

AGREEMENT BY AND BETWEEN THE CITY OF AUSTIN AND THE DIVERSITY AND ETHNIC CHAMBER ALLIANCE

This Agreement (Contract) is made and entered into by and between the City of Austin (“City”), acting through its Economic Development Department (EDD), and the Diversity and Ethnic Chamber Alliance (“DECA”), a 501(c)(3) organization comprised of the Austin LGBT Chamber of Commerce, Greater Austin Asian Chamber of Commerce, Greater Austin Black Chamber of Commerce, and Greater Austin Hispanic Chamber of Commerce (individually, “DECA Member”).

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES.

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained in this Contract, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services and execute those in a contract amendment.
- 1.3 **Responsibilities of the City.** The City’s Contract Manager shall be responsible for exercising general oversight of the Contractor’s activities in completing the Scope of Work. Specifically, the Contract Manager shall represent the City’s interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate in meetings and conference calls for status reporting as needed, shall promptly review any written reports submitted by the Contractor, and shall review and 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. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture.
- 1.4.1 **Designation of Key Personnel.** The Contractor’s Contract Manager for this engagement shall be _____, Phone: _____, Email: _____. The City Contract Manager for the engagement with the DECA and general contract matters shall be Dusty McCormick, (512) 974-6390, Email: Dusty.McCormick@austintexas.gov.

SECTION 2. SCOPE OF WORK.

2.1 **General.** DECA will complete the Scope of Work described below. Acceptance and approval of documents or reports by the City shall not constitute a release of the responsibilities and liability of DECA for the accuracy and competency of DECA's work product or other documents and services prepared/performed under this Contract. No approvals or acceptances by or on behalf of the City shall be an assumption of responsibility by the City for any defect, error, or omission in the work products or other documents and services as prepared/performed by DECA. DECA shall not complete tasks unauthorized by the City. It is understood and agreed that no claim for extra work finished or materials furnished by DECA, nor shall the DECA perform any work or furnish any materials, unless it is first requested of and authorized in writing by the City. Any work or materials furnished by DECA without a written request of and authorization from the City shall be at DECA's own risk, cost, and expense. DECA further agrees to correct documents or re-execute services as may be required, due to the DECA's development of documents that are found to be in error or contain defects or omissions, at no additional costs to the City.

2.2 **Capacity Building.** The City recognizes the need for DECA to acquire resources and capacity to support the objectives outlined in this Contract. As such, the initial deliverables identified to accomplish these objectives are of a capacity-building nature.

2.2.1 DECA shall create and implement an Economic Development Training Plan for the primary corporate contact and a backup member (e.g., the DECA Board Chair and Vice-Chair) that would provide the necessary training to develop corporate executive skills necessary to successfully lead the DECA and DECA Members (Training Plan). The City recommends courses from the International Economic Development Council (IEDC). Possible courses are as follows:

- Workforce Development Strategies
- Neighborhood Development Strategies
- Entrepreneurial and Small Business Development Strategies
- Economic Development Strategic Planning
- Economic Development Marketing and Attraction
- Real Estate Development and Reuse
- Business Retention and Expansion

2.2.2 DECA shall develop an understanding of requirements for establishing business operations in Austin, and cultivate referral networks for tax, accounting, and legal services to facilitate compliance with these requirements. DECA shall develop a network of real estate brokers to assist prospects seeking commercial/industrial space in Austin, while identifying the criteria a prospect must satisfy to receive real estate relocation support.

2.2.3 DECA shall develop capacity for hosting virtual events with international and domestic partners to promote Austin, highlight relocation/expansion support services, and identify business expansion prospects.

2.2.4 Deliverables for Section 2.2:

2.2.4.1 DECA shall submit a Training Plan for completing the capacity building deliverables outlined in Section 2.2.1 within Year 1 of this Contract. The Training Plan shall be submitted to the City Contract Manager within thirty (30) days of Contract execution, followed by quarterly reports on DECA's progress in completing the Training Plan.

2.2.4.2 DECA shall produce a referral list of Austin-area tax, accounting, and legal service providers. The list shall be submitted to the City within sixty (60) days of Contract execution, followed by annual updates.

2.2.4.3 DECA shall produce a referral list of Austin-area real estate service providers. The list shall be submitted to the City within ninety (90) days of Contract execution, followed by annual updates.

2.2.4.4 DECA shall demonstrate its proficiency in hosting virtual events with international and domestic partners by hosting at minimum one (1) international event and one (1) domestic event by end of Year 1 of the Contract.

2.3 **National Marketing Plan.** DECA shall plan and execute a media campaign targeted to a national ethnic minority and LGBT business audience that creates a greater awareness of Austin and Central Texas as advantageous locations for communities to operate a business and create jobs. The media campaign shall include:

2.3.1 A national paid advertising campaign:

2.3.1.1 Identify diverse, appropriate business publications for placement of advertising that reaches the targeted audience.

2.3.1.2 Create advertisements that differentiate Austin from other communities and emphasizes Austin's diverse workforce and ethnic minority chambers.

2.3.1.3 Place at least twelve (12) advertisements per 12-month Contract term.

2.3.2 A national media relations program to generate earned, unpaid, out-of-market media coverage for the Greater Austin area.

2.3.3 DECA shall submit a quarterly report that includes:

2.3.3.1 A copy of each publication that contains a paid placement advertising Austin as a business location.

2.3.3.2 A copy or website link to earned media coverage generated.

2.4 **Regional Equitable Economic Development Plan.** DECA shall develop and implement a Regional Equitable Economic Development Plan (REED) as described in **Exhibit A**, incorporated into the Contract, as a business initiative for Austin and surrounding areas to encourage economic development and job creation in communities of color and the LGBT communities.

2.4.1 DECA shall host at minimum six (6) community meetings to allow for public and key stakeholder input for the development of the final REED Plan. Stakeholder engagement activities will be documented and detailed in the REED Plan.

2.4.2 DECA will conduct a community needs assessment and survey in conjunction with the community meetings and include the results and data collected in REED Plan.

2.4.3 DECA shall retain a qualified economic development consultant to assist with structuring and formatting the REED Plan.

2.4.4 DECA shall submit a draft of the REED Plan to the City no later than September 1, 2022. The City shall provide feedback within 30 days from receipt of the REED Plan. DECA shall incorporate the City's feedback and finalize the REED Plan no later than December 31, 2022.

2.4.5 DECA shall develop an implementation and marketing strategy plan for the REED Plan and submit to the City no later than February 28, 2023.

2.4.6 DECA shall create a REED Advisory Council by May 31, 2022.

2.4.6.1 The REED Advisory Council shall include at least one City employee.

2.4.6.2 DECA shall facilitate quarterly meetings of the REED Advisory Council.

2.4.6.3 DECA shall provide quarterly reports to the City that includes agendas, meeting information, and contact information pertaining to REED Advisory Council meetings.

2.5 **Diverse Business Development Activities:** DECA shall provide support for business development activities to be promoted to diverse business communities. This includes the support and promotion of EDD's programs and services in addition to expanding the scope of services available to support businesses seeking to expand from international and domestic markets to Austin and the Austin economic development community's ability to accommodate and serve inbound trade missions and delegations.

2.5.1 **Support for Economic Development Programs and Services.** DECA shall attend quarterly presentations of EDD programs and services, with the goal of providing feedback on the alignment of EDD's programs and services with DECA business needs. DECA shall develop and distribute marketing materials promoting and including EDD programs targeting DECA businesses. Additionally, DECA shall serve as the primary point of contact and formalize a process in the first year of the Contract for other local chambers of commerce that inquire about potential DECA participation and seek contracting with the City of Austin.

2.5.2 **Business Connections.** DECA shall provide "Business Connection" referrals to Economic Development Department (EDD) programming and resources per the 12-month term of this Contract. The goal is for DECA to demonstrate good faith efforts to provide one hundred (100) Business Connections per year. A "Business Connection" shall be defined as a DECA or a DECA Member organization informed about a service and/or resource offered by EDD, including but not limited to incentives, funding tools, or technical assistance as identified below.

2.5.2.1 A Business Connection shall access one or more of the EDD programs and resources listed below:

- Business Expansion Incentive Program
- The ATX+ Entrepreneurship Program
- Healthy Corner Stores Program
- Texas Enterprise Zone
- Family Business Loan Program
- Art in Public Places
- Public Improvement Districts
- Souly Austin
- Location Enhancement Program
- Creative Content Incentive Program
- Creative Space Assistance Program (CSAP)
- Cultural Funding Programs
- Heritage Tourism Grants
- Live Music Fund
- Media Production Development Zone
- Small Business Division Classes and Events

2.5.2.2 DECA shall submit a quarterly report via the online contract reporting portal listing business connections referred to EDD services and resources, including the specific program the member was referred to.

2.5.3 Support for International and Domestic Economic Development Activities. DECA shall develop programming to support the attraction of investment and job creation from international and domestic companies that locate to Austin.

2.5.3.1 DECA shall support outbound delegations by: Identifying countries and industry sectors to be priority targets for outbound delegations. Building relationships with international economic development partners. Conducting at least four (4) outbound delegations intended to generate international and domestic trade or business investment and expansion prospects for Austin. International delegations should be coordinated with City of Austin officials.

2.5.3.2 DECA shall support inbound delegations by: Assembling a task force and implementing a standard agenda template and itinerary for supporting inbound trade delegations. Providing connections to member organizations providing real estate services to support companies looking to expand to Austin. Joining meetings with delegations as appropriate and helping to connect them with Austin-based companies, relevant economic stakeholders, appropriate services, and organizations focused on supporting business expansion to Austin. Hosting four (4) virtual or in person events or delegations intended to generate investment and expansion from international businesses to Austin per Contract term.

2.5.3.3 DECA shall submit quarterly reports detailing activities conducted in support of outbound and inbound international trade delegations. The report shall include the following:

- 2.5.3.3.1 A description of outbound delegations conducted, including the goals of the delegation and results in meeting the goals, and/or business inquiries received following the delegation.
- 2.5.3.3.2 A description of support provided to inbound delegations, including:

- The number of inbound delegations supported;
- Number of business prospects referred to appropriate service providers segmented by referral type;
- Number of businesses receiving real estate relocation support; and
- Number of virtual events held with number of attendees for each event.

SECTION 3. PAYMENT, REPORTING, AND INVOICING.

- 3.1 **Contract Amount.** The City has authorized \$839,929.00 for the City's participation with the DECA. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$839,929.00 annually for all fees and expenses, and an amount not-to-exceed \$4,199,645.00 over the duration of the extension options as described in Section 4.1.
- 3.2 **Payment schedule and Invoicing.**
- 3.2.1 Contractor shall be paid on a quarterly basis based on Exhibit B, Payment Schedule for DECA Contract. Contractor shall invoice the City according to the Payment Schedule outlined Exhibit B. Invoices shall be submitted by email to: Dusty McCormick, dusty.mccormick@austintexas.gov. *Invoices shall be supported by* a quarterly report with documentation evidencing the deliverables specified in this Contract.
- 3.2.2 Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices shall contain the following information at a minimum or they shall not be processed and shall be returned to the Contractor:
- a. The Contractor's name which must exactly match the information in the Contractor's registration with the City;
 - b. A unique invoice number;
 - c. Invoice Date;
 - d. The City-provided purchase order or delivery order number; and
 - e. The Contractor's remittance address, which must exactly match the information in the Contractor's registration with the City.
- 3.2.3 The City shall pay all proper invoices within 30 calendar days of the City's receipt of the deliverables or of the invoice, whichever is later. If the City does not timely pay, interest shall accrue on the unpaid balance at the rate specified in Texas Government Code §2251.025. However, if the City does not timely pay for a reason for which the City may properly withhold payments under law or the terms of this Contract, then interest shall not accrue until 10 calendar days after the parties have resolved the grounds for withholding payment.
- 3.2.4 The payment obligations of the City under this Contract are subject to 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 **Non-Appropriation.** The Contractor acknowledges that the City has provided notice that the City's payment obligations to the Contractor are payable only from funds

appropriated or available for the purpose of this Contract. If the City does not appropriate funds for this Contract, or if there are no other lawfully available funds for this Contract, the Contract is void. The City shall provide the Contractor with 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 City to pay its obligations under the Contract.

- 3.4 **Final Payment and Close-Out.** The making and acceptance of final payment shall constitute: a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION.

- 4.1 **Term of Contract.** This Contract shall become effective on March 1, 2022, and shall continue for a period of one year (until February 28, 2023). This Contract may be extended for up to four additional one-year periods, subject to the approval of the funding during the City budget process and agreement of the DECA and the City Manager or designee.
- 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 in this Contract, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 4.4 **Termination for Cause.** In the event of a default by DECA, the City shall have the right to terminate the Contract for cause, by written notice effective 10 days, unless otherwise specified, after the date of such notice, unless DECA, within such 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of DECA'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 with 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with the 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 **Right to Terminate.** In the event one or more DECA Members terminate their involvement or membership with DECA, the City shall have the right to terminate the Contract by written notice effective 10 days, unless otherwise specified, after the date of such notice.
- 4.7 **Fraud.** Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES.

5.1 General Insurance Requirements.

- 5.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated in this Contract for the duration of the Contract and during any warranty period.
- 5.1.2 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.
- 5.1.3 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.
- 5.1.4 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 under this Contract and shall not be construed to be a limitation of liability on the part of the Contractor.
- 5.1.5 The Contractor must submit certificates of insurance to the City for all sub-Contractors prior to the sub-Contractors commencing work on the project.
- 5.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII

or better. The City shall accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

- 5.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation / contract number, the Contractor's name, and the Contractor's email address, and shall be mailed to the following address:

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

- 5.1.8 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.
- 5.1.9 If insurance policies are not written for amounts specified in Section 5.2, 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.
- 5.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 5.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- 5.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 5.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- 5.1.14 The Contractor shall endeavor to provide the City 30 calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

- 5.2 **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.

5.2.1 **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:

- Blanket contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
- Independent Contractor's Coverage.
- Products/Completed Operations Liability for the duration of the warranty period.
- Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
- 30 calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
- The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.2.2 **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.

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

5.3 **Equal Opportunity.**

5.3.1 **Equal Employment Opportunity.** Neither the Contractor nor the Contractor's agents shall engage in any discriminatory employment practice as defined in chapter 5-4 of the City Code.

5.3.2 **Americans with Disabilities Act (ADA) Compliance.** The Contractor shall comply with the accessibility provisions of (i) the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, (ii) the Texas Architectural Barriers Act, Ch. 469, Texas Govt. Code, (iii) Americans with Disabilities Act Accessibility Guidelines, and (iv) the Texas Accessibility Standards (found at <https://www.tdlr.texas.gov/ab/abtas.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 shall be refunded to the City by the Contractor. Failure of the City to require performance by the Contractor does not affect the right of the City to require performance in the future. No delay, failure, or waiver of the City's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by the City of any breach of any term of the Contract shall not be construed as a waiver of any continuing or successive breach.

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 Section 7.17, Dispute Resolution. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) flood, fire, earthquake, hurricane, tornado, or other 'acts of God;' (b) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (c) national or regional emergency; (d) other similar events beyond the control of the Party impacted by the Force Majeure Event (the "Impacted Party"). The Impacted Party shall give notice, by email or telephone, confirmed promptly in writing, within five business days of the Force Majeure Event to the other party, stating how long the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of the Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 days, the other party may terminate this Contract upon 15 days' written notice.

5.6 **Rights to 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. The City shall

comply with the requirements of the Public Information Act, Chapter 552, Texas Government Code, when information related to this Contract is requested by a third party.

- 5.7 **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, and the Contractor shall have previously obtained the authorization from the owner to use it for this Contract.

SECTION 6. WARRANTIES.

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

SECTION 7. MISCELLANEOUS.

7.1 Workforce.

- 7.1.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they shall perform under the Contract.
- 7.1.2 The Contractor, its employees, sub-Contractors, and sub-Contractor'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:
- 7.1.2.1 Illegally use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.
- 7.1.2.2 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.
- 7.1.3 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 illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 7.2 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor and its 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. 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.
- 7.3 **Right To Audit.**
- 7.3.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- 7.3.2 The Contractor shall include this provision in all sub-Contractor agreements entered into in connection with this Contract.
- 7.4 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor shall 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.
- 7.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten 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 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.6 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be

deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin
Economic Development Department
ATTN: Dusty McCormick
Economic Development Manager
5202 E. Ben White Blvd, Suite 400
Austin, TX 78741
P: (512) 974-6381 F: (512) 974-7825
Dusty.mccormick@austintexas.gov

To the Contractor:

Diversity and Ethnic Chamber Alliance
ATTN:

- 7.7 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information shall substantially injure the City and/or its licensors. The Contractor (including its employees, sub-Contractors, agents, or representatives) agrees that it shall maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
- 7.8 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.9 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona

fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

- 7.10 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.11 **Prohibition against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.12 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.13 **Assignment-Delegation.** The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; the intention of the parties is that there be no third party beneficiaries.
- 7.14 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of

default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.15 **Modifications.** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

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

7.17 **Dispute Resolution.**

7.17.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 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 shall proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.17.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 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 shall share the costs of mediation equally.

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

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

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

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

7.19 **Living Wages and Benefits (applicable to procurements involving the use of labor).**

7.19.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum living wage for City employees is \$15.00 per hour. This minimum wage is required for any DECA employee assigned to this Contract unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.

7.19.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. DECA

must provide health insurance with optional family coverage for all DECA employees assigned to this Contract.

7.20 Jurisdiction and Venue.

7.20.1 Each party irrevocably and unconditionally agrees that it shall not commence any action, litigation, or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Contract and all contemplated transactions, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the courts of the State of Texas sitting in Travis County, Texas, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in the courts of the State of Texas sitting in Travis County, Texas. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

7.20.2 This Contract and all matters arising out of or relating to this Contract, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of Texas, United States of America, without giving effect to the conflict of laws provisions to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

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

7.21 **Holidays:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
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 shall be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it shall be observed on the following Monday.

7.22 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

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

7.24 **Incorporation of Documents.** Section 0100, Standard Purchase Definitions, and Section 0300, Standard Purchasing Terms and Conditions, and Section 0400, Supplemental Terms and Conditions, are hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.25 **Indemnity**

7.25.1 In this section, the following terms have the meanings assigned below:

7.25.1.1 "Indemnified party" is the city and the city's officers, elected and appointed officials, employees, agents, representatives, successors and assigns.

7.25.1.2 "Indemnifying party" is the Contractor, its officers, agents, employees, sub-Contractors, successors or assigns.

7.25.2 The indemnifying party shall indemnify, hold harmless, and defend the indemnified party against any and all losses, damages, liabilities, deficiencies, claims, causes of action, judgments, settlements, interest, awards, penalties,

finances, costs or expenses, including professional fees and attorneys' fees, that are incurred by the indemnified parties arising out of any direct or third party claim of:

- 7.25.2.1 Breach or non-fulfillment of any provision of this contract by the indemnifying party;
- 7.25.2.2 Any negligent or more culpable act or omission of the indemnifying party, including any reckless or willful misconduct, related to the performance of its obligations under this contract;
- 7.25.2.3 Any bodily injury, death of any person, or damage to real or personal property caused by the negligent or more culpable acts or omissions of indemnifying party, including any reckless or willful misconduct; or
- 7.25.2.4 Any failure of the indemnifying party to comply with any applicable federal, state, or local laws, regulations, or codes related to the performance of its obligations under this contract.

7.25.3 The indemnifying party's obligations under this section are not excused in the event a claim is caused in part by the alleged negligence or more culpable acts or omissions of the indemnified party, including any reckless or willful misconduct.

7.25.4 The indemnified party shall give the indemnifying party written notice (a "claim notice") of any claim received related to this contract. The indemnifying party's duty to defend applies immediately. The indemnified party's failure to provide a claim notice to the indemnifying party does not relieve the indemnifying party of its duty to indemnify, hold harmless and defend the indemnified party.

7.25.5 The indemnified party may select its own legal counsel to represent its interests. the indemnifying party shall:

- 7.25.5.1 Reimburse the indemnified party for its costs and attorney's fees immediately upon request, as they are incurred, and

- 7.25.5.2 Remain responsible to the indemnified party for any losses indemnified under this section.

7.25.6 The indemnifying party shall give prompt, written notice to the indemnified party of any proposed settlement of a claim that is indemnifiable under this section. The indemnifying party may not, without the indemnified party's prior, written consent, settle or compromise any claim or consent to the entry of any judgment regarding which indemnification is being sought under this section.

EXHIBITS, incorporated into this contract, as if written word-for-word:

Exhibit A – REED Plan (attached)

Exhibit B – Payment Schedule

IN WITNESS WHEREOF, the Parties, who have had the opportunity to consult with their attorneys with respect hereto and who fully and completely understand the terms and provisions hereof, have executed this Contract as of the date set forth below their signatures.

DIVERSITY AND ETHNIC CHAMBER ALLIANCE

Name

Title

Date

Contract Endorsed by:

<p>By: _____</p> <p>Name: Valerie Salinas-Davis</p> <p>Title: Board Chair</p> <p>Date: _____</p> <p>By: _____</p> <p>Name: Tina Cannon</p> <p>Title: President & CEO</p> <p>Date: _____</p> <p>ON BEHALF OF AUSTIN LGBT CHAMBER OF COMMERCE</p>	<p>By: _____</p> <p>Name: Jenny DuFresne</p> <p>Title: Board Chair</p> <p>Date: _____</p> <p>By: _____</p> <p>Name: Tam Hawkins</p> <p>Title: President & CEO</p> <p>Date: _____</p> <p>ON BEHALF OF GREATER AUSTIN BLACK CHAMBER OF COMMERCE</p>
<p>By: _____</p> <p>Name: Veronica Hinojosa-Segura</p> <p>Title: Board Chair</p> <p>Date: _____</p> <p>By: _____</p> <p>Name: Brittney Rodriguez</p> <p>Title: Chief Operating Officer</p> <p>Date: _____</p> <p>ON BEHALF OF GREATER AUSTIN HISPANIC CHAMBER OF COMMERCE</p>	<p>By: _____</p> <p>Name: Ahmed Moledina</p> <p>Title: Board Chair</p> <p>Date: _____</p> <p>By: _____</p> <p>Name: Fang Fang</p> <p>Title: President & CEO</p> <p>Date: _____</p> <p>ON BEHALF OF GREATER AUSTIN ASIAN CHAMBER OF COMMERCE</p>

CITY OF AUSTIN, a Texas home rule city and municipal corporation

Rodney Gonzales
Assistant City Manager

Date

APPROVE AS TO FORM

Ron Pigott
Assistant City Attorney