



# Solicitation **COVER SHEET**

## IDENTIFICATION

Number	RFP 9100 JTH3015
Title	Public Relations Marketing COVID 19 Response
Summary	Marketing Public Relations for Covid-19 Response.
Type	Request for Proposal (RFP)
Version (Addenda)	1

## AUTHORIZED CONTACT PERSONS

Primary	Jim Howard; Procurement Specialist IV; (512) 974-2031; jim.howard@austintexas.gov
Secondary	Alfonso Drayton, Procurement Specialist III, (512) 974-2298; alfonso.drayton@austintexas.gov
Subcontractor Questions	Small Minority Business Resources Department; (512) 974-7600; SMBRComplianceDocuments@austintexas.gov
Notes	See Solicitation Instructions, 3.1 Authorized Contact Persons.

## IMPORTANT DATES

### OFFERS DUE

Date and Time	Tuesday, November 30, 2021, 2:00 PM (CST)
Notes	See Solicitation Instructions, 5 Offer Submission.

### OFFER OPENING

Date and Time	Tuesday, November 30, 2021, 3:00 PM (CST)
Notes	See Solicitation Instructions, 5 Offer Submission.

### QUESTIONS DUE

Date and Time	Monday, November 19, 2021, 5:00 PM (CST)
Submission Method	Email Only <a href="mailto:jim.howard@austintexas.gov">jim.howard@austintexas.gov</a>
Notes	See Solicitation Instructions, 3.2 Questions.

### PRE-OFFER CONFERENCE

Conference (Yes/No)	Yes
Mandatory (Yes/No)	No
Date and Time	Monday, November 1, 2021, 1:30 PM (CST)
Location	<p><b>Join on your computer or mobile app</b>  <a href="#">Click here to join the meeting</a></p> <p><b>Or call in (audio only)</b>  <a href="tel:+15128317858611644449">+1 512-831-7858,611644449#</a> United States, Austin            Phone Conference ID: 611 644 449#</p>
Notes	Meetings are scheduled via Microsoft TEAMS.

**PUBLISHED**

Date	October 25, 2021
Available Online	<a href="https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm">https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm</a>
Available Hardcopy	Purchasing Office; 124 w. 8 <sup>th</sup> Street, Suite 300; Austin, TX 78701

**SOLICITATION DOCUMENTS**

Document name	Pages	Date
<b><u>Solicitation Packet – RFP 9100 JTH3015</u> Includes the following:</b>		
<u>Solicitation Cover Sheet</u>	3	11/12/2021
<u>Solicitation Instructions</u>	10	10/25/2021
<u>Terms and Conditions</u>	50	10/25/2021
<u>Scope of Work</u>	10	10/25/2021
<u>Pricing Submittal – RFP 9100 JTH3015 – Complete and return</u>	1	10/25/2021
<u>Offer and Certifications – RFP 9100 JTH3015 – Complete, Sign and return</u>	14	11/12/2021
<u>Living Wage Contractor Certification– RFP 9100 JTH3015 Complete and return</u>	2	11/12/2021

**NIGP CODES****COMMODITY CODES**

Code	Description
91503	Advertising/Public Relations
91522	Communication Marketing Services
91826	Communications: Public Relations Consulting
91876	Marketing Consulting
96153	Marketing Services



# Solicitation INSTRUCTIONS

Solicitation No.  
RFP 9100 JTH3015

## 1 REQUEST FOR PROPOSALS

- 1.1 **Invitation.** The City of Austin invites all Responsible Offerors to submit Proposals to provide the goods and/or services described in this Solicitation.
- 1.2 **Documents.** This Request for Proposals (“RFP” or “Solicitation”) is composed of all documents listed in the Attachments section of the Solicitation Cover Sheet.
- 1.3 **Process.** The process described in this RFP is the Competitive Sealed Proposals process. This process is procedurally compliant with the competitive proposal processes prescribed by Texas Local Government Code Ch. 252 and Ch. 271.
- 1.4 **Changes.** The City may change or revise any of the contents of this Solicitation through the issuance of a written Addendum. Any Addenda issued will be added to the Attachments section of the Solicitation Cover Sheet. The Version number displayed in the Solicitation Cover Sheet will indicate the number of Addenda issued. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Offerors shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.
- 1.5 **Review of Documents.** Offerors shall review the entire Solicitation, as revised. Offerors shall notify the Authorized Contact Person(s) listed on the Solicitation Cover Sheet in writing of any omissions, ambiguities, inconsistencies or errors in the Solicitation prior to the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. Offerors shall also notify the City of any Solicitation contents the Offeror believes may be unreasonably restrictive.
- 1.6 **Cancellation.** The City reserves the right to cancel this Solicitation at any time for any reason and to resolicit the goods and services included in this Solicitation.

## 2 PUBLICATION AND NOTICES

- 2.1 **Publication.** This Solicitation was published in the City’s financial services website, Austin Finance Online, as of the Published date displayed in the Solicitation Cover Sheet section.
- 2.2 **Email Notices.** On the Solicitation’s Published date, email notices regarding this Solicitation were issued to all vendors registered in Austin Finance Online, that had previously selected the NIGP Codes displayed in the Solicitation Cover Sheet section. All subsequent email notices regarding this Solicitation will be limited to those vendors or other persons that subscribe to this Solicitation in Austin Finance Online.
- 2.3 **Newspaper Notices.** If applicable, one or more notices of this Solicitation were published in the newspaper as required by statute.
- 2.4 **Third-Party Notices.** Austin Finance Online is the only source of official notices regarding this Solicitation. Prospective Offerors shall not rely on any notices concerning this Solicitation received from sources other than Austin Finance Online.

## 3 COMMUNICATIONS AND MEETINGS

- 3.1 **Authorized Contact Persons.** The names and contact information for the authorized contact persons for this Solicitation are displayed in the Solicitation Cover Sheet. Offerors needing assistance contacting an Authorized Contact Person regarding this Solicitation may also contact the Purchasing Office’s main line at (512) 974-2500 and request assistance from any member of the Purchasing Office’s management team. Offerors may direct specific questions concerning subcontractors and responding to the Minority-owned Business Enterprise and Women-owned Business Enterprise Procurement Program requirements to the SMBR contact, also listed on the Solicitation Cover Sheet.

- 3.2 Questions.** Offerors shall submit any questions concerning this Solicitation in writing via e-mail to the Authorized Contact Persons displayed on the Solicitation Cover Sheet. The City will respond to all questions received by the Questions Due Date and Time displayed on the Solicitation Cover Sheet. The City will publish one or more Addenda displaying all timely received questions and the City's responses to each for any information not already contained in the solicitation.
- 3.3 Vendor Help Desk.** For general questions concerning the City's online financial services system, Austin Finance Online, Vendor Connection ("Vendor Connection"), Offerors may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 3.4 No-Lobbying.** This Solicitation is subject to City Code, Ch. 2-7, Article 6, Anti-Lobbying and Procurement. ([https://assets.austintexas.gov/purchase/downloads/New\\_ALO\\_Ordinance\\_No\\_20180614-056.pdf](https://assets.austintexas.gov/purchase/downloads/New_ALO_Ordinance_No_20180614-056.pdf)) The No-Lobbying period for this Solicitation starts on the Published Date displayed on the Solicitation Cover Page. The No-Lobbying Period continues through the earliest of the following: (i) the Solicitation is cancelled, (ii) the last of any resulting contract(s) are executed, or (iii) 60-days following Council authorization of the last contract resulting from this Solicitation. The No-Lobbying Period continues throughout the completion of the solicitation process. During the No-Lobbying Period, Offerors, Respondents and/or their Agents shall not make any prohibited communications to City Officials or City employees other than the Authorized Contact Persons. Respondents includes both prospective and actual Offerors.
- 3.5 Pre-Offer Conferences.** The City may hold one or more pre-offer conferences to review the Solicitation and to receive verbal questions. The Solicitation Cover Sheet will display if a Pre-Offer Conference is being held and if attendance at this meeting is mandatory. If a Pre-Offer Conference is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Pre-Offer Conference will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 3.6 Site Visits.** The City may hold one or more site visits to allow prospective Offerors to inspect the location(s) where work under any resulting contract will be performed and to receive verbal questions. The Solicitation Cover Sheet will display if a Site Visit is being held and if attendance at this meeting is mandatory. If a Site Visit is planned, the date, location, time and any other necessary information regarding this meeting will also be displayed in the Solicitation Cover Sheet. Attendance at any Site Visit will be recorded and will be included in an Addendum published following the meeting. As the Solicitation is subject to changes (See Solicitation Instruction, 1.4 Changes.) Offerors shall not rely on verbal exchanges that may occur at a Pre-Offer Conference. Offerors shall continue to submit all questions in writing (See Solicitation Instructions, 3.2 Questions.)
- 4 OFFER PREPARATION**
- 4.1 Offer Submittals.** Offerors intending to respond to this Solicitation shall download and complete each of the Submittal documents listed in the Solicitation Cover Sheet. Submittal documents will include additional Solicitation instructions specific to its contents. Offerors will complete each Submittal in accordance with the instructions in the submittal. At a minimum, submittals will include a Price Offer, a Technical Offer, and an Offer and Certifications submittal.
- 4.2 Alternate Offers.** Unless excluded elsewhere in the Solicitation, Offerors may submit alternative Offers, in addition to their primary Offer. Offerors seeking to submit an alternative Offer may include with their completed Submittals, any alternative Submittals as applicable.
- 4.3 Exceptions.** Offerors shall indicate if they take exception to any portions of the Solicitation in their Proposal. Any exceptions included in the Proposal may negatively impact the City's evaluation of the Proposal or may cause the City to reject the Proposal entirely.

- 4.4 Proposal Acceptance Period.** All proposals are valid for a period of one hundred and eighty (180) calendar days after the RFP closing date unless a longer acceptance period is offered in the proposal
- 4.5 Proprietary and Confidential Information.** All Offers received and opened by the City are subject to the Texas Government Code, Ch. 552, and will be made available to the public. Offerors seeking to keep any portions of their Offer confidential shall mark each such portion as “Proprietary”. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General’s Office of the State of Texas, of any Proposal contents marked as “Proprietary”. A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- 4.6 Cost of Offer Preparation and Participation.** Offerors are responsible for all costs related to the preparation of their Offer and incurred while participating in this Solicitation process.
- 4.7 Minority and Women Owned Business Enterprise (MBE/WBE) Procurement Program.** If the solicitation includes an MBE/WBE Program Compliance Plan or Offeror intends to subcontract, the Offeror 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 Subcontractor Utilization Plan as approved by the City (the “Plan”).
- 4.8 Living Wages.** The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

## 5 OFFER SUBMISSION

Offers in response to this Solicitation may be submitted using one of the following methods.

- 5.1 Electronic Offers.** Electronic Offers (electronic documents) shall be submitted to the City of Austin using the Solicitation’s eResponse function, available through the City’s online financial system, Austin Finance Online. To submit Electronic Offers using the eResponse function, Offeror’s must first be registered as a vendor with the City of Austin in Austin Finance Online.

See [Instructions, Submitting Offers in Austin Finance Online](#).

- 5.1.1 Due Date and Time for Electronic Offers.** Electronic Offers in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Offers.
- 5.1.2 Withdrawing Electronic Offers.** Electronic Offers submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation’s Due Date and Time. Withdrawn Electronic Offers may be resubmitted, with or without modifications, up to the Solicitation’s Due Date and Time.
- 5.1.3 Late Electronic Offers.** The Solicitation’s eResponse function in Austin Finance Online will not allow Electronic Offers to be submitted past the Solicitation’s Due Date and Time.
- 5.1.4 Opening Electronic Offers.** The information regarding Electronic Offers will become available on or shortly after the Offer Opening Date and Time stated on the Solicitation’s Cover Sheet. When Electronic Offers are opened, the names of each Offeror would be displayed within the Solicitation’s eResponse section. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will also be displayed in the eResponse section.
- 5.2 Hardcopy Offers.** Hardcopy Offers (physical documents including paper and flash drives) must be returned in a sealed envelope and shall be delivered to the City of Austin’s Purchasing Office at one of the following addresses, depending on the delivery method:

<b>Deliveries by US Mail</b>	<b>Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries</b>
City of Austin Purchasing Office Response to Solicitation: RFP 9100 JTH3015 P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: RFP 9100 JTH3015 124 W 8 <sup>th</sup> Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

- 5.2.1 Due Date and Time for Hardcopy Offers.** Hardcopy Offers in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Offers.
- 5.2.2 Withdrawing Hardcopy Offers. See below for changes due to the COVID-19 pandemic.**
- 5.2.3 Late Hardcopy Offers.** All Hardcopy Offers received after the Solicitation’s Due Date and Time will be rejected. Late Hardcopy Offers that are inadvertently received by the City shall be returned to the Offeror. It is the responsibility of the Offeror to ensure that their Offer arrives at the proper location by the Solicitation’s Due Date and Time. Arrival at the City’s mailroom, mail terminal, or post office box will not constitute the Hardcopy Offer arriving on time. The City may, at its sole discretion, receive a late Hardcopy Offer if the City’s misdirection or mishandling was the sole or main cause for the Hardcopy Offer’s late receipt at the designated location.
- 5.2.4 Opening Hardcopy Offers.** The City will open Hardcopy Offers on or shortly after the Offer Opening Date and Time stated on the Solicitation’s Cover Sheet. When Hardcopy Offers are opened, the names of each Offeror would be read aloud. For Solicitations conducted via Competitive Sealed Bidding, the Price Offer for each Offeror will be available to read aloud. If no one attends the Solicitation Opening, the aggregate price will be read aloud, with the remaining Price Offer available for public inspection immediately following the Solicitation opening.
- 5.3 Special procedures due to 2020 COVID-19 Pandemic.**
  - 5.3.1 Confirmation of Submittals –** Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Offers when they are received or able to verify receipt of Hardcopy Offers or provide signature confirmation of Offers delivered by common carriers.
  - 5.3.2 Withdrawing Hardcopy Offers –** Hardcopy Offers may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Offerors must send emails to withdraw Offers to the following email address: [PurchasingAdmin@austintexas.gov](mailto:PurchasingAdmin@austintexas.gov)
  - 5.3.3 Solicitation Openings -** Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website: [https://www.austintexas.gov/financeonline/afo\\_content.cfm?s=66](https://www.austintexas.gov/financeonline/afo_content.cfm?s=66) .

When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Offers aloud and will referring the public to the Solicitation’s eResponse section to view the remaining Electronic Offers.

## 6 OFFER EVALUATION

- 6.1 Basis of Competition.** The City may compare Offers based on groups or categories and will choose the basis of competition that best meets the City's needs for the resulting contracts. The basis of competition for each RFP will be described in section 11, Evaluation of Offers below.
- 6.2 Minimum Responsiveness.** Proposals are Minimally Responsive when they include all of the Submittals listed in this Solicitation, completed and with sufficient detail in each to evaluate the Proposal in accordance with the Solicitation's Instructions. Proposals that are not Minimally Responsive may be deemed non-responsive and rejected.
- 6.3 Responsibility.** An Offeror is responsible if they have the financial and practical ability, resources, expertise, past performance and positive compliance history with all City ordinances. An Offer may be rejected if an Offeror is determined to not be responsible.
- 6.4 Clarifications.** Any time after the opening of Proposals, the City may contact Offerors to ask questions about their Proposal's contents to better understand these contents as written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Proposal's contents. Clarifications are not to be confused with Discussions as described herein.
- 6.5 Evaluation.** Proposals that are Minimally Responsive will be evaluated based on the Evaluation Factors listed in Section 11.1 of the Solicitation Instructions. Evaluation Factors correspond to their specified Submittals and shall indicate their respective weighting next to each. Proposal submittals not identified as Evaluation Factors will be evaluated on a pass / fail basis in accordance with the Solicitation's Instructions and any further instructions within each Solicitation. Although minimum responses are required in all Submittals, the Submittals identified as Evaluation Factors will be used to differentiate the Proposals and to identify which Proposal(s) represent the Best Value to the City. The City's evaluation may be made without Clarifications or Discussions with Offerors. Proposals should, therefore, include the Offeror's most favorable terms.
- 6.6 Discussions and Proposal Revisions.** After completing initial evaluations, the City may enter Discussions (communications which may include negotiations and feedback about the Proposal submitted) with one or more Offerors submitting the highest rated Proposal(s). Following the completion of Discussions, the City may request Proposal revisions from these Offerors. The City may seek multiple rounds of Discussions and Proposal revisions as deemed necessary by the City. The City may revise its initial evaluations depending on the contents of any Proposal revisions received following these Discussions.
- 6.7 Interviews/Presentations.** The City may require that one or more Offeror submitting the highest rated Proposals participate in interviews and/or presentations.

## 7 CONTRACT AWARD AND EXECUTION

- 7.1 Award Determination.** City staff will recommend Contract award to the Offeror(s) submitting the highest rated Proposal(s) based on the Evaluation Factors set forth in this Solicitation. The Award Determination will be published to Austin Finance Online and notice will be sent to all Offerors subscribed to the Solicitation.
- 7.2 Multiple Awards.** If the City determines that multiple contracts are needed, the City will award one or more additional contracts to the Offeror(s) submitting the next highest rated Proposal(s).
- 7.3 Contract Execution.** Contracts within the City Manager's authority will be awarded and executed simultaneously. Contracts above the City Manager's authority will be executed following their authorization by the Austin City Council.

## 8 ADMINISTRATIVE MATTERS

- 8.1 Solicitation File.** All documents included in this Solicitation, and all timely received Offers in response to this Solicitation, except for Offer contents deemed by Offerors to be proprietary and confidential, will be available for public inspections upon the execution of the contract.



- 8.2 Debriefings.** Offerors may request a debriefing meeting to ask any questions concerning the Solicitation's contents, process or the evaluation of their Offer. Debriefing meetings are informal exchanges and may be requested anytime following the earlier of (i) after the contract resulting from this Solicitation is executed, or in the case of multiple awards, the last contract is executed; (ii) the date the Solicitation is cancelled. Debriefings are not public called meetings in accordance with the Texas Open Meetings Act and are usually limited to a single Offeror and any of their representatives. Only information regarding the Solicitation documents and the Offeror's Offer (including City's evaluation of the Offer) in response to the Solicitation will be discussed.
- 8.3 Reservations.** The City reserves the right to: (i) specify approximate quantities in the Solicitation; (ii) extend the Solicitation due date and time; (iii) add additional terms or modify existing terms in the Solicitation; (iv) reject an Offer containing exceptions, additions, qualifications or conditions not called for in the Solicitation; (v) reject an Offer received from an Offeror who is currently debarred or suspended by the City, State, or Federal Government; (vi) reject an Offer that contains fraudulent information; (vii) reject an Offer that has material omissions; (viii) reject any or all Offers; (ix) procure any goods or services included in this Solicitation by other means; (x) consider and accept alternate Offers, if specified in the Solicitation, when most advantageous to the City; (xi) reject an Offer if prices in the Offer are unbalanced (some prices are significantly high and other prices are significantly low) and/or (xii) waive any minor informality in any Offer or procedure so long as the deviation does not affect the competitiveness of the Solicitation process.
- 8.4 Protests.** The Purchasing Officer has the authority to settle or resolve any claim of an alleged deficiency or protest. The procedures for notifying the City of Austin of an alleged deficiency or filing a protest are listed below. If you fail to comply with any of these requirements, the Purchasing Officer may dismiss your complaint or protest.
- 8.4.1** Protest regarding the Solicitation (Pre-Submittal Protest). Any protest regarding the Solicitation by the City shall be filed no later than five (5) days prior to the due date and time for proposals. Any protest filed after that date which raises issues regarding the Solicitation will not be considered.
- 8.4.2** Protests regarding the evaluation of Proposals. Any protest regarding the evaluation of Proposals by the City shall be filed with the City no later than five (5) days after the notification of award recommendation is posted on Austin Finance Online, or notification that the protestor's status as a Offeror has changed, such as notification that an Offer has been found to be non-responsive or an Offeror has been found to be non-responsive. Any protest filed after such date which raises issues regarding the evaluation will not be considered. Offerors may only protest the evaluation of their Proposal.
- 8.4.3** Protest Regarding Award of Contract (Post-Award Protest). Any protest regarding the award of the contract shall be filed no later than ten (10) days after the date of award. Any protest regarding the award of the contract filed after such date will not be considered.
- 8.4.4** You shall submit your protest in writing and it shall include the following information: (i) your name, address, telephone, and email address; (ii) the Solicitation number; (iii) the specific facts and/or law upon which the protest of the Solicitation or the award is based, including all pertinent documents and evidence thereto; and (iv) the form of relief requested.
- 8.4.5** Your protest shall be concise and presented logically and factually to help with the City's review.
- 8.4.6** When the City receives a timely written protest, the Purchasing Officer will determine whether the grounds for your protest are sufficient. If the Purchasing Officer decides that the grounds are sufficient, the Purchasing Office will schedule a protest hearing, usually within five (5) working days. If the Purchasing Officer determines that your grounds are insufficient, the City will notify you of that decision in writing.
- 8.4.7** The protest hearing is informal and is not subject to the Open Meetings Act. The purpose of the hearing is to give you a chance to present your case, it is not an adversarial proceeding. Those who may attend from the City are representatives from the department that requested the purchase, the Department of Law, the Purchasing Office, and other appropriate City staff. You may bring a representative or anyone else that will present information to support the factual grounds for your protest with you to the hearing.

- 8.4.8** A decision will usually be made within fifteen (15) calendar days after the hearing.
- 8.4.9** The City will send you a copy of the hearing decision after the appropriate City staff has reviewed the decision.
- 8.4.10** When a protest is filed, the City usually will not make an award until a decision on the protest is made. However, the City will not delay an award if the City Manager or the Purchasing Officer determines that the City urgently requires the supplies or Services to be purchased, or failure to make an award promptly will unduly delay delivery or performance. In those instances, the City will notify you and make every effort to resolve your protest before the award.
- 8.5 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 successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

<https://www.ethics.state.tx.us/File/>

## 9 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.

"Addendum" means 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.

"Best Offer" means the best evaluated Offer in response to a Request for Proposals or Request for Qualifications/Statements.

"Best Offeror" means the Offeror submitting the Best Offer.

"City" means the City of Austin, a Texas home-rule municipal corporation.

"Offer" means a complete signed response to a Solicitation including, but not limited to, a Request for Proposals.

"Offeror" means a person, firm, or entity that submits an Offer in response to this 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.

"Proposal" means a complete, properly signed Offer to a Request for Proposals.

"Proposer" means a person, firm, or entity that submits an Offer in response to a Request for Proposals.

"Purchasing Office" refers to the Purchasing Office in the Financial Services Department of the City.

"Purchasing Officer" means the director of the Purchasing Office and the principle recipient of procurement authority from the City Manager.

"Request for Proposals" means all documents utilized for soliciting Proposals.

“Responsible Offeror” means 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.

“Responsive” means meeting all the requirements of a Solicitation.

“Solicitation” means this Request for Proposals or RFP.

## 10. PROPOSAL SUBMITTALS

- 10.1**        **Executive Summary** - Provide an Executive Summary that summarizes your RFP response and confirms that the Proposer will comply with the requirements, provisions, terms, and conditions specified in this solicitation. The Executive Summary should be in the form of a standard business letter on official business letterhead and signed by an authorized representative of Proposer. Include the complete name and address of your firm, telephone number, and email address of the person the City of Austin should contact regarding your firm’s response.
- 10.2**        **Authorized Negotiator** - Include name, address, email, and telephone number of a person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
- 10.3**        **Project Concept and Strategy** - State your understanding of the requirement presented in the Scope of Work of this RFP and describe in detail your proposed solution including:
- 10.3.1**        A comprehensive outline of goals and measurable objectives for a marketing campaign focused on COVID-19 related themes including vaccine hesitancy, hygiene, education outreach, 3rd doses, and booster shots. The plan should identify the types of creative assets and message testing strategies the contractor will use to execute the plan, detail relevant platforms and outlets where the contractor will execute the placement of key messaging content and collateral including traditional broadcast, print, digital, streaming, social media, as well as community-based and multi-cultural media outlets.
- 10.3.2**        Creative concepts for COVID-19 campaign content and collateral materials to be placed on multiple platforms including traditional advertising, paid media, social media and earned media in English and priority languages identified by APH including Arabic, Burmese, Chinese, Korean, Spanish, Urdu, and Vietnamese.
- 10.3.3**        Outline on-going strategies to develop culturally relevant, multi-lingual messaging to reach diverse populations in Austin/Travis County. The strategies should include how the contractor will deliver translation and interpretation of campaign marketing collateral in alignment with the City’s language access guidelines.
- 10.3.4**        A plan to serve various cultures and to provide services in various languages.
- 10.3.5**        Describe your reporting capability and how the Client data, including demographics, will be documented for the target population(s) identified.
- 10.3.6**        A plan to implement an advertising dashboard or similar tool which tracks ad placements and performance in real time including data by City Council district and demographic.
- 10.4**        **Work Plan**- Provide a work plan for implementing the campaign which includes:
- 10.4.1**        A proposed media mix and budget detailed by platform.

- 10.4.2** Proposed review and approval process for campaign content and hand-out collateral (video production, graphic design, translations, hand out collateral) ;
- 10.4.3** Process for purchasing and placement of messaging content and collateral on all platforms
- 10.4.4** Contingency plan or process for handling emergency support /quick turnarounds as well as a proposed response time guarantee during APH business hours, non-business hours, and emergencies.
- 10.4.5** Provide an overview of the organization’s capacity and experience for leveraging public dollars to identify and negotiate additional value-added media placements Provide detail via the Program Funding Summary
- 10.5** **Contractor Qualifications**  
To be considered responsive to this solicitation, the contactor shall meet the following minimum requirements:
- 10.5.3** A minimum of three (3) years of experience developing and implementing high-impact multi-platform advertising and marketing campaigns that maximize population reach and motivate behavior change
- 10.5.4** Demonstrated experience developing diverse, culturally relevant multi-platform, multi-lingual campaigns targeted for specific populations.
- 10.5.5** Demonstrated ability to leverage the use of in-kind or media matches (i.e. - free and discounted).
- 10.6** **Contractor Qualifications and Related Experience**-The contractor shall provide a description of their qualifications to assume the responsibilities required for this opportunity, including experience in administering similar programs, as demonstrated in the proposal. Do not include experience unless personnel assigned to this project actively participated. Do not include experience prior to 2011.
- 10.6.1** The Contractor will provide a list of **three (3)** comparable projects that the contractor has conducted, and include a brief description of:
- 10.6.1.1** Project Name
- 10.6.1.2** The client and each project’s purpose
- 10.6.1.3** Budget of each project and final cost invoiced for each **project**
- 10.6.1.4** Timeframe for each project
- 10.6.2** References – The Contractor will provide written information from three (3) references which can verify experience in working with the Contractor and substantiate the contractor’s success in creating, implementing, and managing the project and completing all deliverables within budget and schedule.
- 10.6.3** **Assigned personnel -Provide Names and Qualifications of all professional personnel who will be assigned to this project. Identify key people by name and title. Provide all resumes.**
- 10.7** **Organization Oversight**- Provide the full name and address of your organization and identify parent organization if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work.
- 10.8** **Price Proposal** - Cost will be evaluated based upon lowest. The City will also verify that administrative and fund development costs do not exceed percentages as described in the Scope of Work. Cost will be evaluated based upon information provided on the form provided titled “price sheet.”

- 10.8.1** Identify the cost and need for each deliverable in pages 9 through 12 of the Scope in this solicitation.
- 10.8.2** A proposed budget, with bottom line total initial term (3 years), and each of the two (2) year extensions,'

**11. EVALUATION OF OFFERS -**

This procurement will comply with applicable City of Austin Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in 11.1 shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the successful Proposer. Award of a contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

**11.1 Evaluation Factors**

<b>RFP Evaluation Factors</b>	<b>Maximum Points</b>
<b>Proposed Advertising and Marketing Campaign (Sections: 10.3,10.4, 10.7)</b>	40
<b>Contractor Qualifications and Related Experience (Sections:10.5, 10.6)</b>	35
<b>Price Proposal (Section 10.8 Price Sheet)</b>	25
<b>Total</b>	<b>100</b>

**11.2 Interviews and/or presentations, Optional.** The City will score proposals based on the criteria listed above. The City may select a “short list” of Proposers based on those scores. “Short-listed” Proposers may be invited for presentations, demonstrations, or discussions with the City. The City reserves the right to re-score “short-listed” proposals as a result, and to make award recommendations on that basis.

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The Contractor agrees that the Contract shall be governed by the following terms and conditions.

**1 GENERAL**

**1.1 TERM OF CONTRACT:**

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, unless specified otherwise in the Scope of Work, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

**1.2 INDEFINITE QUANTITY:**

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

**1.3 INVOICES:**

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order of Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor'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 vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.**
- E. 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.

**1.4 PAYMENT:**

- A. 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.

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- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §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 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. Delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
  - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. 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;
  - v. Reasonable evidence demonstrates 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;
  - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
  - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §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.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. 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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation.

**1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:

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- i. 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
- ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**1.6 SPECIAL TOOLS & TEST EQUIPMENT:**

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**1.7 SAM.GOV: CONTRACTOR AGREES THAT IT WILL REGISTER WITH THE SYSTEM FOR AWARD MANAGEMENT (SAM) AT <HTTPS://WWW.SAM.GOV> AND NOTIFY THE CITY IN WRITING WHEN THAT REGISTRATION IS COMPLETE.**

**1.8 SINGLE AUDIT REQUIREMENTS:**

- i. Contractor shall annually contract with an independent auditor utilizing a Letter of Engagement to complete either a full financial audit or financial review. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas. The City shall reimburse the Contractor for all out-of-pocket costs and expenses incurred in performing its services under this Agreement (including, but not limited to, the costs of any audit or financial review required by the City).
- ii. In the event the Contractor expends \$750,000 or more in a year in federal awards, it shall have a single or program specific audit conducted in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations as required by the Single Audit Act of 1984, as amended (Single Audit Act), and shall submit to the City a complete set of audited financial statements and the auditor's opinion and management letters in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and any guidance issued by the federal Office of Management and Budget covering Contractor's fiscal year until the end of the term of this Contract.
- iii. If Contractor is not subject to the Single Audit Act, and expends \$750,000 or more during Grant Administrator's fiscal year, then it shall have a full financial audit performed in accordance with Generally Accepted Auditing Standards (GAAS). If less than \$750,000 is expended, then a financial review is acceptable, pursuant to the requirements of this Contract.
- iv. The Contractor shall submit a complete financial audit report or financial review which has been presented and accepted by its Board of Directors, to include the original auditor



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Opinion Letter/Independent Auditor's Report within 270 calendar days of the end of the Contractor's fiscal year, unless alternative arrangements are approved in writing by the City. The financial audit report or financial review report must include the Management Letter/Internal Controls Letter, if one was issued by the auditor.

- v. The inclusion of any Findings or a Going Concern Uncertainty, as defined by Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and GAAS, in the Contractor's audit requires the creation and submission to the City of a corrective action plan formally approved by Contractor's governing board. The plan must be submitted to the City within 60 days after the audit is submitted to the City. Failure to submit an adequate plan to the City may result in the immediate suspension of funding. If adequate improvement related to the audit findings is not documented within a reasonable period of time, the City may provide additional technical assistance, refer the Agreement to the City Auditor for analysis, or move to terminate the Agreement, pursuant to the terms of this Contract.

**1.9 AUDITS AND RECORDS:**

- A. 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, including security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
  - i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
  - ii. The Contractor shall retain all records for a period of five 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.

**1.10 FINANCIAL DISCLOSURES AND ASSURANCE:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

**1.11 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. If 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.

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**1.12 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.

**1.13 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, (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 the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.14 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

**1.15 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.16 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. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract

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**1.17 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.

**1.18 DELAYS:**

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 Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**1.19 FORCE MAJEURE:**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

**1.20 INDEMNITY:**

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) 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, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
  - i. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
  - ii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
  - iii. 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;
  - iv. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY

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- THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
- v. 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.
- B. 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.
- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
- i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
  - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. 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.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.21 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. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

**1.22 CONFIDENTIALITY:**

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, 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 a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In

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all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.
- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.23 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. 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.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
  - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
  - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or

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intentionally fails to comply with a requirement of that Subchapter.

**1.24 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.

**1.25 ADVERTISING:**

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

**1.26 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.

**1.27 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.

**1.28 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.

**1.29 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.

**1.30 ASSIGNMENT DELEGATION:**

The Contract shall be binding upon and ensure 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

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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.

**1.31 WAIVER:**

The claim or right arising out of a breach of the Contract cannot 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.

**1.32 MODIFICATIONS:**

The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**1.33 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.

**1.34 DISPUTE RESOLUTION:**

- A. 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.
- B. 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 consider 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. 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

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participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**1.35 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, 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.

**1.36 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.

**1.37 HOLIDAYS:**

Dates for the holidays observed by the City can be found here <https://www.austintexas.gov/department/official-city-holidays>

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.

**1.38 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.

**1.39 COOPERATIVE CONTRACT:**

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**1.40 EQUAL OPPORTUNITY:**

- A. **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



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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.

- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **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.
- D. **Civil Rights Compliance:** Contractor acknowledges it is required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23

**1.41 INSURANCE:**

A **GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. 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 hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:
  - City of Austin Purchasing Office
  - P.O. Box 1088
  - Austin, Texas 78767
  - OR
  - [PURInsuranceCompliance@austinTexas.gov](mailto:PURInsuranceCompliance@austinTexas.gov)
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the 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.
- iv. 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.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.

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- vi. 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.
  - vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance 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.
  - viii. 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.
  - ix. 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 exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
  - x. 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.
  - xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
  - xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
  - xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum 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.
- i. **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.
    - (1) The Contractor’s policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
      - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
      - b. 30 Days’ Notice of Cancellation, Form WC420601, or equivalent coverage.
  - ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
    - (1) The policy shall contain the following provisions:

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- a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
  - b. Independent Contractors coverage (Contractor/Subcontracted work);
  - c. Products/Completed Operations Liability for the duration of the warranty period;
  - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
- iii. **Business Automobile Liability Insurance**: 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 include these endorsements in favor of the City of Austin:
- a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Media Professional Liability**: Contractor shall provide Professional Liability coverage, at a minimum limit of: \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages for libel, slander, defamation, copyright, title and slogan infringement, piracy, plagiarism, and invasion of privacy in the conduct of his/her business.
- v. **Cyber Liability Insurance**: Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.
- C. **Endorsements**: The specific insurance coverage endorsements specified above, or their equivalents must be provided. If 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.

**2 GOODS**

**2.1 DELIVERY AND PACKAGING TERMS:**

- A. **DELIVERY AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. destination, prepaid and allowed unless otherwise specified. Unless otherwise stated in this Contract, the Contractor's price shall be deemed to include all delivery and transportation charges of required mode of transportation. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be set forth in the block of the Purchase Order or Delivery Order

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entitled "SHIP TO" and/or Offer Sheet. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays. The City expressly reserves all rights under law, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables.

- B. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach. However, the Contractor shall have the right to substitute a conforming tender; provided if the time for performance has not yet expired. The Contractor shall notify the City of the intention to cure and may then make a conforming tender within the time allotted in the Contract.
- C. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** All Deliverables must be shipped complete unless arrangements for partial shipments are made in advance. 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.
- D. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables
- E. **CONTRACTOR PACKAGING DELIVERABLES:** The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and Purchase Order or Delivery Order number and the price agreement number if applicable, (c) container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear the cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable Specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**2.2 WARRANTY:**

- A. **PRICE:**
  - i. 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.
  - ii. The Contractor warrants that its prices provided in this Contract are no higher than its current prices on orders for similar goods under similar terms of purchase.
- B. **TITLE & RISK OF LOSS:** Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables. The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
- C. **DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the Specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State,

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Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Contract, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.

- i. 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.
- ii. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively 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.
- iii. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables 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 Deliverables from another source.
- iv. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall fully assist and cooperate with the City to enforce such manufacturer's warranty for the benefit of the City.
  - i. Contractor warrants that all Equipment shall be at current engineering change levels and shall be eligible for the manufacturer's standard prime shift maintenance contract upon delivery.

**2.3 WARRANTY BY CONTRACTOR AGAINST INFRINGEMENTS:**

- A. The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the Specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims.
- B. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties Stated in this Contract.
- C. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's Specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this Paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

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**2.4 RESTOCKING FEES:**

- A. The Contractor may bill the City restocking fees (if specifically authorized by this Contract) for parts that are Ordered by the City under the Contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.
- B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

**2.5 PUBLISHED PRICE LISTS:**

The Published Price List may be superseded or replaced during the Contract term only if price revisions are the result of a modification to the manufacturer's official Published Price List. Written notification from the Contractor of price changes, along with one copy of the revised manufacturer's official Published Price List must be submitted to the Purchasing Office with the effective date of change to be at least 30 calendar days after written notification. The City reserves the right to refuse any list revision. The discounts or markups on equipment rental, material, supplies, parts, and Contract services shall be fixed throughout the term of the Contract and are not subject to increase. Failure to submit written notification of Published Price List revisions will result in the rejection of new prices being Invoiced. The City will only pay Invoices according to the last approved price list.

**2.6 OWNERSHIP AND USE OF DELIVERABLES:**

The City shall own all rights, titles, and interests throughout the world in and to the Deliverables, except as stated below.

- A. **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.
- B. **COPYRIGHTS:** As to any Deliverable containing copyrighted 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 work 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 Austin) 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-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.
- C. **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

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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 obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Clause 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 arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

**2.7 BUY AMERICAN ACT:**

In accordance with applicable Federal Regulations, the City is restricted from using Federal funds for purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate.

**2.8 WORKPLACE CONDITIONS CODE ("CODE"):**

The Austin City Council adopted Ordinance No. 20070621-152 on June 21, 2007, enacting the Workplace Conditions Code. The policy defined in this code applies to any contract for the procurement or laundering of apparel. The Contractor shall comply with this Code, for the term of this Contract. The Code is available at <https://www.austintexas.gov/edims/document.cfm?id=104087>.

**3 SERVICES**

**3.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:**

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

**3.2 WORKFORCE:**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. 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:
  - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
  - ii. 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.
- C. 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.

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**3.3 GUARANTEE – 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 following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. 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.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from Final Acceptance Date. The maintenance period shall not begin until after the Final Acceptance Date and no associated maintenance fees will be charged until commencement of the maintenance period. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty 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.
- C. 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.

**3.4 DATA SECURITY:**

The Contractor shall:

- A. Notify the City of a Security Incident as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
- B. Notify the City Identified Contact of any of a Security Incidents by telephone at 512-974-4357 and email at [cybersecurity@austintexas.gov](mailto:cybersecurity@austintexas.gov) and [AE-Exec-Info-Sec@austinenergy.com](mailto:AE-Exec-Info-Sec@austinenergy.com).
- C. All vendors and subcontractors who have access to city data are required to have internal privacy and security policies.
- D. All vendors and subcontractors are required to provide proof of at least annual cybersecurity training for all authorized persons with access to city data.

**3.5 TRAVEL EXPENSES:**

All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the current United States General Services Administration Domestic Per Diem rates as published and maintained online at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>

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



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**3.6 LIVING WAGES:**

**The City's Living Wage Program, Rule R161-17.14, is located at:**

<http://www.austinTexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$15.00 per hour, 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.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (see the Living Wages Contractor Certification included in the Solicitation) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant Contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act.
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first Invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the Contract. The City reserves the right to request individual Employee Certifications at any time during the Contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the Contract. The Employee Certification form is available on-line at [https://www.austinTexas.gov/financeonline/vendor\\_connection/index.cfm](https://www.austinTexas.gov/financeonline/vendor_connection/index.cfm).
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of Contract award with the respective Invoice to verify that employees are paid the Living Wage throughout the term of the Contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the Contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in Paragraph C above to verify compliance with this provision.

**3.7 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Access to the Austin Public Health Department building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Public Health Department ) building at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Public Health building and security badges must be on display, at all times, when in the

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building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.

- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

**4 TECHNOLOGY**

**4.1 PROFESSIONAL & TECHNICAL - DELIVERABLE (INCLUDING SERVICE) ACCEPTANCE:**

Acceptance for any particular Deliverable, shall not occur until City has determined that such Deliverables function substantially in accordance with the specifications listed in Contractor's relevant technical documentation, and with any required test scripts and procedures developed according to any relevant Statement of Work ("Acceptance Test"). Once the Acceptance Test(s) are passed in City's determination, Contractor shall request Final Acceptance in writing. Final Acceptance of the Work shall officially occur by City stating same to Contractor in writing and by making the final payment to Contractor of the initial sum(s) due and owing, in line with any Statement of Work or Payment Schedule.

**4.2 SOFTWARE & CLOUD - WARRANTY:**

- A. **PERFORMANCE:** Contractor represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provide under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any Deliverables provided by Contractor shall operate in conformance with the terms of this Contract and the applicable Schedules and Statements of Work.
- B. **SOFTWARE:** Unless otherwise expressly provided in this Contract, a SaaS Subscription Schedule or Statement of Work, Contractor for itself and for and on behalf of its subcontractors, licensors, employees and agents warrants that: (a) the functions contained in the Subscription Services and in any Non-subscription Services provided under this Contract shall meet City's requirements, (b) the operation of the Subscription Services and any Non- subscription Services shall be uninterrupted and error free, (c) the Subscription Services and any Non- subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services and (d) the Subscription Services shall work with future specifications, as well as future releases of web browsers, and shall have both forward and backward functionality. Contractor shall be liable for any damages that City may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Contract. Without limitation, Contractor's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any act by an agent, contractor, subcontractor, consultant, or employee of Contractor that results in, or is intended by such agent,

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contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of City's systems, data, City's Confidential Information, or City's technology.

- i. Contractor warrants that no software program, either in whole or in part, nor any portion of the Subscription Services or Non-subscription Services provided to City under this Contract, shall:
  - (1) Contain any hidden file;
  - (2) Replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;
  - (3) Alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
  - (4) Contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Contract, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;
  - (5) Contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Contractor; or
  - (6) Use electronic self-help, including but not limited to preventing electronically City's further or continued use of and/or access to the Subscription Services, Non-subscription Services, or any software or other portion thereof.
- ii. Notwithstanding any provision in this Contract to the contrary, if any Subscription Service or Non-subscription Service has any of the above foregoing attributes (collectively, "Illicit Code"), Contractor shall be in default of this Contract, and no cure period shall apply unless approved by an executive of the City. At the request of and at no cost to City, Contractor shall remove any such Illicit Code from the licensed software as promptly as possible.
- iii. To protect City from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into City's computer systems, no software may be installed, executed or copied onto City's equipment without express warranty to City that Illicit Code does not exist. Contractor agrees that in the event of any dispute with City regarding an alleged breach of this Contract, Contractor shall not use any type of electronic means to prevent or interfere with City's use of any portion of the Subscription Services and Non-subscription Services. Contractor understands that a breach of this provision could foreseeably cause substantial harm to City and to numerous Third Parties having business relationships with City. As a result, at City's option, City may subject Contractor to the Liquidated Damages provision of this Contract or obtain injunctive relief against Contractor which Contractor agrees not to contest.

**4.3 BUSINESS CONTINUITY AND DISASTER RECOVERY:**

The Contractor shall maintain a business continuity and disaster recovery plan.

**4.4 DATA**

- A. **DATA OWNERSHIP:** The City owns all right, title and interest in City Data. Contractor agrees it has no title or interest to City Data. The Contractor shall not access City User accounts or City Data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Contract, or (4) at the City's written request.

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- B. **DATA PROTECTION:** Protection of personal privacy and City Data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of City Data at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City Data and comply with the following conditions:
- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of City Data, including non-public data. Such security measures shall be in accordance with recognized industry practice.
  - ii. All non-Public data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the non-Public data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this Contract.
  - iii. The City shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-Public data shall be identified and made a part of this Contract.
  - iv. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any Contractor Affiliate for non-City use.
  - v. The Contractor shall not use any information collected in connection with the Service it provides under the Contract for any purpose other than fulfilling the Contract requirements.
- C. **COMPLIANCE WITH ACCESSIBILITY STANDARDS:** The Contractor shall comply with and adhere to the Accessibility Standards of Section 508, as amended, of the Rehabilitation Act of 1973.
- D. **SECURITY:** The Contractor shall disclose its non-proprietary security processes and technical limitations to the City and shall provide protection of the City Data. The City and the Contractor shall understand and memorialize each other’s roles and responsibilities in the Contract documents. Contractor agrees to adhere to the requirements of the Data Handling Controls. Contractor agrees these provisions shall survive the termination of the Contract.
- E. **COMPLIANCE WITH CHAPTER 521 OF THE TEXAS BUSINESS AND COMMERCE CODE:** Contractor shall comply with all requirements of Chapter 521 of the Texas Business and Commerce Code, including being responsible for a program that protects against the unlawful use or disclosure of Personal Identifying Information (PII) or Sensitive Personal Information (SPI) collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also include appropriate corrective action in event of any Security Incident or Data Breach, and proper methods of destroying records containing PII or SPI.
- F. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** The Contractor shall inform the City of any Security Incident or Data Breach as required by the Data Handling Controls or other relevant part of the Contract.
- i. **Incident Response:** The Contractor may need to communicate with outside parties regarding a Security Incident or Data Breach, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Security Incidents or Data Breaches, especially notification and

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subsequent communication, should be handled on an urgent basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Contract, including the Data Handling Controls.

- ii. **Security Incident Reporting Requirements:** The Contractor shall report a Security Incident to the appropriate City identified contact immediately and without delay, as defined in the SLA.
- iii. **Data Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any City Data, whether or not that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify by telephone the appropriate City identified contact as soon as reasonably possible, but no later than four (4) hours, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.
- iv. **Data Breach Responsibilities:** The following subsection describes the Contractor's supplemental responsibilities that apply when a Data Breach is suspected or occurs with respect to Personally Identifiable Information or City Confidential Information within the possession, custody or control of Contractor.
  - (1) The Contractor, unless stipulated otherwise (including in the Data Handling Controls), shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Security Incident.
  - (2) The Contractor, unless stipulated otherwise, shall promptly notify by telephone the appropriate City identified contact as soon as reasonably possible but no later than four (4) hours, unless shorter time is required by applicable law (or by another section of the Contract), if it confirms that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the Services.
  - (3) Unless otherwise stipulated, if a Security Incident or a Data Breach is a direct result of the Contractor's breach of its Contract obligations, the Contractor shall bear all costs to remedy, including but not limited to (1) the investigation and resolution of the Security Incident or the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause analysis.

**4.5 EXPORT OF DATA:**

The City shall have the ability to export data in part or in its entirety at its discretion without interference from the Contractor. This includes the ability for the City to export data to/from other Contractors.

**4.6 IMPORT OF DATA:**

The City shall have the ability to import data in part or in its entirety at its discretion without interference from the Contractor. This includes the ability for the City to import data to/from other Contractors.

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**5 DEFINITIONS**

1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data , and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.
7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.

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11. **“Confidential Information”** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **“City Confidential Information”** is a subsets of Confidential Information.
12. **“Contract”** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **“Contract Price”** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **“Contractor”** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **“Contractor Information”** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.
16. **“Contractor Software”** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **“Data Breach”** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City’s or City’s customers’ unencrypted Personally Identifiable Information or City Confidential Information.
18. **“Documentation”** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.

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23. **“Infrastructure-as-a-Service”** (IaaS) – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).
24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
29. **“Party”** or **“Parties”** – the City and Contractor, individually or together, as applicable.
30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
31. **“Platform-as-a-Service”** (PaaS) – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.



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32. **“Purchase Order”** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.
33. **“SaaS Software Application”** and **“SaaS Software”** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
34. **“SaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the SaaS Software Application.
35. **“Security Incident”** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
36. **“Service Level Agreement” (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
37. **“Service Levels”** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
38. **“Services”** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
39. **“Software”** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.

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40. **“Software-as-a-Service” (SaaS)** – the Services provided to the City to use the Contractor’s offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
41. **“Specifications”** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
42. **“Statement/Scope of Work”** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City’s Service needs and expectations.
43. **“Subscription Services”** – City’s access to and use of and Contractor’s provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
44. **“Third Party”** – any natural person or legal entity other than Contractor and City.
45. **“Transition Date”** – the date upon which it is established to City’s satisfaction that the SaaS Software Application is stable enough to support City’s production processing.
46. **“User Information”** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.
47. **“User”** – City’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
48. **“Work Product”** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor’s Software.

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**Exhibit 1: City of Austin Special Supplemental Terms, Conditions, Clauses and Certifications**

**The following Terms, Conditions, Clauses and Certifications are required by various agencies of the United States Government as part of the City’s contracts in support of emergencies and where reimbursement will be sought from federal and state sources. These provisions are non-negotiable.**

1. Applicable to All Procurements Regardless of Dollar Value.

a. Prohibition on Contracting for Covered Telecommunications Equipment or Services on or after November 12, 2020

Prohibition on Contracting for Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing—

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- (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28
- (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
  - (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
  
- (d) Reporting requirement.
  - (1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
  - (2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
    - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
    - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered for telecommunications equipment or services.
  
- (e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

b. Domestic Preference Procurements on or after November 12, 2020

Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-

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based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

c. Debarment and Suspension

NOTE: NFEs, even for procurements under \$25,000, must also comply with the regulation requiring nonstate entities to only award contracts to responsible vendors.

d. Access to Records

The Contractor agrees to provide the City of Austin, Texas, State of Texas Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

e. Contract Changes or Modifications

Changes or modifications to contracts will be discussed with the Contractor. These changes will require documentation of any price increase or decrease. City will review and accept or reject price changes. City will issue a contract amendment for each change.

Changes to contract scope or price may increase the number of applicable federal contract clauses. If a contract value is increased from one dollar value threshold to another, the City will advise the Contractor of the additional applicable requirements as an amendment of the contract.

f. DHS Seal, Logo and Flags

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts.

g. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

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h. No Obligation by Federal Government

The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

i. Program Fraud and Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

j. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

k. Copyright – all procurements that may involve the creation of copyrightable material.

“License and Delivery of Works Subject to Copyright and Data Rights” The Contractor grants to the City of Austin, Texas, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the City of Austin, Texas or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the (insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).

l. Civil Rights

Recipients of Federal financial assistance from the Treasury, including the City's contractors and subcontractors are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds.

Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of

- race,
- color,

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- national origin (including limited English proficiency),
- disability,
- age, or
- sex (including sexual orientation and gender identity),

in accordance with the following authorities:

- Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22;
- Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794;
- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28;
- Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

- m. Requirement to use minority businesses, woman-owned businesses, and labor surplus area firms.

Prime Contractors must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Prime contractor may contact the City (WHO?) for assistance in identifying businesses in these three categories.

- n. Parties involved in developing requirements excluded from award of subsequent contract.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements.

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If a contractor is later discovered to have violated this term, contract is void. [MW: ensure language is consistent with other City terms creating void contract, such as Anti-Lobbying.] [MW: This should probably move up to the City's library of Standard Terms and Conditions.]

o. Prohibition on contracting / sub-contracting with precluded parties

Contractors may not use subcontractors identified within the System for Award Management as a precluded party.

2. Applicable to Procurements Over \$10,000

a. Termination for Cause or Convenience; Process and Basis for Settlement

The City may terminate this Contract for convenience at any time with 30 calendar days' written notice to Contractor. On receipt of the Notice, the Contractor shall immediately stop performance of services (unless the Notice directs otherwise) and deliver all documents, programs, reports, and materials accumulated in performing this Contract (whether finished or in process) to the City within 10 business days, or as otherwise stated in the Notice. The City shall pay the Contractor for all reimbursable costs and obligations incurred up to the date of termination. However, in no event shall the Contractor be entitled to recover any profit for unperformed Services. In the event of a termination for convenience, the City shall have the right (but not the obligation) to take over the Services and complete them by contract or otherwise, including the option to require the Contractor to assign any or all of its subcontracts to the City.

b. Procurement of Recovered Materials where materials are involved

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.



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The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

3. Applicable to Procurements Over \$25,000

a. Suspension and Debarment

Suspension and Debarment. This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the City of Austin, Texas. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of Austin, Texas, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. Registration with and maintenance of account with GSA System for Award Management (SAM)

Prime and all subcontractors (if any) shall register with the System for Award Management.

LINK:

Per Executive Orders 12549 and 12689, a contract award must not be made to parties listed on the government-wide exclusions in the System for Award Management.

4. Applicable to Procurements Over \$100,00 with mechanics or laborers

a. Contract Work Hours and Safety Standards Act

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Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (insert name of grant recipient or subrecipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

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(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.”

5. Applicable to Procurements Over \$100,000

a. Byrd Anti-Lobbying Amendment

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

If applicable, contractors must sign and submit the certification included on the final page with each bid or offer exceeding \$100,000.

6. Applicable to Procurements Over \$150,000

a. Clean Air Act and Federal Water Pollution Control Act

“Clean Air Act”

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The contractor agrees to report each violation to the (insert name of non-federal entity entering into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

“Federal Water Pollution Control Act”

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to the (insert name of the non-federal entity entering

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into the contract) and understands and agrees that the (insert name of the nonfederal entity entering into the contract) will, in turn, report each violation as required to assure notification to the (insert name of the pass-through entity, if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

7. Applicable to Procurements Over \$250,000

a. Remedies for Violation or Breach of Contract; Sanctions and Penalties

A party shall be in default (“Default”) under the Contract if the party (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, and following receipt of notice of such failure, fails timely to cure the failure within [*time to cure*] or fails to provide adequate assurance of performance within [*should be same amount of time*].

8. Applicable to Procurements Over \$750,000

- a. When the City spends an amount in excess of \$750,000 with a contractor, whether in a single order or contract, or as the result of a series of purchases assembled into a reimbursement project, the City will be the subject of a “single audit” for each such event.
- b. Contractor is advised that the requirements of a single audit may result in requirements to produce additional documentation for the City.

9. Applicable Only to Construction Projects

a. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other Contract Provisions Guide 12 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204

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of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings

b. Davis-Bacon Act

**§ 5.5 Contract provisions and related matters.**

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

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**(1) *Minimum wages.***

(i) All [laborers](#) and mechanics [employed](#) or working upon [the site of the work](#) (or under the [United States Housing Act of 1937](#) or under the [Housing Act of 1949](#) in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the [Secretary](#) of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of [wages](#) and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the [wage determination](#) of the [Secretary](#) of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such [laborers](#) and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the [Davis-Bacon Act](#) on behalf of [laborers](#) or mechanics are considered [wages](#) paid to such [laborers](#) or mechanics, subject to the provisions of [paragraph \(a\)\(1\)\(iv\)](#) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such [laborers](#) and mechanics shall be paid the appropriate wage rate and fringe benefits on the [wage determination](#) for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). [Laborers](#) or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the [employer's](#) payroll records accurately set forth the time spent in each classification in which work is performed. The [wage determination](#) (including any additional classification and wage rates conformed under [paragraph \(a\)\(1\)\(ii\)](#) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at [the site of the work](#) in a prominent and accessible place where it can be easily seen by the workers.

**(ii)**

**(A)** The [contracting officer](#) shall require that any class of [laborers](#) or mechanics, including helpers, which is not listed in the [wage determination](#) and which is to be [employed](#) under the [contract](#) shall be classified in conformance with the [wage determination](#). The [contracting officer](#) shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the [wage determination](#); and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the [wage determination](#).

**(B)** If the contractor and the [laborers](#) and mechanics to be [employed](#) in the classification (if known), or their representatives, and the [contracting officer](#) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the [contracting officer](#) to the [Administrator](#) of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The [Administrator](#), or an authorized representative, will approve, modify, or disapprove every additional classification action within 30

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days of receipt and so advise the [contracting officer](#) or will notify the [contracting officer](#) within the 30-day period that additional time is necessary.

**(C)** In the event the contractor, the [laborers](#) or mechanics to be [employed](#) in the classification or their representatives, and the [contracting officer](#) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the [contracting officer](#) shall refer the questions, including the views of all interested parties and the recommendation of the [contracting officer](#), to the [Administrator](#) for determination. The [Administrator](#), or an authorized representative, will issue a determination within 30 days of receipt and so advise the [contracting officer](#) or will notify the [contracting officer](#) within the 30-day period that additional time is necessary.

**(D)** The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this [contract](#) from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the [contract](#) for a class of [laborers](#) or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as [stated](#) in the [wage determination](#) or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the [wages](#) of any [laborer](#) or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the [Secretary](#) of Labor has found, upon the written request of the contractor, that the applicable standards of the [Davis-Bacon Act](#) have been met. The [Secretary](#) of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**(2) *Withholding.*** The (write in name of [Federal Agency](#) or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this [contract](#) or any other Federal [contract](#) with the same prime contractor, or any other federally-assisted [contract](#) subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay [laborers](#) and mechanics, including [apprentices](#), trainees, and helpers, [employed](#) by the contractor or any subcontractor the full amount of [wages](#) required by the [contract](#). In the event of failure to pay any [laborer](#) or mechanic, including any [apprentice](#), [trainee](#), or helper, [employed](#) or working on [the site of the work](#) (or under the [United States Housing Act of 1937](#) or under the [Housing Act of 1949](#) in the construction or development of the project), all or part of the [wages](#) required by the [contract](#), the (Agency) may, after written notice to the contractor, [sponsor](#), applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**(3) *Payrolls and basic records.***

**(i)** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all [laborers](#) and mechanics working at [the site of the work](#) (or under the [United States Housing Act of 1937](#), or under the [Housing Act of 1949](#), in the construction or development of the project). Such records



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shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of [wages](#) paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the [Davis-Bacon Act](#)), daily and weekly number of hours worked, deductions made and actual [wages](#) paid. Whenever the [Secretary](#) of Labor has found under [29 CFR 5.5\(a\)\(1\)\(iv\)](#) that the [wages](#) of any [laborer](#) or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the [Davis-Bacon Act](#), the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the [laborers](#) or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing [apprentices](#) or [trainees](#) under approved programs shall maintain written evidence of the registration of [apprenticeship programs](#) and certification of [trainee](#) programs, the registration of the [apprentices](#) and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

**(A)** The contractor shall submit weekly for each week in which any [contract](#) work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the [agency](#) is a party to the [contract](#), but if the [agency](#) is not such a party, the contractor will submit the payrolls to the applicant, [sponsor](#), or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under [29 CFR 5.5\(a\)\(3\)\(i\)](#), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each [employee](#) (e.g., the last four digits of the [employee](#)'s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the [agency](#) is a party to the [contract](#), but if the [agency](#) is not such a party, the contractor will submit them to the applicant, [sponsor](#), or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the [sponsoring](#) government [agency](#) (or the applicant, [sponsor](#), or owner).

**(B)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons [employed](#) under the [contract](#) and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, [29 CFR part 5](#), the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, [29 CFR part 5](#), and that such information is correct and complete;

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(2) That each [laborer](#) or mechanic (including each helper, [apprentice](#), and trainee) [employed](#) on the [contract](#) during the payroll period has been paid the full weekly [wages](#) earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full [wages](#) earned, other than permissible deductions as set forth in Regulations, [29 CFR part 3](#);

(3) That each [laborer](#) or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable [wage determination](#) incorporated into the [contract](#).

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by [paragraph \(a\)\(3\)\(ii\)\(B\)](#) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and [section 231](#) of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under [paragraph \(a\)\(3\)\(i\)](#) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview [employees](#) during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the [Federal agency](#) may, after written notice to the contractor, [sponsor](#), applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to [29 CFR 5.12](#).

**(4) Apprentices and trainees -**

(i) **Apprentices.** [Apprentices](#) will be permitted to work at less than the predetermined rate for the work they performed when they are [employed](#) pursuant to and individually registered in a bona fide [apprenticeship program](#) registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, [Employer](#) and Labor Services, or with a [State Apprenticeship Agency](#) recognized by the Office, or if a person is [employed](#) in his or her first 90 days of probationary employment as an [apprentice](#) in such an [apprenticeship program](#), who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, [Employer](#) and Labor Services or a [State Apprenticeship Agency](#) (where appropriate) to be eligible for probationary employment as an [apprentice](#). The allowable ratio of [apprentices](#) to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an [apprentice](#) wage rate, who is not registered or otherwise [employed](#) as [stated](#) above, shall be paid not less than the applicable wage rate on the [wage determination](#) for the classification of work actually performed. In addition, any [apprentice](#) performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the [wage determination](#) for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every [apprentice](#) must be paid at not less than the rate specified in the registered program for the [apprentice](#)'s level of progress, expressed

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as a percentage of the journeymen hourly rate specified in the applicable [wage determination](#). [Apprentices](#) shall be paid fringe benefits in accordance with the provisions of the [apprenticeship program](#). If the [apprenticeship program](#) does not specify fringe benefits, [apprentices](#) must be paid the full amount of fringe benefits listed on the [wage determination](#) for the applicable classification. If the [Administrator](#) determines that a different practice prevails for the applicable [apprentice](#) classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, [Employer](#) and Labor Services, or a [State Apprenticeship Agency](#) recognized by the Office, withdraws approval of an [apprenticeship program](#), the contractor will no longer be permitted to utilize [apprentices](#) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in [29 CFR 5.16](#), [trainees](#) will not be permitted to work at less than the predetermined rate for the work performed unless they are [employed](#) pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of [trainees](#) to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every [trainee](#) must be paid at not less than the rate specified in the approved program for the [trainee's](#) level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable [wage determination](#). [Trainees](#) shall be paid fringe benefits in accordance with the provisions of the [trainee](#) program. If the [trainee](#) program does not mention fringe benefits, [trainees](#) shall be paid the full amount of fringe benefits listed on the [wage determination](#) unless the [Administrator](#) of the Wage and Hour Division determines that there is an [apprenticeship program](#) associated with the corresponding journeyman wage rate on the [wage determination](#) which provides for less than full fringe benefits for [apprentices](#). Any [employee](#) listed on the payroll at a [trainee](#) rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the [wage determination](#) for the classification of work actually performed. In addition, any [trainee](#) performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the [wage determination](#) for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize [trainees](#) at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of [apprentices](#), [trainees](#) and journeymen under this part shall be in conformity with the equal employment opportunity requirements of [Executive Order 11246](#), as amended, and [29 CFR part 30](#).

**(5) Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of [29 CFR part 3](#), which are incorporated by reference in this [contract](#).

**(6) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in [29 CFR 5.5\(a\)\(1\)](#) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the [contract](#) clauses in [29 CFR 5.5](#).

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**(7) Contract termination: debarment.** A breach of the [contract](#) clauses in [29 CFR 5.5](#) may be grounds for termination of the [contract](#), and for debarment as a contractor and a subcontractor as provided in [29 CFR 5.12](#).

**(8) Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in [29 CFR](#) parts [1](#), [3](#), and [5](#) are herein incorporated by reference in this [contract](#).

**(9) Disputes concerning labor standards.** Disputes arising out of the [labor standards](#) provisions of this [contract](#) shall not be subject to the general disputes clause of this [contract](#). Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in [29 CFR](#) parts [5](#), [6](#), and [7](#). Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting [agency](#), the U.S. Department of Labor, or the [employees](#) or their representatives.

**(10) Certification of eligibility.**

**(i)** By entering into this [contract](#), the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the [Davis-Bacon Act](#) or [29 CFR 5.12\(a\)\(1\)](#).

**(ii)** No part of this [contract](#) shall be subcontracted to any person or firm ineligible for award of a Government [contract](#) by virtue of section 3(a) of the [Davis-Bacon Act](#) or [29 CFR 5.12\(a\)\(1\)](#).

**(iii)** The penalty for making false statements is prescribed in the U.S. [Criminal Code](#), [18 U.S.C. 1001](#).

c. Copeland Anti-Kickback – Applicable to Construction contracts greater than \$2,000

Compliance with the Copeland “Anti-Kickback” Act.

Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

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d. Value Engineering

Prime contractors are encouraged to submit value engineering recommendations for changes to construction contracts where there are opportunities for cost reductions without compromising purpose or quality. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [MW: maybe we just pull the language from the FAR here. Also, GSA contracts included value engineering clauses for service contracts. We might want to move it to the “all procurements” section on that basis. If a contractor can conclusively demonstrate a cost reduction that does not compromise quality or purpose, then that benefits all parties. However, VE normally results in a “reward”, “rebate” or other consideration to the contractor to offset the lost billables.]

10. Applicable to Funding Agreements Only

a. Rights to Inventions Made Under a Contract or Agreement

“License and Delivery of Works Subject to Copyright and Data Rights” The Contractor grants to the City of Austin, Texas, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the (insert name of the non-federal entity) or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the (insert name of the non-federal entity) data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).

11. Records Retention

Records retention by the contractor varies based on source of funds. This contract has the following document retention requirements. (Check only one, then erase the others)

FEMA Public Assistance: minimum of three (3) years after submission of final federal financial report.

US Treasury – CARES Act: Seven (7) years after last action (Completion; final report; litigation; dispute or audit)

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US Treasury – American Rescue Plan Act (SLFRF): Five (5) years after funds expended or returned to Treasury.

Records retention will be reviewed prior to completion of contract, and contractor will be specifically released from further document production or retention as part of the City’s Contract Closeout process.

**12. Contract Monitoring and Reporting by Contractor**

Contractor acknowledges these additional Special Supplemental Terms, Conditions, Clauses and Certifications incorporated in full or by reference above as part of the City’s contract.

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Signature of Contractor’s Authorized Official

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Name and Title of Contractor’s Authorized Official

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Date

**CITY OF AUSTIN  
STANDARD TERMS AND CONDITIONS**

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that: No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Contractor’s Authorized Official

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Name and Title of Contractor’s Authorized Official

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Date

**SCOPE OF WORK**  
**SOLICITATION NO. RFP 9100 JTH3015**  
**CITY OF AUSTIN**  
**DESCRIPTION: COVID-19 ADVERTISING, MARKETING AND OUTREACH SERVICES FOR**  
**AUSTIN PUBLIC HEALTH**

**1 CONTRACTOR QUALIFICATIONS**

To be considered responsive to this solicitation, the contractor shall meet the following minimum requirements:

- 1.1 A minimum of three (3) years of experience developing and implementing high-impact multi-platform advertising and marketing campaigns that maximize population reach and motivate behavior change
- 1.2 Demonstrated experience developing diverse, culturally relevant multi-platform, multi-lingual campaigns targeted for specific populations.
- 1.3 Demonstrated ability to leverage the use of in-kind or media matches (i.e. - free and discounted).

**2 PURPOSE**

The City of Austin Public Health Department (hereinafter referred to as the "City") requests proposals from qualified media and marketing contractors (hereinafter referred to as the "Contractor") to provide expertise and assistance in:

- 1) Development of an advertising and marketing plan to ensure the City of Austin and Travis County residents have every opportunity to receive culturally relevant health related messaging, in multiple languages, designed to reduce COVID-19 infections. Communications will have a large focus on reaching populations identified as experiencing disparate outcomes with COVID-19, with health-related information, messages to support behavior change and compliance with health and safety measures including: vaccine acceptance, testing when sick, masking, social distancing, and hand hygiene, as well as details on how to get assistance.
- 2) Purchase and place advertising assets and messaging on a diverse cross-section of media platforms, including but not limited to broadcast, print, digital, social, streaming, and other creative outlets to reach the Austin/Travis County population, with strong focus on populations who suffer disproportionately from the burden of COVID-19 infections and related illness.

If awarded, the contract term begins upon contract execution with an initial term of three (3) years. Available funding for the initial term is \$9,000,000. Additional funding may be available via two (2) one year extensions. Total funding for the initial term and extensions will not exceed \$15,000,000. Funding level and availability of funding is subject to grant and City general fund allocations in the APH budget.



**SCOPE OF WORK**  
**SOLICITATION NO. RFP 9100 JTH3015**  
**CITY OF AUSTIN**  
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**AUSTIN PUBLIC HEALTH**

The anticipated date of award for this contract is February 2022.

**3. BACKGROUND**

Over the past year, Austin Public Health’s (APH) Joint Information System has utilized its advertising and outreach budget to build relationships with 27+ media outlets, leveraging print, radio, television, social media, email, and additional creative platforms from each media partner, to ensure that Austin-Travis County residents have had every opportunity to hear health related messaging, in multiple languages. Communications have been urgent and reactive in nature, as well as planned and proactive.

In the past year and a half, campaign messaging has centered on the COVID-19 response, with themes covering:

- Risk-based Stage Levels communication as needed (Stages 2 – 5)
- Mayoral, County Judge and State Orders
- Implications, meaning, responsibilities
- Wearing a mask
- What are the COVID-19 symptoms
- Where to get tested for COVID-19
- What to do if you or someone you love tests positive for COVID-19
- How to locate a vaccine site
- Vaxx Facts Newsletter—fighting misinformation and disinformation
- Who is eligible to get vaccinated
- How to stay safe (holidays, family gatherings, events, etc.)
- Vaccine Hesitancy
- Let’s Stick Together Joint Campaign
- Back to School
- 3rd Shot/Booster
- Event promotion (PPE, vaccination sites)
- Newsletters to schools and childcare providers
- Newsletters to specific organizations and businesses categories
- Newsletters to leaders in non-profit organizations who focus on specific demographics

There has been, and will continue to be, great focus on reaching underserved populations. Consistent reporting on key campaign performance, reach, and effectiveness, by City Council district, zip code, and target population is priority.

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**3.1 Target Populations**

The target population for COVID-19 and vaccine media advertising has a reach throughout Travis County and its surrounding areas in Central Texas.

Specific demographic for focused messaging will include but is not limited to:

- Latinx/Hispanic
- African American/Black
- Asian Americans
- Elderly/Homebound
- Specific career fields and organizations
- Non-digitally inclined populations
- Populations / Communities by Zip codes

**3.2 Advertising Placement and Impressions**

APH COVID-19 advertising placements have included:

Television:

Commercials, OTT (Streaming services), email blasts, social media partnerships, television interviews, television live remotes, special events, webpage advertising

Radio:

Commercials, live remotes, webpage ads, interviews, social media, newsletters, special events

Print:

Weekly ads, webpage advertising,

Social Media:

Facebook, Instagram, Snapchat, Spotify, Twitter, YouTube

Other:

Specialty websites (web advertising, email blasts, featured content); Focused texting campaigns to eastern crescent for education, initiatives and events; Bus advertising (interior and exterior); Austin Energy monthly newsletter

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English percentage of ads bought: 43%  
Spanish percentage of ads bought: 57%

**The average monthly impressions across platforms 55 million.**

APH data will be provided to help focus future campaign messaging on specific demographic populations based on the project focus.

**About Austin Public Health**

Vision:

Everyone will have an optimal quality of life, health and well-being.

Mission:

To prevent disease, promote health, and protect the well-being of all.

**4. Marketing and Advertising Outreach Strategies**

Outreach will center on developing creative concepts for comprehensive COVID-19 response marketing including advertising content and collateral materials. Outreach scope includes identifying paid and other placement opportunities on traditional and non-traditional media outlets and platforms to maximize across key audiences by demographic and location(s) as defined by APH.

APH anticipates allocation of resources in the percentages listed below, however, contractor may provide alternative allocation percentages with justifications for why the allocations will ensure sufficient audience reach and result in greater campaign performance and efficiency.

Broadcast Media 30%

Digital Media 20%

Social Media 15%

Community Media 10%

Campaign development, management, and media placement 25%

**5. Contractor's Responsibilities**

**5.1** Contractor shall furnish all necessary services, qualified personnel, materials, equipment, and facilities to develop, implement, and manage the advertising campaign including the purchase and placement of messaging content and

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collateral on all platforms.

**5.1.1** Tasks/Requirements

Contractor shall provide a formal presentation of marketing plan(s) outlining messaging and target audiences (including multi-lingual content strategies), for outreach themes including vaccine hesitancy, hygiene, education outreach, 3rd doses, booster shots, and others as identified to the APH contract manager and other relevant City stakeholders for review and approval.

**5.1.2** Contractor shall make any edits and submit an updated marketing plan for approval to APH Contract Manager.

**5.1.3** **Develop a Work Plan to Implement the Campaign** - The Contractor shall develop a separate work plan that describes all tasks in detail and establishes an implementation schedule with lead times for content and collateral development, APH content and collateral review and approval, clearance, material revisions, final production, advertising placement, proposed advertising platform mix, and confirmation of paid media budget including any negotiated value-added placements.

**5.1.4** Contractor shall make any edits and submit an updated Work Plan for approval to APH Contract Manager.

**5.1.5** Contractor shall develop and produce all advertising and marketing content and collateral as outlined in the approved work plan.

**5.1.6** Contractor shall provide a detailed budget as well as purchase and place all approved advertising and marketing content and collateral as outlined in the approved work plan.

**5.1.7** Contractor shall participate in and provide feedback on any outcome evaluation developed and conducted by APH, in relation to this project.

**5.1.8** Reporting- The contractor shall create campaign objectives that are feasible and measurable. The contractor shall be responsible for submitting to the regular reports to the APH contract manager which summarize campaign performance including data on outreach metrics, target demographic reach, geographical reach (zip codes and Austin City Council District), impressions, and spend return on investment.

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Frequency of reporting and targets for these measures will be determined after the Work Plan (see 4.1.4) is developed.

**5.1.8.1** Contractor shall provide the APH Contract Manager with access to a regularly updated digital advertising and Marketing performance dashboard which tracks ad placements and performance in including data by City Council district and demographic.

**5.1.8.2** Contractor shall provide a report summarizing campaign implementation activities and expense justifications with each invoice.

**6. City's Responsibilities**

**6.1** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work and will provide revision requests or approval of work products.

**6.2** The Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract and shall participate regularly in conference calls or meetings for status reporting.

**6.3** The Contract Manager, or designated representative will provide the contractor with all relevant APH data to focus future campaign messaging on specific topics and target demographic populations based on project goal.

**6.4** The City's Contract Manager will give the Contractor timely feedback on the acceptability of progress and task reports

**7. Specific Invoice Requirements**

The City's preference is to have invoices emailed to [hhsdAPinvoices@austintexas.gov](mailto:hhsdAPinvoices@austintexas.gov)

For questions regarding your invoice/payment please contact the City Contract Manager.

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**8. Designation of Key Personnel**

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 shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor’s and City’s key personnel are identified as follows:

	<u>Name/ Title</u>	<u>Phone Number</u>	<u>Email Address</u>
City Contract Manager	<u>Jen Samp</u>	<u>512-972-6115</u>	<u>Jen.samp@austintexas.gov</u>
City Contract Administrator, Procurement Specialist	<u>Jim Howard Procurement Specialist IV</u>	<u>512-974-2031</u>	<u>Jim.howard@austintexas.gov</u>
Contractor’s Key Personnel	<u>TBD</u>	<u>TBD</u>	<u>TBD</u>

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**9 DELIVERABLES/MILESTONES**  
**(See table below)**

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Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
<b>Develop a campaign marketing plan</b>				
Deliverable	Create and develop a comprehensive plan outlining goals and measurable objectives for a marketing campaign focused on themes including: Vaccine hesitancy, hygiene, education outreach, 3 <sup>rd</sup> doses, booster shots	<i>To be delivered three weeks after the execution of contract</i>	Acceptance by APH Contract Manager	5.1
Deliverable	Work with APH to identify and continually update profiles of key audience segments for each campaign objective. Audience segments should include representation from priority languages identified by APH.	<i>To be delivered three weeks after execution of contract</i>	Acceptance by APH Contract Manager	5.1.1
Deliverable	Develop creative messages for the campaign on relevant platforms including traditional advertising, paid media, social media and earned media	<i>Week 3</i>	Acceptance by APH Contract Manager	5.1.3
Deliverable	Develop a plan for creative messages for the campaign on relevant platforms including traditional advertising, paid media, social media and earned media in each of the City's priority languages	<i>Week 3</i>	Acceptance by APH Contract Manager	5.1.5



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Deliverable	Identify the types of creative assets required to execute the strategies	<i>Week 3</i>	Acceptance by APH Contract Manager	5.1.3
Deliverable	Develop a plan to implement an advertising dashboard which tracks ad placements and performance in real time including data by City Council district and demographic.	<i>Week 3</i>	Acceptance by APH Contract Manager	5.1.8.1
Deliverable	Include a media budget per campaign broken down by media type	<i>Week 3</i>	Acceptance by APH Contract Manager	5.1.6
Deliverable	Contractor shall provide a formal presentation of marketing plans to relevant City stakeholders, subject to City's approval.	<i>Week 3</i>	Acceptance by APH Contract Manager	5.1.1
Deliverable	Contractor shall make any edits and submit an updated marketing plan for approval to APH Contract Manager.	<i>Week 4</i>	Acceptance by APH Contract Manager	5.1.2
<b>Develop a work plan to implement the campaign</b>				
Deliverable	Contractor should develop a work plan for the campaign for City approval, including confirming final media budget and desired media mix.	<i>Week 5</i>	Acceptance by APH Contract Manager	5.1.3
Deliverable	Contractor shall provide APH Contract Manager a review of all creative	<i>Week 5</i>	Acceptance by APH Contract Manager	5.1.3

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	elements of campaign (Advertising copy, video production, graphic design, and translations).			
Deliverable	Contractor should make edits and submit an updated work plan for approval to APH Contract Manager.	<i>Week 5</i>	Acceptance by APH Contract Manager	5.1.4
<b>Implement multi-platform outreach plan</b>				
Deliverable	The contractor shall place all advertising across platforms including community and multi-cultural media outlets.	<i>Week 6 and on-going</i>	Acceptance by APH Contract Manager	5.1.6
Deliverable	The contractor shall identify and negotiate added value opportunities and provide a detailed summary of such activities.	<i>Week 6 and on-going</i>	Acceptance by APH Contract Manager	5.1.3
<b>Reporting</b>				
Deliverable	Regular summary reporting to include outreach metrics, demographics, spend, residents reached, impressions made, reporting on zip codes and City Council Districts served.	<i>(Beginning when plan is implemented and approved by APH)</i>	Acceptance by APH Contract Manager	5.1.8
Deliverable	Contractor shall provide a digital performance dashboard which tracks ad placements and performance in real time including data by City Council district and demographic.	<i>On-going</i>	Acceptance by APH Contract Manager	5.1.8.1

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Deliverable	Contractor shall provide a report including a summary of billing, invoice management activity and summary justification of rates and charges.	<i>Bi-weekly</i>	Acceptance by APH Contract Manager	5.1.8.2
Deliverable	Contractor shall participate in and provide feedback on any outcome evaluation developed and conducted by APH, in relation to this project.	<i>On-going</i>	Acceptance by APH Contract Manager	5.1.7

**5- PRICE PROPOSAL APH MARKETING COVID 19**

Information described in the following subsections is required from each Proposer.

1. A firm fixed price or not-to-exceed contract is contemplated, with progress payments as mutual determined to be appropriate.
2. Price shall be broken down by Deliverables on pages 9-12 of the Scope of Work provided.
3. Travel expenses. All travel lodging expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City’s Travel Policy as published and maintained by the City’s Controller’s Office and the Current United States General Services Administration Domestic Per Diem Rates (the “Rates”) as published and maintained on the Internet at:

[www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC)

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

4. Your proposal should include, where allowed by law, leveraging resources and programs that are already established for a savings to the City.

Cost by Deliverables (page 9-12 of Scope) \_\_\_\_\_

Total cost (per year) \_\_\_\_\_

Total cost for 5 years \_\_\_\_\_