Upon any termination of this agreement, Kingsley will discontinue Client's access to data, including but not limited to, the Kingsley Portal, two weeks post the date of termination. If requested by Client, Kingsley will provide an export of all data relevant to Client engagement.

## 10. INDEMNIFICATION, LIMITATION OF LIABILITY.

10.1 **Limitation of Liability.** Neither Party shall be liable for any loss of business, potential business, revenues or profits, or for any consequential, incidental, punitive or similar damages for any cause whatsoever, regardless of the form of action, whether in contract or in tort, including negligence, even if the Party has been advised of the possibility of these types of damages. In no event will Kingsley's aggregate liability under this Agreement exceed the amount actually paid to Kingsley by Client under this Agreement during the 12 months immediately preceding the date on which the claim or liability or Loss accrued. The limitations of liability in this Section 10.2 shall not apply to a Party's indemnification obligations or a Party's breach of its confidentiality obligations.

## 11. GOVERNING LAW AND VENUE.

11.1 **Attorney Fees and Remedies.** The prevailing Party in any legal action arising in connection with this Agreement will be entitled to recover its reasonable attorney fees (including, if applicable, charges for in-house counsel), court costs and other legal expenses from the other Party. Except as is otherwise expressly provided in this Agreement, the Parties' remedies either under this Agreement or applicable law are cumulative.

**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 18 day of February, 2020

CONTRACTOR  
Authorized  
Signature

Kingsley Associates

Lisa L. Green

Title

Lisa Green  
Vice President  
Kingsley Associates

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

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

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

Contractor's Name:

Kingsley Associates

Signature of Officer or  
Authorized  
Representative:

*Lisa L. Green*

Date: 5/8/20

Printed Name:

Lisa L. Green

Title

Vice President