



## **CONTRACT FOR CONSULTING SERVICES ON THE CULTURAL ARTS FUNDING PROGRAM**

BETWEEN THE  
**CITY OF AUSTIN**  
AND  
**MJR PARTNERS**

This Contract for Consulting Services on the Cultural Arts Funding Program ("Contract") is entered into by and between the City of Austin ("City"), a home-rule municipality incorporated in the State of Texas, and MJR Partners ("Consultant"), located at 1712 Rockridge Drive, Wichita Falls, Texas 76310.

### **Article 1. Introduction**

#### **1.1. Background,**

The Cultural Arts Division ("Division") of the Economic Development Department of the City of Austin manages funding for programs to provide financial support to organizations and individuals through a competitive application and review process. The majority of the funds for cultural arts services contracts are derived from a portion of the revenues from the City's Hotel Occupancy Tax. The Division is facing pressure on the available funds and process governing distribution of Cultural Funding due to a flattening of Hotel Occupancy Tax funding, combined with a record-high number of successful applicants. Expanding population combined with successful program retention and outreach has resulted in increasing community participation in the program, but program funds are not increasing in proportion to this participation, which has prompted broader and deeper cuts to organizational funding for the first time in many years. Paired with the goal of increasing and sustaining cultural equity, these conditions present both challenges and opportunities to re-examine the current funding process, model, goals, structure, operation, and priorities, with stakeholder engagement.

#### **1.2. Purpose**

The Division seeks to engage the Consultant to guide review and evaluation of its Cultural Funding Program, including examination of program history, operations, structure, peer panel and matrix processes, and participation; engage a broad and inclusive community of stakeholders in conversation about program experience, goals and priorities; and prepare a report on findings, with corresponding recommendations for future program structure and operation. Ultimately this exercise should help make changes to the program that better align with the Austin Strategic Direction 2023, resulting in a higher degree of effectiveness in grant-making and also advance the Division's commitment to fair access in the distribution of resources and opportunities.

### **1.3. Definitions**

The following terms, as used in this Contract, have the meanings identified below. Terms not defined below will have their ordinary and customary meanings, as defined in Meriam-Webster's Dictionary.

- (1) "Approval" means prior, written authorization from the City for the Consultant to take an action under this Contract.
- (2) "Consultant" means MJR Partners.
- (3) "City" means the City of Austin, acting by and through its duly authorized City Manager or designee.
- (4) "Contract" means this contractual document for Consulting Services for the Cultural Funding Program between the City and the Consultant, including any and all attachments, exhibits, and amendments.
- (5) "Contract Price" means the total compensation, identified in Section 3.1, to be paid to the Consultant pursuant to this Contract.
- (6) "Effective Date" means the date on which this Contract becomes fully effective as between the Parties, and is the date on which the last Party executes this Contract.
- (7) "Notice" means the prior, written announcement of a Party's intention to take an action, or readiness to take action, authorized or required by the Contract.
- (8) "Party" means either the City or the Consultant, and "Parties" means the City and the Consultant, collectively.

### **1.4. Term of the Contract**

The term of this Contract shall begin on the Effective Date and end on April 1, 2020, unless terminated earlier in accordance with the requirements of this Contract.

## **Article 2. Consultant's Responsibilities and Commitments**

### **2.1. Consulting Services**

- (i) The Consultant shall evaluate the Cultural Arts Division's Cultural Funding program based on the following:
  - (1) The alignment with the indicators and metrics of the City's strategic priority "Culture and Lifelong Learning," featured in the Austin Strategic Direction 2023.
  - (2) The history of the Cultural Funding Program, including past consultant recommendations, community engagement components, and program changes.
  - (3) The foundation and parameters of the funding review and allocation process (including the application questions, peer process, funding matrix, Arts Commission and staff roles, appeals, etc.).
  - (4) The Arts Commission's goal of creating a funding plan that supports equitable distribution, reflects fiscal responsibility, and provides a plan for the future.
  - (5) The Arts Commission Responsiveness Working Group's four pillars:
    - (A) Cultivate Leadership – develop current and emerging leaders;
    - (B) Ensure and Encourage Equity – reflect the growing, diverse population of Austin;
    - (C) Foster Collaboration – contribute to Austin's robust arts ecosystem; and
    - (D) Inspire Evolution – achieve advancement through innovation and resiliency.
  - (6) The Arts Commission Funding Working Group's guiding principles:
    - (A) Consistency with CAD Funding Program Guidelines;
    - (B) Consistency with and respect for the integrity of the peer panel process and score;
    - (C) Consistency with matrix parameters used in the past; and
    - (D) That the funding process plan be sound and defensible.

(7) The Cultural Arts Division's mission and goals:

(A) The City envisions a culturally vibrant city where:

- (i) Arts, culture and creativity are an integral component of a vibrant community and a thriving economy;
- (ii) Artists and cultural/creative organizations across all disciplines have the opportunity to engage in meaningful work and provide a robust selection of activities to a wide audience including residents, visitors and tourists; and
- (iii) A creative environment cultivates and attracts a diverse workforce and businesses that value the arts, culture and creativity.

(B) Goals for Allocation of Funds:

- (i) Support arts, culture, and creativity as an integral component of a vibrant community and a thriving economy:
  - Contribute to cultural tourism development
  - Foster sustainable growth and development of the creative community
  - Build and diversify audiences through research and marketing strategies
  - Attract the workforce and businesses that value a creative community
- (ii) Preserve the unique character and cultural heritage of Austin while encouraging artistic and cultural excellence and innovation:
  - Provide opportunities for active participation in Austin's cultural life
  - Increase and diversify the production of arts and cultural activities
  - Enhance the vitality of emerging and established culturally-diverse arts organizations
  - Promote the value of arts, culture, and creativity



- (iii) Support artists and arts organizations of all disciplines as they engage in meaningful work:
  - Encourage excellence, innovation, and collaboration in the creation and presentation of artistic and cultural work
  - Support artists and organizations in developing new programs and activities
  - Encourage partnerships and creative collaborations within the community

(8) Formal and informal feedback from a variety of stakeholders (including City Council offices, Arts Commissioners and Commissioners from related Board or Commissions, City staff, and a diverse reflection of fiscal sponsors, cultural contractors, and applicants) regarding program access, effectiveness, operation, and equity.

(9) Landscape of Austin's arts ecosystem, including examination of demographics of all types, budget sizes, disciplines, commitment to equity, etc.

(10) Comparisons/benchmarking with other cities' program.

(11) Framing within local, state, and national arts grant-making contexts and trends.

(12) Capacity of an awardee to develop a sustainable business model.

## **2.2. Deliverables**

(a) The Consultant shall provide to the City the following deliverables:

- (1) Perform a Strengths, Weaknesses, Opportunities, and Threats (SWOT) assessment, or substantially similar assessment, of current funding program operations;
- (2) Identify any needs for the Division to conduct baseline surveys or provide relevant reports/data to inform design;
- (3) Provide proposed design of year-long program evaluation, engagement, and recommendation process, including key milestones, community engagement opportunities, outcomes, and recommendations for program changes. The design must include identifying nature and timing of proposed staff- and/or Consultant-

facilitated dialogue and activities with stakeholders or the community;

- (4) Provide relevant best practices information from a national perspective, including any comparison/contrasts with other cultural funding programs, cultural equity policymaking and implementation, and national trends in arts grant-making;
  - (5) Submit a draft report of the Consultant's review and evaluation process, findings, analysis, conclusions, and recommendations for program improvements. This draft report shall be submitted to Division staff for initial review and feedback
  - (6) Prepare and present a written final report of the review and evaluation process, findings, analysis, conclusions, and recommendations for program improvements.
- (b) The Consultant shall participate in public and individual stakeholder meetings to share and explain the final report with community and City leaders.
  - (c) The Consultant shall present the topic of cultural equity to public or small meeting audiences and participate in program effectiveness audit meetings/phone calls, as agreed.

### **Article 3. Payment to Consultant**

#### **3.1. Contract Amount**

The Contract Price for this Contract is \$45,000.

#### **3.2. Full Consideration**

In exchange and consideration for the Consultant undertaking the obligations in this Contract, the City agrees to pay the Consultant the Contract Price. The Consultant agrees that the Contract Price is the only compensation owed to the Consultant under this Contract, and agrees to be solely responsible for all costs related to the work contemplated by this Contract, including travel, mailing, shipping, labor, insurance, permitting and licensing, and any other costs incurred by the Consultant in fulfilling all obligations under this Contract.

#### **3.3. Payment Schedule**

- (a) Payment of the Contract Price will be in the following percentages and at the following payment milestones:
  - Phase 1: Preparation for Planning (2 months) – \$6000
    - Confirmation of scope of project and outcomes

- Review of background information and program history, current program operations and funding priorities/philosophy
- Develop list of stakeholders and engagement opportunities
- Interviews with CAD staff and Commissioners
- Phase 2: Discovery and Engagement (4 months) - \$12,000
  - Follow-up interviews with CAD staff and Commissioners
  - Key stakeholder interviews and/or focus groups
  - Research on other model programs and best practices
  - Issue charrettes related to peer panel, funding matrix and contractor experience
  - Equity audit of current policy, language and practices
- Phase 3: Imagining and Articulating Model for the Future - \$9,000
  - Analysis and synthesis of stakeholder and staff/Commission input
  - Formulating program aspirations, including goals, vision, change theory and logic model
  - Formulating recommendations and strategies
  - Drafting of plan for review by staff
  - Workshops with CAD and Commission to test plan, findings, and recommendations
  - Revising and incorporating feedback
  - Developing implementation of strategies, timelines, responsibilities
- Phase 4: Transition to Implementation - \$6000
  - Review of final recommendations
  - Presentations to staff, Commission, and community as appropriate
- Phase 5: Final Report and Closeout: \$3500
  - Prepare and present final report in publishable formats
  - Evaluate process and provide feedback to staff
  - Closeout on any remaining project work
- (b) Pursuant to City Code §2-8-3, the City may withhold payment otherwise due under this Contract in order to offset any debt owed by the Consultant to the City, including but not limited to any tax debt owed by the Consultant to the City pursuant to Article VIII, Section 1 of the Austin City Charter. The Consultant acknowledges notice of this City ordinance and Charter provision.

### **3.4. Tax-Exempt Status**

The Consultant acknowledges that the City is a tax exempt organization, and that no state or local sales taxes, and no federal excise tax, will be due on the deliverables of this Contract.



## **Article 4. Contract Management**

### **4.1. Amendment in Writing**

This Contract may be modified only by a writing properly executed by each of the Parties. Neither any representation or promise made after the execution of this Contract, nor any modification or amendment of this Contract, shall be binding on the Parties unless made in writing and properly executed by each of the Parties.

### **4.2. Subcontracting by the Consultant**

- (a) The Consultant may subcontract portions of the services to be provided under this Contract, at the Consultant's sole expense, subject to the following limitations:
  - (1) The Consultant is responsible for all work performed by subcontractors.
  - (2) The Consultant shall remain fully responsible to the City for the actions of any subcontractors engaged by the Consultant.
  - (3) Any subcontract must be in writing, must attach this Contract as an exhibit, and must acknowledge the supremacy of this Contract in the case of any conflict between the two. All subcontractors shall remain subject to the terms of this Contract at all times.
  - (4) Prior to the Consultant entering into a subcontract, the Consultant shall give Notice to the City, identifying the proposed subcontractor, the proposed scope(s) of work, and the dollar amount of the subcontract. The City may reject a subcontractor proposed by the Consultant. If the City rejects a proposed subcontractor, the Consultant may not use that subcontractor on this Contract.
- (b) In an effort to further stimulate and positively impact the local economy, the Consultant shall make reasonable efforts, which the Consultant shall document on request by the City, to:
  - (1) Provide minority-owned, women-owned, and local small businesses an equal opportunity to participate as suppliers for materials and labor services acquired or used by the Consultant for this Contract.
  - (2) Recruit residents of the Austin metropolitan area for available subcontracting opportunities.

### **4.3. Termination for Cause**

- (a) In the event of default by a Party, the other Party shall have the right to terminate this Contract for cause, by Notice delivered by certified mail to



the Party in default. Unless the Party giving notice specifies a different time in the Notice, the Contract is terminated 30 calendar days after the date of the Notice. During this time period, the Party alleged to be in default may cure the default or provide evidence sufficient to prove to the other Party's reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the Party alleging the default. Each Party's rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

- (b) The City may also terminate this Contract for cause if the Consultant, including any agent or representative of the Consultant, provides or offers to provide any gratuities in the form of entertainment, gifts, or similar benefits to any City official or employee in order to secure favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performance of this Contract. Termination for cause under this paragraph will be in the manner set out in Subsection (a), above, except that the Consultant shall not be entitled to any right to cure. If the City terminates this Contract under this paragraph, the City shall, in addition to all other rights and remedies, be entitled to recover from the Consultant an amount equal to the cost incurred by the Consultant or the agent or representative of the Consultant in providing such gratuities.

#### **4.4. Termination for Convenience**

The City may terminate this Contract for convenience, with 30 calendar days' Notice to the other Party. If the City terminates this Contract for convenience, the Consultant shall immediately stop performance under this Contract (unless the Notice directs otherwise) and deliver all work product to the City within 10 business days. If the City approves reimbursements for work performed not covered by prior payments to the Consultant, the City will reimburse the Consultant for the work within 30 calendar days of the Consultant's submission of invoices and documentation evidencing the work.

#### **4.5. Funding Out and Offset for Taxes Owed**

- (a) The Consultant acknowledges awareness of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to the City for taxes, and of City Code §2-8-3, concerning the right of the City to offset indebtedness owed the City.
- (b) The Consultant acknowledges that the City's payment obligations to the Consultant are payable only from funds appropriated or available for the purpose of this Contract. If the City does not appropriate funds for this Contract, or if there are no other lawfully available funds for this Contract, this Contract is void. The City shall provide the Consultant with Notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under this Contract, or of the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Contract.

#### 4.6. Force Majeure

- (a) Each Party agrees to excuse the failure of the other Party to perform its obligations under this Contract to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Contract, but only if and to the extent the event or circumstance is not within the control of the Party seeking to have its performance obligation excused and which the Party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a Party's cost but not its ability to perform.
- (b) The Party invoking Force Majeure shall give timely and adequate Notice to the other Party, by e-mail or orally but confirmed promptly in writing, and shall use due diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. In the event a Party's performance of an obligation under this Contract is delayed due to a Force Majeure event, then the time for completion of the Party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not last more than 90 days. If an event of Force Majeure affecting the Consultant's performance continues for more than 90 days, the City shall have the right to terminate this Contract upon Notice to the Consultant. The Contract shall terminate immediately upon receipt of such Notice.

#### 4.7. Notices

- (a) Unless explicitly stated elsewhere in this Contract, all Notices must be given in the manner set out in this Section in order to be effective.
- (b) Any Notice required or allowed to be given or to be served in connection with this Contract will be deemed delivered and received on the earlier of the date actually received or a date that is:
  - (1) Three calendar days after being deposited in the United States mail, if sent via certified mail, properly addressed and with postage prepaid;  
or
  - (2) The date delivery is originally scheduled to occur, if sent via a reputable overnight courier service.
- (c) Notice to each Party must be given as follows:

The City  
Meghan Wells

The Consultant  
Margie Reese

Cultural Arts Division Manager  
Economic Development Dept.  
City of Austin  
PO Box 1088  
Austin TX 78767

Principal, MJR Partners  
1712 Rockridge Drive  
Wichita Falls, TX 76310

with copies to:

Sylnovia Holt-Rabb  
Interim Deputy Director  
Economic Development Dept.  
City of Austin  
PO Box 1088  
Austin TX 78767

City of Austin Law Dept.  
ATTN: City Attorney  
PO Box 1088  
Austin TX 78767

- (d) The Parties will each have the right to change their respective addresses for Notice purposes, and will have the right to specify as its address any other address within the United States of America by giving the other Party at least five days' Notice.
- (e) The Consultant is responsible for giving prompt Notice to the City of any changes to the Consultant's address(es).

#### **4.8. Right to Assurance**

When one Party, in good faith, has reason to question the other Party's intent to perform its obligations under this Contract, that Party may make demand on the other Party for written assurance of the intent to perform. The Party who is asked for assurance has 10 business days to provide Notice of its written assurance of intent to perform. If the Party fails to provide the assurance, the demanding Party may treat this failure as an anticipatory repudiation of the Contract and terminate the Contract for cause.

### **Article 5. Terms and Conditions**

#### **5.1. Equal Opportunity**

- (a) For the duration of this Contract, including any maintenance or repair provided by the Consultant under Section **Error! Reference source not found.**, the Consultant shall:
  - (i) Take no action to discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation,



gender identity, national origin, age, or disability, including but not limited to actions taken to employ, promote, demote, transfer, recruit, or pay or otherwise compensate, or select for training.

- (2) Take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
  - (3) Post in conspicuous places, available to all employees and applicants for employment, any notices provided by the City regarding equal opportunity.
  - (4) State, in all solicitations or advertisements for employment placed by or on behalf of the Consultant, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
  - (5) Furnish any information and reports requested by the City, and allow the City access to its books, records, and accounts for purposes of investigation to ascertain compliance with this Section and any applicable rules and regulations.
- (b) If the Consultant fails to comply with this Section, the City may terminate this Contract for cause, or may suspend this Contract in whole or in part, and the Consultant may be debarred from further contracts with the City.

#### **5.2. Right to Audit**

- (a) The Consultant 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 of the Consultant's records related to this Contract. The Consultant shall retain all such records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Consultant are resolved, whichever is longer. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.
- (b) The Consultant shall include the requirements of Subsection (a), above, in all subcontractor agreements entered into in connection with this Contract.

#### **5.3. Indemnification**

- (a) THE CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE "INDEMNIFIED PARTIES") AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND



CAUSES OF ACTIONS ("CLAIMS"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY OUT OF (A) A BREACH OF THIS CONTRACT OR VIOLATION OF LAW BY THE CONSULTANT AND THE CONSULTANT'S EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS (THE "CONSULTANT PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE CONSULTANT PARTIES IN THIS CONTRACT, IN THE CONSULTANT'S PROPOSAL, OR THE FORMATION OF THIS CONTRACT, (D) THE INTELLECTUAL PROPERTY INVOLVED IN ANY DELIVERABLES SUBMITTED TO THE CITY, (D) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE CONSULTANT PARTIES IN CONNECTION WITH THIS CONTRACT. CLAIMS TO BE INDEMNIFIED INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. **THE CONSULTANT'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED, IN PART, BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.**

- (b) The City shall give the Consultant Notice of any Claim asserted against an Indemnified Party. The Consultant shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving the Consultant of any obligations in this Contract. In no event shall the Consultant admit liability on the part of an Indemnified Party without the prior, written consent of the City Attorney.

#### **5.4. Independent Contractor**

This Contract shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. The City and the Consultant are independent contractors. The Consultant agrees and understands that this Contract does not grant any rights or privileges established for employees of the City.

#### **5.5. Competent, Orderly Workers**

The Consultant and any subcontractors of the Consultant shall only employ orderly and competent workers, skilled in the performance of the services that they will perform under the Contract. The Consultant, the Consultant's employees and subcontractors, and subcontractors' employees may not: (1) illegally use or possess any firearms, or (2) use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, while on the job or on City's property. The workers may not be intoxicated or under the influence of alcohol or drugs on the job. If the City notifies the Consultant that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated City rules, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the

Consultant shall immediately remove the worker and the worker may not be employed again for work on this Contract without the City's written consent.

**5.6. Survival of Obligations**

All provisions of this Contract that impose continuing obligations on the Parties, including but not limited to warranty, indemnification, limitation of liability, and keeping addresses for Notice current, shall survive the expiration or termination of this Contract.

**5.7. Election of Remedies; No Waiver**

Neither the exercise of nor the failure to exercise a right or to give notice of a claim under this Contract shall constitute an election or waiver of remedies or limit a Party in any manner in the enforcement of any other remedies that may be available to the Party, whether at law or in equity.

**5.8. Jurisdiction and Venue**

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

**5.9. Severability**

If a court of competent jurisdiction determines that a term or provision of this Contract is void or unenforceable, the remainder of this Contract remains effective to the extent permitted by law.

**5.10. Mandatory Anti-Israel Boycott**

(a) Pursuant to §2270.002, Texas Government Code, the City is prohibited from entering a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract.

(1) "Boycotting Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business with Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(2) A "company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.



- (b) Pursuant to this statutory requirement, the Consultant provides this written verification that, if the Consultant is a company as defined above, it does not boycott Israel and will not boycott Israel for the term of this Contract.
- (c) The Consultant's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

**5.11. Execution in Counterparts**

This Contract may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same Contract.

**5.12. Mutual Drafting**

This Contract shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against the drafter shall not be applicable to this Contract.

**5.13. Complete Agreement**

This Contract constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, and representations concerning its subject matter. This Contract includes the following exhibits, which are incorporated into this Contract by reference:

CITY OF AUSTIN

BY: *Sylvia Holtz*

NAME: *Sylvia Holtz*

TITLE: *Interim Deputy Director*

DATE: *3-13-2019*

APPROVED AS TO FORM:

CONSULTANT

BY: *Margie J. Reese*

NAME: *Margie J. Reese*

TITLE: *Principal Partner*

DATE: *3-11-2019*

R. Ryott 3/13/19  
ASSISTANT CITY ATTORNEY



**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 5<sup>th</sup> day of February, 2019

CONTRACTOR  
Authorized  
Signature

Title

MSR Partners  
Maraji Reese  
Owner

**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: Margie J. Reese dba MSR Partners

Signature of Officer or  
Authorized  
Representative: Margie J. Reese Date: 1-5-2019

Printed Name: Margie J. Reese

Title: Principal