

**Contract between**  
**The City of Austin and RSM US, LLP**  
**for**  
**Compliance Review Services for Economic Development Agreements**  
**MA 5500 \_\_\_\_\_**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and RSM US, LLP ("Contractor"), having offices at 811 Barton Springs, Suite 550, Austin, TX 78704.

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

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.
- 1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Joel Perez, Phone: (512) 476-0717, Email Address: [Joel.Perez@rsmus.com](mailto:Joel.Perez@rsmus.com). The City's Contract Manager for the engagement shall be Terry Franz, Economic Development Department (EDD), Phone: (512) 974-7871, Email Address: [Terry.Franz@austintexas.gov](mailto:Terry.Franz@austintexas.gov). The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor 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.
- 2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform

the tasks specified in the RSM US, LLP, Scope of Services dated April 1, 2021, attached to this Contract as Exhibit A.

### SECTION 3. COMPENSATION

- 3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$120,000 per year for all fees and expenses. The total amount shall not exceed \$600,000.

3.2 **Invoices.**

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

Department	City of Austin
Attn:	Economic Development Department
Address	Terry Franz
City, State, Zip Code	301 W. 2 <sup>nd</sup> Street, 2 <sup>nd</sup> Floor
	Austin, TX 78701

- 3.2.2 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.2.3 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 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 calendar days after the grounds for withholding payment have been resolved.
- 3.3.3 The City may withhold or off set 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.

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

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

- 3.5.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled. The waiver shall solely apply to additional fee requests after final payment for the services provided under the terms of this Contract.

## SECTION 4. TERM AND TERMINATION

- 4.1 **Term of Contract.** The Contract shall be in effect beginning March 7, 2022 and continuing through March 6, 2027.
- 4.1.1 Upon expiration of the term, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).
- 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 calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten 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 months, however, it may be for a longer period, not to exceed one 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 years and any Offer submitted by the Contractor may be disqualified for up to five 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 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 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 Economic Development Department  
Attn: Terry Franz  
P. O. Box 1088  
Austin, Texas 78767
- 5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that

policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

- 5.1.1.9 If insurance policies are not written for amounts specified in 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 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.
- 5.1.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 5.1.1.12 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.
- 5.1.1.13 The Contractor shall endeavor to provide the City 30 calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- 5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
  - 5.1.2.1 **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 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.

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

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

5.1.2.2.2 30 calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

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

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 30 calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.** The Contractor shall provide coverage, at a minimum limit of \$500,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

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

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

## **5.2 Equal Opportunity.**

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

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

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 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 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City 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.
- 5.8 **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 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
- 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. 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 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

### **7.2 Workforce.**

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

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

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

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

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

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

7.4 **Significant Event.** The Contractor shall immediately notify the 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:

- 7.4.1 disposal of major assets;
- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 known or anticipated sale, merger, or acquisition;
- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

## **7.5 Audits and Records.**

- 7.5.1 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 or examine any and all records of the Contractor related to the performance under this Contract. City may reproduce the aforementioned records when compelled by a court of law or due to required discovery for litigation. Contractor does not waive any rights to file documents in connection with a litigation in order to prevent disclosure. The Contractor shall retain all such records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- 7.5.2 Records Retention:
  - 7.5.2.1 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.
  - 7.5.2.2 All Records are the property of the City. Notwithstanding, it is understood that at all times Contractor's workpapers, as defined by industry standards, shall remain the sole property of Contractor and are not subject to the terms of this section. 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:

7.5.2.2.1 requested by a director or an authorized City employee; or

7.5.2.2.2 the contract is completed or terminated.

7.5.3 The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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

## 7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "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:

7.7.1.1.1 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;

7.7.1.1.2 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),

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

7.7.2 **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.**

- 7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten 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.
- 7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:
- |                    |                               |
|--------------------|-------------------------------|
| To the City:       | To the Contractor:            |
| City of Austin EDD | RSM US, LLP                   |
| ATTN: Terry Franz  | ATTN: Joel Perez              |
| P O Box 1088       | 811 Barton Springs, Suite 550 |
| Austin, TX 78767   | Austin, TX 78704              |
- 7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information. Notwithstanding, it is understood that Contractor subscribes to a program of peer review for maintenance of quality control as required by its profession. As part of this program, engagement files may be selected for review by other professionals under strict rules of confidentiality and non-disclosure agreement. Acceptance constitutes agreement for disclosure under peer review programs, subject to Contractor obtaining the written

consent of the company for which the engagement files pertain to. Contractor shall provide reasonable advanced written notice to the City of the selection of an engagement file which is the subject of this Agreement and provide confirmation of the company's consent to release of the information.

- 7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City 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.
- 7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City 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.
- 7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.16 **Assignment-Delegation.** The Contract shall be binding upon and 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.
- 7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in

whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only 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.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the 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.



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

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

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

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

**7.22 Subcontractors.**

7.22.1 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.

7.22.2 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:

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

- 7.22.2.2 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;
  - 7.22.2.3 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;
  - 7.22.2.4 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
  - 7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 7.22.3 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.
- 7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten calendar days after receipt of payment from the City.
- 7.23 **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.
- 7.24 **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.
- 7.25 **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
Juneteenth	June 19
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.

- 7.26 **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.
- 7.27 **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.

**Incorporation of Documents.** Attachment A - RSM US, LLP, Scope of Services dated September 20, 2016, Attachment B - RSM US, LLP, Statement of Qualifications dated September 14, 2016, and Attachment C - City of Austin Standard Purchase Definitions are hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text.

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

**RSM US, LLP**

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

Name: Joel Perez

Title: Partner

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

**CITY OF AUSTIN**

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

Name: Sylvia Holt-Rabb

Title: Acting Director, EDD

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

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Ron Pigott  
Assistant City Attorney

**List of Exhibits**

Exhibit A      RSM US, LLP, Scope of Services dated April 1, 2021  
Exhibit B      RSM US, LLP, Statement of Qualifications dated April 1, 2021  
Exhibit C      City of Austin Standard Purchase Definitions

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**Exhibit A**  
**RSM US, LLP Scope of Services**  
**April 1, 2021**

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**Purpose**

The purpose of this professional services agreement is to provide independent third party reviews to verify compliance with the terms and requirements in economic development incentive agreements and agreements related to participation in the Texas Major Events Reimbursement Program and/or the Texas Events Trust Fund. In accordance with Ordinance 20090312-005, the City Council is committed to making the administration of City of Austin economic development agreements a transparent process, and requires that compliance reviews for economic development agreements be verified by an independent third party ("Contractor") and the results of that independent review be made available for public inspection.

**Qualifications**

Each third party review will consist of the City and the Contractor performing agreed-upon procedures, performed in accordance with attestation standards established by the American Institute of Certified Public Accountants, and agreed upon by the City and the Contractor, to determine whether the party to an economic development agreement with the City (Company) complied with each applicable requirement in their agreement.

**Schedule and Term**

The City of Austin currently has Chapter 380 agreements with eight Companies. Chapter 380 agreement terms range from five-years to twenty years. Companies must meet performance requirements during each year of the term in order to be eligible for a Chapter 380 payment for that year. The number of reviews to be conducted each year is expected to remain relatively stable at approximately seven to twelve reviews per year.

Reports of the Companies' performance during the previous year are typically due between January and March. The City and the Contractor then determine whether each Company has complied with the terms of their agreement. Provided a Company is found to be compliant, that Company's Chapter 380 payment is processed in October.

To the extent that Companies are prompt in providing reports to the City, scheduling review meetings and providing information needed to verify compliance, the City and the Contractor shall make every effort to complete third party reviews so that Chapter 380 payments may be made timely, usually by October 31.

**Method**

Since much of the material that the City and the Contractor evaluate in order to determine each Company's compliance is considered proprietary by the Companies, reviews are conducted at the Companies' sites, when possible. In order to minimize disruption to the Companies, the City and the Contractor conduct the on-site portions of each review concurrently. Each third party review is specific to the agreement which identifies the obligations of the Company and the City.

Once the City receives a Company's Certificate of Compliance, in January, February or March, the City will evaluate the report, then coordinate with the Company and the Contractor to schedule a meeting at the Company's site. The City will provide to the Company and the Contractor a detailed agenda for the meeting, generally describing the procedures to be performed.

**Exhibit A**  
**RSM US, LLP Scope of Services**  
**April 1, 2021**

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Each third party review will consist of the City and the Contractor performing the procedures, agreed upon by the City and the Contractor, to determine whether the Company complied with each applicable requirement in their agreement with the City.

While much of the material that the City and the Contractor evaluate in order to determine compliance is considered proprietary by the Companies, the Contractor's reports include only general information and are made available to the public. Each report will be written in a way that clearly communicates whether or not the Company complied with each requirement. No report will be finalized until it is accepted by the City.

**Travis County Participation**

Under an interlocal agreement between the City and Travis County, the City and County collaborate to monitor "Joint Projects". A Joint Project is one that has a Chapter 380 agreement with the City and a concurrent Chapter 381 agreement with the County. Travis County representatives will participate on reviews of Joint Projects.

**Cost**

The actual cost of each review will depend on the review procedures required and the length of time needed to apply them. The cost anticipated for the five-year agreement is \$600,000, or \$120,000 per year during the five-year term..

# STATEMENT OF QUALIFICATIONS FOR CHAPTER 380 ORDINANCE THIRD-PARTY REVIEW

CITY OF AUSTIN ECONOMIC  
DEVELOPMENT DEPARTMENT

April 1, 2021





April 1, 2021

Ms. Sylnovia Holt-Rabb  
Acting Director  
City of Austin Economic Development Department  
301 West 2nd Street  
Austin, Texas 78701

**RSM US LLP**

811 Barton Springs Rd  
Suite 500  
Austin, TX 78704  
T 512 476 0717  
F 512 476 0462  
[www.rsmus.com](http://www.rsmus.com)

Dear Ms. Holt-Rabb:

RSM US LLP (RSM) is pleased to submit this statement of qualifications to provide independent third-party agreed-upon procedures that the City of Austin can use to verify compliance with the terms and requirements in economic development incentive agreements and/or agreements related to participation in the Texas Major Events Reimbursement Program and/or the Texas Events Trust Fund for the City of Austin Economic Development Department (the COA EDD).

The COA EDD needs to work with a respected national firm that you will not outgrow. You also deserve a professional services firm that is committed to serving you with its top people. As the largest U.S. provider of audit, tax and consulting services focused on the middle market, RSM is honored to serve cities like the City of Austin, and we look forward to treating you as a valued client.

We are confident RSM is the right choice to deliver upon your expectations based on the following factors. To facilitate your review, there are several key points we wish to emphasize regarding our qualifications:

- We have over 10 years of experience with the COA EDD economic development incentive agreements and agreements related to participation in the Texas Major Events Reimbursement Program and the Texas Events Trust Fund.
- We have a thorough understanding of and experience with the reporting requirements required by City Council Resolution 20071206-049 and Ordinance 20090312-005.
- We understand the qualifications are for engagements to be performed in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA). Engagements and the procedures to be performed will be agreed upon by the COA EDD and RSM.
- We understand the timeline for the completion of the attestation engagements and are committed to complying with the dates required by the COA EDD. We have a strong commitment to client service and will provide the COA EDD with reliable professional services throughout the year.

We appreciate this opportunity to present our statement of qualifications to the COA EDD. We have the capability to perform all work required in a professional, complete and timely manner. We believe that we are the best qualified firm due to our experience with governmental entities involved in economic development agreements and the expertise and independence of our team.

**THE POWER OF BEING UNDERSTOOD**  
AUDIT | TAX | CONSULTING



Ms. Sylnovia Holt-Rabb  
Assistant Director  
City of Austin Economic Development Department  
April 1, 2021  
Page 2

Your RSM engagement team looks forward to continuing our long-term relationship with the COA EDD and delivering value for your organization now and well into the future.

Once you have had the opportunity to review this response, we would be pleased to discuss your needs in greater detail or make a presentation to your team. In the meantime, please feel free to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Perez, Jr.", with a stylized flourish at the end.

Joel Perez, Jr.  
Partner, Audit Services  
210 253 1611

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## FIRM ORGANIZATION

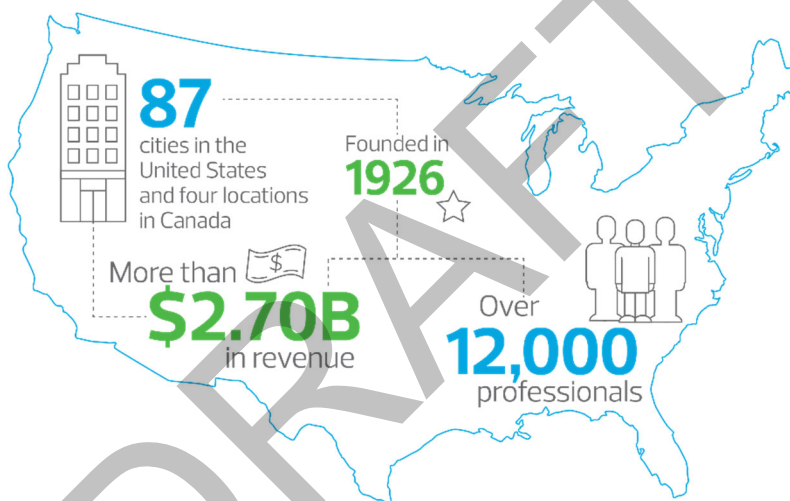
<b>Name and address</b>	RSM US LLP 811 Barton Springs Rd. Suite 500 Austin, Texas 78704 512 476 0717
<b>Type of business entity</b>	Limited liability partnership
<b>State of incorporation or organization</b>	Iowa
<b>Location of office providing service</b>	811 Barton Springs Rd. Suite 500 Austin, Texas 78704
<b>Principal contact person</b>	Joel Perez, Jr. Partner, Audit Services 811 Barton Springs Rd. Suite 500 Austin, Texas 78704 Business phone: 210 253 1611 Business fax: 210 826 8606 joel.perez@rsmus.com
<b>Federal employer identification number</b>	42-0714325
<b>Texas franchise taxpayer number</b>	32036933151
<b>Texas State Board of Public Accountancy license number</b>	P05638

## EXPERIENCE

### About RSM

RSM's purpose is to deliver **the power of being understood®** to our clients, colleagues and communities through world class audit, tax and consulting services focused on middle market businesses. The clients we serve are the engine of global commerce and economic growth, and we are focused on developing leading professionals and services to meet their evolving needs in today's ever-changing business environment.

Founded in 1926, RSM has been a leading provider of audit, tax and consulting services for 95 years, with nearly 12,000 people in 87 U.S. cities and four locations in Canada. RSM is a licensed CPA firm and the U.S. member of RSM International, a global network of independent audit, tax and consulting firms with over 48,000 people in more than 120 countries. RSM uses its deep understanding of the needs and aspirations of clients to help them succeed.



RSM welcomes the opportunity to support COA EDD's goals and status as a trusted community partner through a robust audit of its established financial policies and procedures. In working with RSM, you will benefit from our substantial public sector practices and national firm resources committed to monitoring public sector developments.

### Services offered by RSM

As a national firm, RSM brings credentials in audit, tax and consulting services. The diversity of our client base provides our teams with broad insight into business issues, with the governmental practice focusing on specific topics relevant to your company. Our teams combine the broad view with industry insights to enhance the value of our services.

Our lines of business include:

Audit	Tax	Consulting
<ul style="list-style-type: none"> <li>• Financial statement audits</li> <li>• SEC and public company services</li> <li>• Employee benefit plan audits</li> <li>• Service organization control reporting</li> <li>• Reviews and compilations</li> <li>• Current accounting and reporting developments advisory services</li> <li>• Global statutory audit services</li> </ul>	<ul style="list-style-type: none"> <li>• ASC 740 (f/k/a FIN 48 and FAS109) services</li> <li>• Accounting methods and periods</li> <li>• Corporate tax and transactions</li> <li>• Executive tax services</li> <li>• Federal credits and incentives</li> <li>• Flow-through entity planning</li> <li>• Income tax compliance</li> <li>• International tax services</li> <li>• IRS practice and procedure</li> <li>• State and local tax services</li> <li>• Tax controversy</li> <li>• Tax-exempt organizations</li> <li>• Tax process and technology</li> <li>• Washington National Tax</li> </ul>	<p><b>Financial advisory</b></p> <ul style="list-style-type: none"> <li>• Financial investigations</li> <li>• IPO readiness</li> <li>• Litigation and dispute advisory</li> <li>• Forensic accounting and fraud investigations</li> <li>• Valuation</li> </ul> <p><b>Management consulting</b></p> <ul style="list-style-type: none"> <li>• Finance and accounting</li> <li>• Technology and digital</li> <li>• Operations and supply chain</li> <li>• People and organization</li> <li>• Industry</li> </ul> <p><b>Risk advisory</b></p> <ul style="list-style-type: none"> <li>• Internal audit services</li> <li>• Business risk consulting</li> <li>• Technology risk consulting</li> <li>• Security and privacy risk consulting</li> </ul> <p><b>Technology consulting</b></p> <ul style="list-style-type: none"> <li>• Business applications</li> <li>• Infrastructure</li> <li>• Application integration and development</li> <li>• Business intelligence</li> <li>• Finance and accounting outsourcing</li> </ul> <p><b>Transaction advisory</b></p> <ul style="list-style-type: none"> <li>• Sell-side/Buy-side due diligence</li> <li>• Working capital assistance</li> <li>• Merger integration and optimization</li> <li>• Divestitures and carve-outs</li> <li>• M&amp;A valuations</li> <li>• Due diligence for lenders</li> <li>• IT and operations due diligence</li> </ul>

## Background and qualifications

### State and local government experience

State and local governments are being challenged by a broader range of constituencies to deliver more transparency, efficiency and accountability than ever before. Leaders are under considerable pressure to ensure that government entities function like an efficient business—delivering quality services, implementing efficient processes and setting new standards that can withstand examination, all while maintaining focus on achieving a higher mission: to preserve and protect the public interest.

The COA EDD deserves to work with a service provider that understands your objectives and can help you address challenges and anticipate future changes. RSM can assist the COA EDD in meeting responsibility and accountability expectations. This will help the COA EDD achieve the technical, regulatory and cultural changes required to meet your evolving goals.

With more than 1,100 public sector professionals, including more than 300 professionals who are committed to serving state and local governments, we service the audit, compliance and consulting needs of more than 5,000 public sector clients annually, including more than 500 state and local governmental entities, such as cities and towns, utilities, housing authorities, transportation authorities, redevelopment agencies and school districts. For the COA EDD, this translates to minimal time commitment on your part to assimilate our staff—who will come to the engagement with the level of experience and education necessary to perform their work efficiently.

In working with RSM, the COA EDD will also benefit from our dedicated resources that closely monitor public sector developments and provide regular communications on accounting, auditing and regulatory pronouncements pertinent to state and local governments.

Your engagement primarily will be staffed with audit professionals from our Austin and San Antonio offices. See [Appendix A](#) for biographies of your service team. We look forward to leveraging this proximity to provide a high level of personal attention throughout the engagement and whenever you need us during the year.

Specifically, our state and local government experience includes:

- Cities and counties
- Transportation authorities
- Port and cruise operations
- Airport operations
- Utilities (water and power)
- Public education entities
- River authorities
- Federal and state entities
- Investment pools
- Public employee retirement plans
- Debt financing transactions
- Bonds and tax-exempt debt issuance

A sample listing of our current and former governmental clients is included in [Appendix D](#).

### Licensed to practice in Texas

RSM is a properly licensed certified public accounting firm in good standing, with all relevant licensing from state licensing boards. RSM does not have any outstanding public or private reprimands by the Texas State Board of Public Accountancy or other bodies. Our Texas State Board of Public Accountancy license number is P05638.

## Independence

All RSM partners and professional employees who serve clients are provided access to our policies and procedures relating to independence and conflicts of interest, including those that are specific to our public company audit clients and their affiliates, and are educated about prohibited nonaudit services, including consulting services. We obtain annual acknowledgment regarding their understanding of, and compliance with, these policies.

Our firm uses our proprietary Client Engagement Assessment of Risks (CLEAR) application, which assists engagement teams in performing consistent and comprehensive evaluations of engagement risk, integrates our independence and business conflict checks process, helps assure that the engagement team has the requisite competency and experience, and provides our audit leadership with deeper insight into the risk profile of our client portfolio.

We have identified no conflicts of interest with respect to our ability to serve the COA EDD.

## Quality control

### Quality control procedures

RSM has a system of quality control for our audit practice structured to provide reasonable assurance our personnel comply with applicable professional standards and applicable regulatory and legal requirements, and our firm issues reports that are appropriate in the circumstances.

The policies and procedures designed to implement the system include the following elements:

- Acceptance and continuance of client relationships and specific engagements
- Engagement performance
- Human resources
- Leadership responsibilities for quality within the firm
- Monitoring
- Relevant ethical requirements

Responsibility for the design, implementation and monitoring of RSM's quality control system rests with our firm's National Office of Risk Management. RSM develops and maintains a number of manuals and other guidance material to implement its quality control system. We monitor our quality control system through annual internal inspections. Our Securities and Exchange Commission (SEC) audit practice is subject to annual inspection by the Public Company Accounting Oversight Board (PCAOB), and our non-SEC audit practice is subject to triennial peer review.

RSM has participated in the AICPA Peer Review Program, as administered by the National Peer Review Committee, since its formation.

### Quality control monitoring

We establish monitoring policies and procedures designed to provide reasonable assurance that the policies and procedures relating to our system of quality control are relevant, adequate, operating effectively and complied with in practice. In assuring that our quality control policies and procedures remain relevant and adequate, we consider changes in professional standards or other regulatory requirements applicable to our practice. We also consider other external factors, such as industry trends, economic developments and emerging audit quality issues.

The firm's internal inspection program is designed to evaluate compliance with our system of quality control for its audit practice through an annual review of the elements of quality control and inspection of the work performed for a sample of audit engagements. The internal inspection program has two distinct elements—inspection and functional monitoring.

Engagements are selected by the National Office of Risk Management for inspection using a risk-based approach. This approach focuses, in part, on engagements in the higher risk zones, and partners primarily serving clients in those same zones, and considers other audit risk factors as well. Engagements are selected for inspection so as to cover one-third of all partners annually.

Quality results not only from the procedures performed on specific engagements, but also from certain general functions that have an impact on all engagements and are administered by local offices and national groups. The National Office of Risk Management assesses the quality of the design and operation of these functions by monitoring the risks and controls existing in the following areas:

- Continuing professional education
- Evaluations of partners and other professionals
- Independence
- Regulatory relations

A technology-based tool is used to gather, sort, store and use information obtained through our internal inspection. Engagement-specific results, along with an engagement-quality rating, are reported to the engagement leader and the regional audit leader. Inspection findings are remediated, as required by professional standards. The results of all inspections are accumulated and reported to the firm's board of directors.

#### **Peer review**

Our non-SEC audit practice is subject to the triennial peer review requirements of the AICPA. The firm has been a member of the AICPA since its inception.

The RSM system of quality control for the accounting and auditing practice applicable to non-SEC issuers in effect for the year ended April 30, 2019, was subject to peer review by the firm of BKD LLP, a Government Audit Quality Center member firm. That review included a representative sample of university, government and nonprofit engagements. Under the peer review standards, firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. RSM received a peer review rating of *pass*.

A copy of this most recent peer review report can be found in [Appendix B](#).

#### **Professional membership**

- RSM is a member of the following organizations within the audit profession:
- American Institute of Certified Public Accountants (AICPA)
- AICPA Private Company Practice Section
- AICPA Employee Benefit Plan Audit Quality Center
- AICPA Governmental Audit Quality Center
- AICPA Center for Audit Quality
- National Association of Corporate Directors



In addition, RSM is registered with the PCAOB (United States) and the Canadian Public Accountability Board. Further, individual RSM professionals are members of many audit-related professional boards, committees and task forces.

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## REFERENCES

We provide services to many public and private entities. The following is a partial listing of clients of similar size and scope of services to be provided to the COA EDD that have been served by key members of your RSM team.

Entity, contact person and contact information	Partner	Service type and deliverable	Years of service	Fee method
<b>Austin Bergstrom Landhost Enterprises, Inc.</b> Amy Whitworth, Manager 3600 Presidential Blvd., Suite 411 Austin, Texas 78719 amy.whitworth@austintexas.gov 512 530 6364	Joel Perez	<ul style="list-style-type: none"> <li>Audit of financial statements</li> <li>Net revenue coverage compliance</li> </ul>	2005 to present	Quoted fee by engagement letter
<b>Austin Independent School District</b> George Gogonas, Executive Director of Financial Services 4000 S. IH-35 Frontage, 4th Floor Austin, Texas 78704 george.gogonas@austinisd.org 512 414 9917	Joel Perez	<ul style="list-style-type: none"> <li>Audit of financial statements</li> <li>Federal compliance audit</li> </ul>	2005 to present	Quoted fee by engagement letter
<b>Austin Convention Enterprises, Inc.</b> Jimmy Flannigan, President 500 E. 4th Street Austin, Texas 75201 jimmy.flannigan@austince.org 512 917 8428	Joel Perez	<ul style="list-style-type: none"> <li>Audit of financial statements</li> <li>Net revenue coverage compliance</li> </ul>	2005 to present	Quoted fee by engagement letter
<b>Texas Treasury Safekeeping Trust Company</b> Genoveva Minjares, Chief Financial Officer 208 East 10th Street Austin, Texas 78701 genoveva.minjares@ttstc.texas.gov 512 463 3845	Joel Perez	<ul style="list-style-type: none"> <li>Audit of financial statements</li> </ul>	2005 to present	Fixed by contract

## PERSONNEL

### Partner, supervisory and staff qualifications and experience

We have assembled your RSM team with an emphasis on technical and interpersonal skills that make for a good fit with the COA EDD and its management team. The people selected to fill the roles are vital to a successful audit or agreed-upon procedures engagement and we have formed a team that contains the capabilities and experience we believe are indispensable for this engagement. This includes backgrounds in:

- A variety of state and local governments requiring full-scope financial audits
- Texas Economic development incentive agreements
- Texas Major Events Reimbursement Program agreed-upon procedures engagements
- GASB Standards relative to governmental financial reporting
- Austin City Council Resolution 20071206-049 and Ordinance 20090312-005
- Full-scope audits encompassing financial and compliance reporting for federal and state funding

Other team members will be assigned based on the engagement needs during the period of fieldwork. All accountants assigned will be college graduates with a major in accounting and will be trained in governmental accounting and auditing.

The following professionals have the qualifications and experience to handle your needs for this engagement and are committed to exceeding your expectations. Please refer to [Appendix A](#) for detailed biographies, including educational backgrounds and professional licenses held.

#### Team member, engagement role

##### **Joel Perez**

Partner, Audit Services  
joel.perez@rsmus.com  
210 253 1611

*Engagement leader.* As your engagement leader, Joel will be responsible for your complete satisfaction with the services we provide. Joel will also have responsibility for the overall quality of the agreed-upon procedures. He will be responsible for ascertaining that professional and regulatory standards have been complied with throughout the engagement. Joel's experience includes Austin Bergstrom Landhost Enterprises, Inc.; Austin Independent School District; Austin Convention Enterprises, Inc.; Texas Treasury Safekeeping Trust Company, City of Austin Employee's Retirement System; Central Texas Regional Mobility Authority; and Edwards Aquifer Authority, among others.

## Team member, engagement role

### **Gabriela “Gaby” Luna-Cazares**

Manager, Audit Services  
gaby.cazares@rsmus.com  
512 539 5746

*Audit manager.* Gaby will coordinate the activities of the professional team members assigned to the engagement, participate in planning and developing the overall engagement approach and monitor all phases of the engagement to help ensure timely completion. She will also direct the day-to-day performance and conduct of the services provided to the COA EDD. Gaby’s experience includes Austin Convention Enterprises, Inc.; Austin Bergstrom Landhost Enterprises, Inc.; City of Austin Employee’s Retirement System; and Texas Treasury Safekeeping Trust Company, among others.

## Staff continuity

We recognize the impact staffing changes have on clients and are committed to maintaining continuity and team stability as much as possible.

Our policy is to maintain the integrity of the client service team from year to year. While we cannot guarantee that every member of the service team will return each year, we provide staffing consistency whenever possible. In addition, we make every effort to mitigate disruption when staffing changes occur.

If a change in key personnel should arise, partners and managers on your account will transfer specific knowledge about the COA EDD to new team members, helping to bridge any gaps and avoid interruptions in the performance of services.

## Continuing professional education (CPE)

RSM and its individually licensed certified public accountants are regulated by a number of state and federal requirements. All partners in the firm are CPAs. All CPAs must be licensed in the state in which their office is located. Our licensing department ensures that our firm and its individual employees are in compliance with the licensing requirements in the states where active firm and individual licenses are held.

Many state licensing boards require that CPAs maintain and improve their skills through continuing professional education courses and other opportunities for professional development. Certain competency requirements also must be met for professionals who perform engagements in accordance with standards established by the Comptroller General of the United States (i.e., *Government Auditing Standards*).

RSM is a registered sponsor with the National Association of State Boards of Accountancy (NASBA). We ensure our internal training meets the requirements of the AICPA/NASBA Statement on Standards for Continuing Professional Education Programs.

Our audit and tax partners and professional staff, including CPAs and non-CPAs, are required to participate in at least 20 hours of qualifying CPE every year and at least 120 hours every three years. In addition to these requirements, there are additional minimum standards for professionals who practice in certain industries. It is the responsibility of each professional to be familiar with the various CPE requirements for the states in which they are licensed, and to properly register and complete the necessary CPE requirements when renewing state licenses to practice. Our National Office of Risk Management monitors compliance with CPE requirements.

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## ESTIMATED FEES AND RATES

We do not believe that fee estimates should be the primary barrier between the COA EDD and RSM being able to continue a long-term relationship. Accordingly, if our fee estimates do not match your expectations, we would welcome the opportunity to discuss them with you and enter into pre-contract negotiations.

Our fee for each agreed-upon procedures engagement will be determined by the time incurred by members of our audit team to provide the services and by their respective billing rates. Since each of the City of Austin's Chapter 380 economic development agreements is unique to each company, the procedures and the time required will be different for each engagement. In general, and based on actual engagements performed in 2019 and 2020, we estimate our fees to provide the agreed-upon procedures services the COA EDD has requested would be in the range of \$5,500 to \$15,000 for each review. The foregoing is only an estimate. Actual fees would be determined by the number of hours spent to perform the procedures selected by the COA EDD. We would bill monthly for work performed by project based on actual time incurred at the hourly billing rates shown below.

The hourly rates for the agreed-upon procedures engagements and other consulting services or projects are as follows:

Team member	Rate per hour					
	2021	2022	2023	2024	2025	2026
Partner	\$ 345	\$ 355	\$ 365	\$ 375	\$ 385	\$ 395
Senior director	310	320	330	340	350	360
Manager	245	250	260	270	280	290
Staff associate	160	165	170	175	180	185
Administrative staff associate	105	110	115	120	125	130

### Significant changes in your business

Significant changes in the nature and scope of your business will result in annual professional fee increases. Significant changes may include the addition of new locations, businesses or lines of business; unpreparedness on the part of the COA EDD; material changes in reporting; and changes in the scope of work due to regulations, or audit standards.

### Administrative expense

Our fees for the services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement plus directly billed expenses, including report processing, travel, meals and fees for services from other professionals, as well as a charge of 5% of fees for all other expenses, including indirect administrative expenses such as technology, research and library databases, communications, photocopying, postage and clerical assistance.

**Fee assumptions**

Any proposed fees are based on the following assumptions:

- Assistance will be supplied by COA EDD personnel, including preparation of requested schedules and analyses of accounts before we commence fieldwork.
- There will be no significant changes in the nature and scope of the engagement. Should it be necessary to extend the scope of our services due to unpreparedness on the part of the COA EDD, significant engagement revisions, or other significant changes in the nature and scope of the engagement, we will bill for these additional services based on our standard hourly rates. We will contact you to discuss these items before proceeding with the out-of-scope work.

Our acceptance of this engagement is subject to completion of our acceptance procedures.

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## APPENDICES

### Appendix A—Engagement team biographies



#### **Joel Perez**

Partner, Audit Services  
RSM US LLP  
San Antonio, Texas  
joel.perez@rsmus.com  
210 253 1611

#### **Summary of experience**

Joel has more than 20 years of public accounting experience, primarily serving the public sector industry. His client responsibilities include serving as lead engagement partner for financial audits, federal and state compliance audits, consulting engagements, internal control process reviews, and operational performance audits. His industry experience includes state and local governments, transportation authorities, water utilities, river authorities, independent school districts, charter schools, government-sponsored retirement plans, private schools and tax-exempt (nonprofit) organizations.

Joel brings an in-depth understanding of governmental and nonprofit accounting, auditing and compliance reporting to his clients and consistently shares new ideas and best practices with them. In addition to directly serving clients, Joel serves as quality control reviewer for governmental engagements throughout the firm. He is well versed in the financial and compliance-related requirements of governmental entities and has extensive experience performing audits in accordance with *Government Auditing Standards* and single audits in accordance with the Uniform Guidance (previously OMB Circular A-133).

#### **Professional affiliations and credentials**

- Certified public accountant
- American Institute of Certified Public Accountants
- Texas Society of Certified Public Accountants, San Antonio Chapter
- Texas Association of School Business Officials
- Alamo Area Association of School Business Officials
- Government Finance Officers Association
- Government Finance Officers Association of Texas
- San Antonio Hispanic Chamber of Commerce, board member and finance committee co-chair

#### **Education**

- Bachelor of Business Administration, accounting, The University of Texas at Brownsville
- Fluent in Spanish





## **Gabriela “Gaby” Luna-Cazares**

Manager, Audit Services  
RSM US LLP  
Austin, Texas  
gaby.cazares@rsmus.com  
512 539 5746

### **Summary of experience**

Gabriela has more than 18 years of experience in financial and compliance auditing for state and local governments, student loan servicing, guarantor entities and nonprofit organizations. She has also been involved in financial statement reporting, review of accounting practices and procedures, and internal control structure design and implementation. In addition, Gabriela has experience in auditing private and publicly registered entities in compliance with Sarbanes-Oxley. She has most recently concentrated on audits in accordance with Uniform Grant Guidance.

She has experience with the following:

- Nonprofit organizations
- Government entities
- Securities and Exchange Commission registrants
- Private entities

### **Professional affiliations and credentials**

- Certified public accountant
- American Institute of Certified Public Accountants
- Texas Society of Certified Public Accountants
- Austin Chapter of Texas Society of Certified Public Accountants
- Austin Chapter of Institute of Internal Auditors

### **Education**

- Bachelor of Business Administration, accounting, The University of Texas at Austin

## Appendix B—Peer review report



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### Report on the Firm's System of Quality Control

To the Partners of RSM US LLP and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of RSM US LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary). The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

#### **Firm's Responsibility**

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

#### **Peer Reviewer's Responsibility**

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

#### **Required Selections and Considerations**

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act; audits of employee benefit plans, audits performed under FDICIA, audits of broker-dealers and examinations of service organizations [SOC 1 and SOC 2 engagements].

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

#### **Opinion**

In our opinion, the system of quality control for the accounting and auditing practice of RSM US LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. RSM US LLP has received a peer review rating of *pass*.

BKD, LLP

A handwritten signature in black ink that reads "BKD, LLP".

December 5, 2019



## Appendix C—Culture, diversity and inclusion at RSM

RSM is a thought leader in the profession concerning the imperatives of culture, diversity and inclusion (CDI). At RSM, CDI defines how we thrive—not only because it is part of our values, but because it is how we foster an inclusive workforce, help the middle market address an ever-changing world and generate better business results for our clients and our firm. Internally, RSM invests over \$3 million annually, including nine full-time resources and over 200 professionals serving dual roles executing our CDI programming. The CDI focus at RSM spans four strategic pillars:

1. **Workforce.** The recruitment, advancement and retention of underrepresented women and minorities and the inclusive talent experience for all professionals is an imperative for RSM. The firm funds 12 employee network groups (ENGs) to address the needs of our diverse talent population and, by extension, to increase cultural competency in our client service.
2. **Workplace.** Our enterprise-wide Inclusion Council, which is comprised of our chief executive officer and other executive leaders, ensures CDI is a funded and strategic priority. RSM further ensures that CDI has impact and drives inclusion into our policies and the fabric of our business. CDI collaborates with our human resources, recruiting and professional development teams as well as audit, tax and consulting teams.
3. **Marketplace.** RSM supports diverse suppliers and organizations across the profession, including the National Association of Black Accountants (NABA), Association of Latino Professionals For America (ALPFA), Ascend, Student Veterans of America (SVA) and AICPA Women's Leadership. Through initiatives such as the Middle Market Collaborative for Understanding and publications such as Inclusion: An Evolving Mosaic—RSM's Annual Diversity Report, and thought leadership on key inclusion subjects, RSM extends its culture, diversity and inclusion commitment to our marketplace partners.
4. **Community.** RSM's CDI program provides support for nonprofit efforts and organizations in the communities where we do business. These efforts bridge the divide for the disadvantaged and facilitate opportunity for the workforce of the future. CDI corporate social responsibility includes scholarships, sponsorships and volunteerism with hundreds of charitable entities, associations, colleges and universities annually.

## Appendix D—Other current and past governmental clients

Experience serving Texas governments	
Municipalities and special purpose governments	
City of Austin	Lavaca-Navidad River Authority
City of Boerne	McAllen International Toll Bridge
City of Buda	Nueces River Authority
City of Cedar Park	Port Authority of San Antonio
City of Corpus Christi	Port of Galveston
City of Kyle	San Antonio Housing Authority
City of McAllen	San Antonio Water System
City of San Antonio	Travis County Emergency Services District No. 2
Alamo Regional Mobility Authority	Travis County WCID No. 19
Anzalduas International Toll Bridge	VIA Metropolitan Transit
Austin Bergstrom Landhost Enterprises	Austin Community College District
Austin Convention Enterprises	Austin Independent School District
Brazos River Authority	Comal Independent School District
Brooks Development Authority	Dripping Springs Independent School District
Capital Metropolitan Transportation Authority	Floresville Independent School District
Central Texas Regional Mobility Authority	Fort Sam Houston Independent School District
City of Austin Convention Catering and Concession Services	Lackland Independent School District
East Medina County Special Utility District	Northside Independent School District
Edwards Aquifer Authority	Randolph Field Independent School District
Guadalupe Valley Electric Cooperative	Southside Independent School District
Kerrville Public Utility Board	
Community colleges and independent school districts	
Austin Community College District	Fort Sam Houston Independent School District
Austin Independent School District	Lackland Independent School District
Comal Independent School District	Northside Independent School District
Dripping Springs Independent School District	Randolph Field Independent School District
Floresville Independent School District	Southside Independent School District
Experience servicing federal and state agency programs	
HQ Air Force Services Agency	Texas Local Government Investment Pool Prime
State Bar of Texas	Texas Prepaid Higher Education Tuition Board
Surplus Lines Stamping Office	Texas Treasury Safekeeping Trust Company
Texas Local Government Investment Pool	Tobacco Settlement Permanent Trust Fund

### Experience servicing public employee retirement systems

Capital Metropolitan Retirement Plan for Administrative Employees	CPS Energy Pension; Health; Life; and Disability Plans
Capital Metropolitan Retirement and Savings Plan	Lower Colorado River Authority Retirement Plan
City of Austin Employees Retirement System—extended audit procedures	Retirement Plan for the Employees of Brazos River Authority
City of Austin Deferred Compensation Plan	San Antonio Housing Authority Pension Plan and Trust
City of McAllen Firemen Retirement Plan	VIA Metropolitan Transit Retirement Plan

### Experience servicing city and county governments outside of Texas

City of Excelsior Springs, Missouri	Polk County, Iowa
City of Riverside, Missouri	City of Peoria, Illinois
City of Springfield, Missouri	Rock Island County, Illinois
City of Columbia, Missouri	City of Fort Collins, Colorado
City of Independence, Missouri	City of Northglenn, Colorado
City of Blue Springs, Missouri	City of Longmont, Colorado
Platte County, Missouri	City of Tulsa, Oklahoma
Clay County, Missouri	City of Duncan, Oklahoma
City North Kansas City, Missouri	City of Enid, Oklahoma
City of Overland Park, Kansas	City of Owasso, Oklahoma
City of Roeland Park, Kansas	City of Midwest City, Oklahoma
Shawnee County, Kansas	City of Miami, Florida
City of Bettendorf, Iowa	City of Tampa, Florida
City of Cedar Rapids, Iowa	City of West Palm Beach, Florida
City of Davenport, Iowa	City of Coral Gables, Florida
City of Des Moines, Iowa Municipal Housing Agency, Iowa	City of Coral Springs, Florida
City of Des Moines, Iowa	City of Hollywood, Florida
City of Johnston, Iowa	City of Jacksonville, Florida
City of Maquoketa, Iowa	City of Hartford, Connecticut
City of Waterloo, Iowa	City of New Haven, Connecticut

### Experience servicing special districts and authorities outside of Texas

Colorado River Conservation District	Tulsa Development Authority
Tulsa Metropolitan Utility Authority	Metropolitan Utilities District
Tulsa Public Facilities Authority	Lincoln Water & Wastewater
Metropolitan Tulsa Transit Authority	Metropolitan Airport Authority, Illinois
Tulsa Authority for Recovery of Energy	TaxSlayer Center
Tulsa Airports Improvement Trust	Des Moines Wastewater Reclamation Authority, Iowa
Kansas City Area Transportation Authority, Missouri	Des Moines Water Works, Iowa
Platte County Regional Sewer District, Missouri	Polk County Health Services
Overland Park Development Corp, Kansas	Polk County Wells Fargo Arena
Overland Park Convention Center, Kansas	Oklahoma Public Employees' Retirement System
Tulsa Performing Arts Center Trust	Uniform Retirement System for Justices and Judges
Tulsa Parking Authority	Oklahoma Lottery Commission
Emergency Medical Services Authority	Commissioners of the Land Office
Regional Metropolitan Utility Authority	

### Experience servicing housing authorities

Atlanta Housing Authority ( <i>MTW agency</i> ) ( <i>consulting</i> )	Minnesota Housing Finance Agency
Chicago Housing Authority ( <i>MTW agency</i> ) ( <i>consulting</i> )	Minneapolis Public Housing Agency ( <i>MTW agency</i> )
Colorado Housing and Finance Authority	Public Housing Agency of the City of St. Paul
Dakota County Community Development Agency	San Antonio Housing Authority ( <i>MTW agency</i> )
Housing Authority of Cook County, Illinois	Superior Housing Authority
Housing and Redevelopment Authority of Duluth	Minnesota Housing Finance Agency

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**[www.rsmus.com](http://www.rsmus.com)**

RSM US LLP is a limited liability partnership and the U.S. member firm of RSM International, a global network of independent audit, tax and consulting firms. The member firms of RSM International collaborate to provide services to global clients, but are separate and distinct legal entities that cannot obligate each other. Each member firm is responsible only for its own acts and omissions, and not those of any other party.

For more information, visit [rsmus.com/who-we-are](http://rsmus.com/who-we-are) for more information regarding RSM US LLP and RSM International.

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**CITY OF AUSTIN  
PURCHASING OFFICE  
STANDARD PURCHASE DEFINITIONS**

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.

1. **Addendum** - a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. "Addenda" is the plural form of the word.
2. **Alternate Offers** - multiple Offers with substantive variations from the same Offeror in response to a Solicitation.
3. **Appropriate, Appropriated, or Appropriation** - the adoption by the City Council of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Authorized City Representative** - a person designated by the City Manager to act for the Contract Awarding Authority.
5. **Best Offer** - the best evaluated Offer in response to a Request for Proposals or Request for Qualification Statements.
6. **Best Offeror** - the Offeror submitting the Best Offer.
7. **Bid** - a complete, properly signed response to an Invitation for Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
8. **Bidder** - a person, firm, or entity that submits a Bid in response to an Invitation for Bid. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **Bid Guaranty** - a form of security assuring that the bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
10. **Bid Sheet** - a document, signed and dated by a Bidder, containing unit and extended bid prices for all goods and/or services, identified by item numbers and descriptions, for which Bids are being submitted.
11. **Business Entity** - any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.
12. **Central Purchase Order (CT)** - a financial system document issued by the Contract Awarding Authority to encumber funds to pay for the deliverables identified in a Contract.
13. **City** - the City of Austin, a Texas home-rule municipal corporation.
14. **Compliance Plan** - is defined in chapter 2-9 of the City Code.
15. **Construction** - the construction, repair, rehabilitation, alteration, conversion or extension of buildings, parks, utilities, streets or other improvements or alterations to real property.
16. **Contract** - a binding legal agreement between the City and the Offeror. The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

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- A. any exceptions to the Offer accepted in writing by the City
  - B. the Supplemental Purchase Terms and Conditions
  - C. the Standard Purchase Terms and Conditions
  - D. the Offer, exhibits, and attachments; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.
17. **Contract Awarding Authority** - a City department authorized to enter into Contracts on behalf of the City.
18. **Contractor/Consultant** - a person, firm or entity that supplies or provides goods and/or services to the City by Contract.
19. **Controlling Interest** means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.
20. **Deliverables** - the goods, products, materials, and/or services to be provided to the City under a Purchase Order, Contract, or Master Agreement.
21. **Delivery Order** - a release against a Master Agreement authorizing delivery of goods and/or performance of services. A financial system document issued by the Department to encumber funds to pay for the deliverables.
22. **Disadvantaged Business Enterprise** - is defined in 49 Code of Federal Regulation Part 26 or other applicable federal regulations.
23. **Due Date** - the date and time specified for receipt of Bids, Proposals, Qualification Statements, Quotations, Responses, Submittals and Compliance Plans.
24. **Goods** - supplies, materials, or equipment.
25. **Highest Responsible Offer** - the highest Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid-Sale or Request for Quotation-Sale.
26. **Highest Responsible Offeror** - the Offeror submitting the "Highest Responsible Offer."
27. **Interested Party** – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
28. **Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or on the Internet.
29. **Late Offer** - a Bid, Proposal, Quote, Response, or Submittal that is received after the Due Date and time specified in the Solicitation.
30. **Lowest Responsible Offer** - the Offer meeting all requirements of the specifications, terms, and conditions of the Invitation for Bid or Request for Quotation resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of

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the Vendor to perform the Contract, past performance of the Vendor, and compliance with all City ordinances concerning the purchasing process.

31. **Lowest Responsible Offeror** - the Offeror submitting the Lowest Responsible Offer.
32. **Master Agreement** - a term contract that is used when the total quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand. A Master Agreement does not create a financial obligation.
33. **Minority-Owned Business** - is defined in chapter 2-9 of the City Code.
34. **Non-Professional Services** - services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
35. **Offer** - a complete signed response to a Solicitation including, but not limited to, an Invitation for Bid, a Request for Proposal, a Request for Qualification Statements, or a Request for Quotation.
36. **Offeror** - a person, firm, or entity that submits an Offer in response to a City Solicitation. Any Offeror may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. Includes Bidders, Proposers, Quoters, Contractors and Consultants.
37. **Pre-Bid / Proposal / Quote / Response / Submittal Conference** - a conference conducted by the Contract Awarding Authority, held in order to allow Offerors and Vendors to ask questions about the proposed Contract and particularly the Contract specifications.
38. **Professional Services** - services that use skills that are predominantly mental or intellectual, rather than physical or manual such as accounting, architecture, land surveying, law, medicine, optometry, professional engineering, etc.
39. **Proposal** - a complete, properly signed response to a Request for Proposals, which if accepted, would bind the Proposer to perform the resultant Contract.
40. **Proposal Guaranty** - a form of security assuring that the Proposer (a) will not withdraw the Proposal within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Proposer upon execution of a Contract.
41. **Proposer** - a person, firm or entity that submits a Proposal in response to a Request for Proposals. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
42. **Purchase Order (PO)** - an order placed by a City department for the purchase of Goods and/or Services written on the City's standard Purchase Order form and which, when accepted by the Vendor becomes a Contract. The Purchase Order is the Vendor's authority to deliver and invoice the City for Goods and/or Services specified, and the City's commitment to accept the Goods and/or Services for an agreed upon price.
43. **Purchasing Office** - refers to the Purchasing Office in the Financial and Administrative Services Department of the City.
44. **Quote** - a complete, properly signed response to a Request for Quotation, which if accepted, would bind the Offeror to perform the resultant Contract.

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- 45. **Quoter** - a person, firm or entity that submits a Quote in response to a Request for Quotations. Any Quoter may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 46. **Request for Information (RFI)** - a solicitation used to obtain "state of the art" information on goods and/or services for informational purposes only.
- 47. **Request for Interest (RFINT)** - a solicitation used to identify interest in a City requirement.
- 48. **Request for Proposal (RFP)** - a solicitation used to acquire goods and/or services when a clearly defined scope of work or specification is not available.
- 49. **Request for Qualification Statements (RFQS)** - a solicitation used to acquire professional services as defined by the State of Texas Government Code, Chapter 2254.
- 50. **Request for Quotation (RFQ)** - a solicitation used to acquire goods and/or services with a total dollar value less than the State of Texas competitive bidding amount.
- 51. **Resident Bidder** - a person, firm, or entity whose principal place of business is in the State of Texas, including a Contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.
- 52. **Response** - a complete signed reply to a Solicitation including, but not limited to a Request for Information and/or a Request for Interest.
- 53. **Response Guaranty** – a form of security assuring that the Offeror (a) will not withdraw the Offer within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Offeror upon execution of a Contract.
- 54. **Responsible** - refers to the financial and practical ability of the Offeror to perform the Contract and takes into consideration resources, expertise, and past performance of the Offeror as well as compliance with all City ordinances concerning the purchasing process.
- 55. **Responsive** - meeting all the requirements of a Solicitation.
- 56. **Services** - include all work or labor performed for the City on an independent Contractor basis other than construction.
- 57. **Solicitation** - as applicable, includes Invitation for Bid, Invitation for Bid - Sale, Request for Proposal, Request for Qualification Statements, Request for Quotation, Request for Quotation – Sale, Request for Information, Request for Interest, or such other request as defined by the City.
- 58. **Subcontractor/Subconsultant** - a person, firm, or entity providing goods and/or services to a prime Contractor / Consultant to be used in the performance of the prime Contractor/Consultant's obligations under a Contract.
- 59. **Sub-Subcontractor/Sub-Subconsultant**- a person, firm or entity providing goods and/or services to a Subcontractor/Subconsultant to be used in the performance of the Subcontractor/Subconsultant's obligations under a Contract.

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- 60. **Unbalanced Offer** - an Offer that is based on prices which are significantly less than cost for some items and significantly more than cost for others.
- 61. **Vendor** - a person, firm, or entity that sells Goods and/or Services.
- 62. **Woman-Owned Business** - is defined in chapter 2-9 of the City Code.

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