



**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
and
IKE SMART CITY, LLC (“Contractor”)
for
INTERACTIVE WAYFINDING DIGITAL KIOSKS**

The City accepts the Contractor’s Offer (as defined in Section 1.1 below) and enters into the following Contract as of this 17th day of September, 2025 (the “Effective Date”). This “Contract” is between IKE Smart City, LLC, a Delaware limited liability company having offices at 250 N. Hartford Avenue, Columbus, Ohio 43222, and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation (as defined in Section 1.1 below).

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Contract, including the Negotiated Terms and Conditions, incorporated and attached as Exhibit A
- 1.1.2 The City of Austin’s Request for Proposals (RFP 5500 SMW3032), incorporated and attached as Exhibit B (the “Solicitation”)
- 1.1.3 Contractor’s Response to Request for Proposals Interactive Wayfinding Digital Kiosks, dated April 10, 2025, incorporated herein and attached as Exhibit C (the “Offer”)
- 1.1.4 Supplemental Forms (Non-Discrimination and Non-Retaliation, Wage Theft,) incorporated and attached as Exhibit D

1.2 Key Definitions; Compensation.

1.2.1 As used herein, the following terms shall be defined as follows:

1.2.1.1 “Advertisement(s)” means commercial, industrial, public service, and other charitable advertisements.

1.2.1.2 “Kiosk” or “Kiosks” (as the context requires) means the interactive digital wayfinding kiosks to be installed and operated at certain locations within the City by Contractor in accordance with this Contract.

1.2.1.3 “Required Approvals” means any and all required governmental approvals, permits, and entitlements necessary for the installation and operation of a Kiosk in accordance with this Contract.

1.2.1.4 “Operational Kiosk” means a Kiosk that has been installed within the City in accordance with all Required Approvals and this Contract which is capable of hosting Advertisements.

1.2.1.5 “Operational Date” means, separately for each Kiosk, the date on which such

Kiosk becomes an Operational Kiosk.

1.2.1.6 “Gross Advertising Revenue” means the total revenue derived from the display of Advertisements on the Operational Kiosks.

1.2.1.7 “Net Advertising Revenue” means Gross Advertising Revenues less the upfront costs associated with the purchase and installation of the Kiosks, which are amortized over a 10-year period, as well as replacements, which are amortized over the subsequent 10 years.

1.2.1.8 “Term Commencement Date” means the date on which Contractor has installed one hundred (100) Operational Kiosks in the City, subject to Section 1.4.2.3.6 below.

1.2.1.9 “Contract Year” means each successive period of 12 full consecutive months during the Initial Term and Renewal Term(s) (as applicable) (each as defined in Section 1.3 below), provided that the first Contract Year shall end upon the last day of the 12th full consecutive calendar month following the Term Commencement Date.

1.2.1.10 “Fiscal Quarter” means each successive period of three consecutive full months during the Term (as defined in Section 1.3 below), provided that (a) the final Fiscal Quarter prior to the commencement of the Initial Term shall end on the Term Commencement Date, and may contain less than three (3) full months; and (b) the first Fiscal Quarter of the first Contract Year shall start on the Term Commencement Date, and if the Term Commencement Date occurs on a date other than the first day of a month, shall include any partial month plus the three (3) consecutive full months immediately following such partial month.

1.2.1.11 “Compensation” means the amount due and payable from Contractor to City pursuant to Section 1.2.2 below.

1.2.2 Subject to the terms and conditions set forth in this Section 1.2, Contractor shall pay the City the greater of:

1.2.2.1 A Minimum Annual Guarantee (the “MAG”) for each Operational Kiosk, in amount equal to:

(a) during the period commencing on the Effective Date and continuing until the expiration of the Initial Term (as defined in Section 1.3 below), \$20,000 per Operational Kiosk per (i) twelve-month period between the Effective Date and the Term Commencement Date, or (ii) Contract Year, as applicable;

(b) during the First Renewal Term (as defined in Section 1.3 below), if exercised, \$22,000 per Operational Kiosk per Contract Year;

(c) during the Second Renewal Term (as defined in Section 1.3 below), if exercised, \$24,200 per Operational Kiosk per Contract Year; and

(d) during the Third Renewal Term (as defined in Section 1.3 below), if exercised,

\$26,620 per Operational Kiosk per Contract Year; or

1.2.2.2 Forty percent (40%) of Net Advertising Revenue collected during the applicable period (the "Revenue Share").

1.2.3 Commencing upon the Operational Date for each Operational Kiosk, and continuing on the first day of each month during the Term thereafter, Contractor shall pay the MAG to City for such Operational Kiosk in equal monthly installments, in advance, without demand. If the Operational Date for any Operational Kiosk occurs on a day other than the first day of a particular month, Contractor shall pay to City a prorated amount of the monthly installment of the MAG for such Operational Kiosk based on the number of days in such month from and after such Operational Date, and shall commence paying the regular installments of the MAG for such Operational Kiosk on the first day of the first calendar month thereafter.

1.2.4 Commencing on the date which is 15 days following the expiration of the first Fiscal Quarter of the Term, and continuing on or before the same day following the expiration of each Fiscal Quarter during the Term thereafter, Contractor shall submit to City a statement (a "Reconciliation Statement") of the Net Advertising Revenue received by Contractor during the immediately preceding Fiscal Quarter. If the amount of MAG paid to City by Contractor during the immediately preceding Fiscal Quarter is less than the amount of the Revenue Share earned by Contractor during such immediately preceding Fiscal Quarter (as shown on the Reconciliation Statement), Contractor shall pay the amount of such shortfall to City alongside the Reconciliation Statement.

1.2.5 Notwithstanding anything stated in this Contract to the contrary, the MAG due for an Operational Kiosk impacted by any of the following events shall abate on a day for day basis, from and after the occurrence of such event, until the time set forth below: (a) an Operational Kiosk is removed from its location pursuant to Section 1.43 of Exhibit A below, continuing until the date on which such Kiosk is reinstalled by Contractor pursuant to Section 1.43 of Exhibit A below and such Kiosk is once again an Operational Kiosk; (b) an Operational Kiosk no longer has access to the electrical power and/or data services necessary for such Kiosk to function in accordance with the requirements set forth in this Contract due to any reason outside of Contractor's reasonable control, continuing until the date on which such Kiosk again has access to the electrical power and/or data services necessary for such Kiosk to function in accordance with the requirements set forth in this Contract and is once again an Operational Kiosk; or (c) if the City violates the City's Kiosk Impairment Covenant (as defined in Section 1.39 of Exhibit A below), continuing until the date on which such violation has been remedied to Contractor's reasonable satisfaction.

1.3 Term of Contract.

1.3.1 Except to the extent expressly set forth herein to the contrary, all obligations under this Contract shall commence as of the Effective Date. Subject to Section 1.4.2.3.6 below, the initial term of this Contract shall commence upon the Term Commencement Date and remain in effect until the date which is five Contract Years following the Term Commencement Date (the "Initial Term"), unless earlier terminated in accordance with this Contract.

1.3.2 Subject to the remainder of this Section 1.3 below, the term of this Contract shall renew (a) following the expiration of the Initial Term for one additional period of five Contract Years (the "First Renewal Term") if the Renewal Criteria (as defined below) have been achieved by Contractor

during the Initial Term and the Renewal Report (as defined below) for the Initial Term has been provided to City by Contractor at least ninety days prior to expiration of the Initial Term; (b) following the expiration of the First Renewal Term for one additional period of five Contract Years (the "Second Renewal Term") if the Renewal Criteria have been achieved by Contractor during the First Renewal Term and the Renewal Report for the First Renewal Term has been provided to City by Contractor at least ninety days prior to expiration of the First Renewal Term; and (c) following the expiration of the Second Renewal Term for one additional period of five Contract Years (the "Third Renewal Term" and collectively with the First Renewal Term and Second Renewal Term, sometimes each referred to individually as a "Renewal Term" and collectively as the "Renewal Terms") if the Renewal Criteria have been achieved by Contractor during the Second Renewal Term and the Renewal Report for the Second Renewal Term has been provided to City by Contractor at least ninety days prior to expiration of the Second Renewal Term. On or before the date which is ninety days prior to the expiration of the Initial Term, First Renewal Term (as applicable), and Second Renewal Term (as applicable), Contractor shall deliver to City a report (each, a "Renewal Report") reasonably detailing Contractor's compliance with the Renewal Criteria during the then-current portion of the term of this Contract. Each renewal shall be on the same terms and conditions set forth in this Contract. As used herein, the term "Renewal Criteria" means that, as of the expiration of the Initial Term, First Renewal Term, or Second Renewal Term, as applicable, Contractor:

- (i) has met all operation and maintenance obligations with respect to the Operational Kiosks under this Contract;
- (ii) has deployed monthly updates to the operating software of the Operational Kiosks;
- (iii) has provided electronic monitoring for each Operational Kiosk 24 hours per day, 7 days per week, to ensure that all software is operable;
- (iv) has remedied any interruptions or malfunctions in Operational Kiosk software as soon as reasonably practicable following its receipt of notice of the same;
- (v) has replaced any hardware components or internal networking components of the Operational Kiosks as reasonably necessary to allow the same to function for their intended purposes under this Contract;
- (vi) is not in default of its Compensation obligations under this Contract; and
- (vii) has kept the content displayed on the Operational Kiosks up to date and relevant pursuant to a plan to be jointly developed with the City following the Effective Date.

1.3.3 As used herein, the term "Term" shall refer collectively to the time period between the Effective Date and the Term Commencement Date, the Initial Term, any Renewal Term(s) exercised in accordance with this Contract.

1.3.4 This Contract (including any Exhibits and documents expressly incorporated herein) constitutes the entire agreement of the parties regarding the subject matter of this Contract and

supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

1.4 **Scope of Services**

1.4.1 Public-Private Partnership: This Contract establishes a public-private partnership for the installation, operation and maintenance of the Kiosks. Subject to the terms and conditions set forth herein, Contractor is solely responsible for the installation, utility coordination, permitting, and other requirements for installing, updating, maintaining, replacing, retiring, transitioning, and operating the Kiosks.

1.4.2 Coordination: The Contractor shall:

1.4.2.1 Within three months of execution of this Contract, develop a Kiosk deployment strategy. This strategy shall include:

1.4.2.1.1 A map identifying areas within the City limits where Contractor proposes to locate Kiosks including potential locations in relation to streets, intersections, and key landmarks.

1.4.2.1.2 The map must be reviewed by the City, CapMetro, and stakeholders.

1.4.2.1.3 The Contractor shall provide the standard details and drawings for the Kiosk installations, including foundation designs, electrical requirements, and any necessary protective measures. These details shall align with City design standards, subject to adaptability to various site conditions. For clarity, this requirement does not include engineered plan sets for all 100 Kiosks, but rather, requires standard specifications for the Kiosks.

1.4.2.2 Within three months of development of the Kiosk deployment strategy, develop a Kiosk integration plan with data requirements.

1.4.2.2.1 Kiosks must support integration of publicly available data sources, to the extent reasonably feasible without placing undue hardship on Contractor.

1.4.2.2.2 Contractor must share data with the City upon request at no cost and with no restrictions, subject to Section 1.19 and Section 1.21 of Exhibit A below.

1.4.2.2.3 At the sole discretion of the City, the City reserves the right to share information collected from the Contractor with other entities, subject to Section 1.19 and Section 1.21 of Exhibit A below.

1.4.2.3 Subject to delays caused by reasons beyond Contractor's reasonable control (including with respect to power design), within nine months of development of the Kiosk integration plan, provided that City and Contractor have reached mutual agreement upon the locations for the installation of all 100 Kiosks, as well as the source for power and power connection design for such Kiosk locations, Contractor shall (a) develop uniform design specifications for the Kiosks (being the fully engineered plan sets to submit to the applicable governmental authorities in order to obtain the Required Approvals for each Kiosk) in accordance with the requirements set forth in this Section 1.4.2.3 below; and (b)

submit all applications for the Required Approvals for the first fifty Kiosks. Thereafter, Contractor shall use commercially reasonable diligent efforts to complete the foregoing items for the remaining fifty Kiosks.

- 1.4.2.3.1 Kiosks shall be Americans with Disabilities Act (ADA) compliant.
- 1.4.2.3.2 Kiosk placement/spacing must comply with the following minimum criteria:
 - Must meet the City Code requirements.
 - Shall not be placed within the pedestrian clear zone.
 - Shall comply with ADA and any applicable federal, state and local disability rights laws.
 - Must be placed at least 15 feet, or a minimum distance defined by the City, from another Kiosk, transit stop, bike share station, or similar feature located on the same block face.
- 1.4.2.3.3 Kiosks must comply with the following electrical and structural requirements:
 - Designed, inspected and labeled to UL standards.
 - Designed by regionally licensed structural engineers to meet general location requirements for the Kiosks. These requirements take into consideration wind loads, soil types, regional codes and other site conditions.
 - An electrical permit shall be required to ensure compliance with all applicable electrical codes.
- 1.4.2.3.4 Environmental Operating Conditions:
 - Kiosks must be designed to withstand local weather conditions, including high winds, heavy rain, snow, and extreme temperatures.
- 1.4.2.3.5 Display:
 - Kiosks cannot use colors, shapes, and images that are included in the Texas Manual on Uniform Traffic Control Devices (TMUTCD) in a manner that they could be confused for traffic control devices by operators in the right-of-way.
- 1.4.2.3.6 Construction and Permits:
 - Any excavation in the public right-of-way during installation, repair, or maintenance of equipment must follow Section 5 of the Utility Criteria Manual, though the parties may agree to exceptions to the Manual requirements on a case-by-case basis.
 - Kiosk placement is subject to the ROW permit application process and shall go through the AULCC review.
 - A sign permit shall be required; however, this requirement shall be contingent upon the approval of amendments to the City Code by the City Council expressly authorizing kiosk signage (the “Amendments”). Notwithstanding anything stated to the contrary herein, the five year Initial Term shall not commence until the Amendments have been finally

approved and passed by City Council, and Contractor has obtained any and all sign permits required by such Amendments, provided that Contractor shall exercise commercially reasonable diligent efforts to pursue such permits following the City Council's final approval and passage of the Amendments.

- Additional permits may be required as determined by applicable laws and regulations.

1.4.2.4 Operations

1.4.2.4.1

All Operational Kiosks must meet the following minimum performance requirements:

- Minimum Operational Kiosk up-time of 95% wherein the Kiosks are fully functional, and
- Minimum application up-time of 95% not including application upgrades,
- Provided that the foregoing shall not apply to (i) scheduled maintenance and upgrades; (ii) Kiosks which are removed by Contractor pursuant to Section 1.4.3 of Exhibit A below, until the date that such Kiosk is re-installed by Contractor in accordance with such Section; and (iii) Kiosks which are actively being repaired by Contractor in accordance with its maintenance obligations pursuant to Section 1.4.2.5 below, during the time periods permitted for Contractor to complete the same hereunder.

1.4.2.4.2

During any maintenance and upgrade periods when a Kiosk is not functioning for a period of time exceeding three days, Contractor must place a cover or bag over such Kiosk.

1.4.2.4.3

The Kiosks, including the user interface, may not include flashing lights or text.

1.4.2.5 Maintenance Requirements

1.4.2.5.1

The Contractor shall have a Kiosk maintenance plan in case of vandalism or force majeure circumstances.

- Kiosks must be cleaned routinely, including the removal of any graffiti.
- Proactive inspections, monitoring, and repairs or replacements of broken or damaged Kiosks must be commenced within 24 hours of Contractor's receipt of written notice of the same from City, and Contractor shall use best efforts to complete the same (a) within 48 hours of its receipt of such written notice, or (b) if completing the same within such 48 hour period is not feasible for reasons outside of Contractor's reasonable control, as promptly as reasonably practical.

1.4.2.5.2

Maintenance or Capital Improvement projects of surrounding area may require the Contractor to remove and replace a Kiosk

and foundation infrastructure during construction activities and be able to mobilize within a certain timeframe, which shall be done at no cost to the City, subject to Section 1.43 of Exhibit A below.

1.4.3 Proposed Implementation: The Contractor shall be responsible for conducting design, evaluation, demonstrations, permitting, maintenance and all aspects of implementation with respect to the Kiosks.

1.4.3.1 Planning and Limited Implementation Phase for first round of Kiosk installation (which shall include fifty total Kiosks, unless the City elects to issue the Required Approvals for additional Kiosks (up to one hundred total) during such phase) (the "Pilot Phase"):

1.4.3.1.1 During the Pilot Phase, Contractor shall evaluate the benefits and challenges of the Kiosks, including compliance with applicable regulations and ensuring installation and operation in a manner that will not impair the free and safe flow of traffic.

1.4.3.1.2 Contractor shall provide rationale for quantity/location/placement of Kiosks during the Pilot Phase.

1.4.3.1.3 During the Pilot Phase, Contractor shall collect and report usage data (e.g., quantity of wireless sessions, phone calls, emergency calls, wayfinding, handicap/accessibility features).

1.4.3.2 Design and Permitting: To integrate the first round of kiosks, the Contractor shall complete the following in accordance with this Contract:

1.4.3.2.1 Provide pre and post evaluation of kiosk integration efforts.

1.4.3.2.2 Streamline design process and standard details and specifications of kiosks.

- Develop and provide construction drawings for kiosk integration.

1.4.3.2.3 Provide installation and implementation plans for the kiosks in drawings.

1.4.3.2.4 Develop typical deployment processes.

1.4.3.1. Construction:

1.4.3.1.1 Contractor shall be responsible for labor, equipment, materials, utility service, permits and any and all incidentals related to the installation of the Kiosks.

1.4.3.1.2 Contractor shall consider using the City's downtown network of underground conduits managed by the Transportation and Public Works Department to assess whether it would facilitate Kiosk deployment.

1.4.3.2 Operations and Maintenance: The Contractor shall address proactive maintenance and requests related to maintenance, assessments, and evaluations of the Kiosk network from the stakeholders (i.e., Economic Development Department, Transportation and Public Works Department, CapMetro, Downtown Austin Alliance, etc.), subject to Section 1.4.2.5 above.

1.4.4 Design Requirements and Other Project Considerations

1.4.4.1 The Contractor cannot charge users for access to any of the features, functions, or capabilities provided by the Kiosks unless first approved by the City in writing.

1.4.4.2 All Kiosks must comply with all applicable City ordinances regarding noise.

1.4.4.3 In deploying and maintaining Kiosks, the Contractor must adhere to all applicable federal and state laws/regulations as well as City ordinances.

1.4.4.3.1 The Kiosks must meet the requirements in Code Interactive Wayfinding Kiosks §25-10-159, to be developed.

1.4.4.3.2 Kiosk designs and locations shall be vetted through the City's license agreement process.

1.4.4.3.3 Kiosks cannot use colors, shapes, and images that are included in the Texas Manual on Uniform Traffic Control Devices (TMUTCD) in a manner that they could be confused for traffic control devices by operators in the right-of-way.

1.4.4.3.4 Kiosks must be designed to withstand local weather conditions, including high winds, heavy rain, snow, and extreme temperatures.

1.4.4.3.5 Contractor is solely responsible for the full installation of Kiosks, including but not limited to securing all required right-of-way permits, license agreements, and electrical permits, as well as obtaining a sign permit if and when authorized by amendments to the City Code, and City will reasonably cooperate with Contractor in each such case to the extent reasonably necessary to facilitate the same.

1.4.4.3.6 Kiosk construction is subject to the ROW permit application and shall go through the AULCC review.

1.4.4.3.7 Content Regulations: Contractor may include only commercial material which is lawful and of the highest possible standards of excellence. All Advertisements the Contractor intends to display on the Kiosks are subject to Section 1.4.4.3.8 below, and shall be in compliance with the following guidelines:

- no material that violates any rights of any person, firm or corporation;
- no claims which are proven to be false, unsubstantiated or unwarranted for any product or service, or testimonials that cannot be authenticated;
- no advertising of any habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses, firearms or firearm ammunition;
- no material constituting or relating to a lottery, a contest of any kind in which the public is unfairly treated or any enterprise, service, or product which would tend to encourage, aid, abet, assist, facilitate or promote illegal gambling, except that Contractors may accept advertising from the official state lottery of the State of Texas;
- no advertising for a product or service which is illegal per se or has no legal use;

- no appeal or solicitation for funds or solicitation of volunteer efforts (e.g., "give your time");
- no advertisement which is in whole or part defamatory, obscene, profane, vulgar, repulsive or offensive, either in theme or in treatment;
- no false or ambiguous statements or representations that are misleading to the audience;
- no advertisement that includes any element of intellectual property without the owner's consent to such use, including but not limited to music master, mechanical, performance and synchronization rights or gives rise to any other colorable claim of infringement, misappropriation or other form of unfair competition;
- no disparagement or libel of specific competitors or competitive products;
- no advertisement that is injurious or prejudicial to the interests of the public, or honest advertising and reputable business in general;
- no advocacy advertisement that supports or opposes a candidate, issue or cause; (e.g., political or issue-oriented); however, advertisements that advocate non-issue oriented messages (e.g., get a colon cancer check-up soon) are permissible on a case by case basis. The City will not accept commercial advertising that consists, in whole or in part, of political advocacy or issue-oriented advertising;
- no advertising for products that contain distilled liquor or spirits, regardless of the percentage of alcohol, or advertising for nonalcoholic products containing the name of a distilled product or a distiller or company associated with hard liquor is acceptable, in each case unless such advertising is paired with "Drink Safe" messaging, the form of which is to be mutually agreed by City and Contractor and as long as the advertising shall not be displayed within 500 feet of any school, college, university, libraries, museums, house of worship/religious institutions, cemeteries, youth centers/recreation centers/youth organizations, day care centers, charitable institutions, government offices, public parks, playgrounds, amusement parks, hospitals, medical clinics, senior/assisted living facilities or substance abuse centers/treatment programs;
- no advertising which supports or opposes a religion, denomination, religious creed, tenet or belief;
- no advertisements promoting tattoo parlors, pawn shops, or check cashing businesses; and
- no advertisement shall be permitted that promotes or depicts violence or anti-social behavior or presents a danger of causing riot, disorder or other threat to public safety,

peace or order;

- In addition to these restrictions the following regulation shall apply in the following specific situations:
 - Advertisements for pharmaceutical products (including NDA products) that are subject to the US Food and Drug Administration (FDA) oversight must comply with FDA regulations regarding advertising and promotion;
 - In the case of trade association or institutional advertisements (i.e. Office of National Drug Control Policy), the City requires not only that the name of the sponsor be clearly disclosed, but that the words "Paid for by" or "Sponsored by" be used. This also applies to advertisements purchased by public service organizations or governmental or quasi-governmental organizations;
 - Advertisements may not represent a product or service which presents a conflict of interest with any policy, objective or mandate of the City, including these guidelines;
 - Advertisements may not be placed by a firm awaiting approval from the City Council on any matter unrelated to these guidelines, a firm which operates in an industry regulated by the City or a firm with a pending lawsuit against the City;
 - The advertisement of a product or service does not act as the City's endorsement of any such product or service over another.

The City recognizes that in some cases the City will have to exercise judgment in situations as to which the application of the policy may be ambiguous. In these cases, we will look to the intended effect of these policies and act in accordance with its spirit. The City reserves the right to amend and/or revise the foregoing Content Regulations as social norms within the Austin, Travis County, Texas community may reasonably dictate.

- 1.4.4.3.8 If City believes that any content displayed on the Kiosks violates the terms of this Contract, then City may deliver written notice thereof to Contractor (a "Violation Notice"). Contractor shall remove such content from the Kiosks within 24 hours after receipt of the Violation Notice unless Contractor notifies City in writing that Contractor reasonably and in good faith disputes the alleged violation. If Contractor reasonably and in good faith disputes the alleged violation, the parties shall work together in good faith to resolve the alleged violation; provided, however, that Contractor shall cease displaying the objectionable content pending the resolution of the alleged violation.

By signing below, Contractor hereby certifies the following are true and will ensure the following will remain true throughout the term of this Contract:

1. That its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That it has not in any way directly or indirectly:
 - a. Colluded, conspired, or agreed with any other person, firm, or corporation, as to the amount of this contract or the terms or conditions of this contract.
 - b. paid or agreed to pay any other person, firm, or corporation any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the contract.
3. That it has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Contract documents.
4. In accordance with Chapter 176 of the Texas Local Government Code, that the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
 - b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Offeror; and
 - c. does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.
5. Pursuant to City Council Resolution No. 20191114-056, that its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy. If the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.
6. Pursuant to Texas Government Code §2271.002, the Contractor verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
7. Pursuant to Texas Government Code Chapter 2275, the Contractor verifies that if it will have remote or direct access to communication infrastructure systems, cybersecurity systems, the electric grid, hazardous waste treatment systems, or water treatment facilities as a result of this contract, that it is not owned by or the majority of stock or other ownership interest of the Contractor is not held or controlled by:
 - a. individuals who are citizens of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - b. a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a Governor-designated country; or
 - c. headquartered in China, Iran, North Korea, Russia, or a Governor-designated country.

8. Pursuant to Texas Government Code Chapter 2274, the Contractor verifies that if it has 10 or more full-time employees, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.
9. Pursuant to Texas Government Code Chapter 2276, the Contractor certifies that, if they have 10 or more full-time employees: (1) they do not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

[signature page to follow]

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

IKE SMART CITY, LLC,
a Delaware limited liability company

CITY OF AUSTIN,
a home-rule municipality incorporated by the State of Texas

Peter Scantland

Eric A. Johnson

Printed Name of Authorized Person

Printed Name of Authorized Person





Signature

Signature

Chief Executive Officer

Assistant City Manager

Title:

Title:

9/15/25

9/18/2025

Date:

Date:

**CITY OF AUSTIN
STANDARD TERMS AND CONDITIONS
EXHIBIT A**

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 the Effective Date and shall continue in effect until its expiration or termination in accordance with its terms.
- B. Upon expiration of the Term, 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 the services due under this Contract, provided that any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.2 INTENTIONALLY OMITTED.

1.3 INTENTIONALLY OMITTED.

1.4 INTENTIONALLY OMITTED.

1.5 INTENTIONALLY OMITTED.

1.6 AUDITS AND RECORDS:

- A. Subject to the terms and conditions set forth in this Section 1.6 and Section 1.19 and Section 1.21 below in this Exhibit 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 submit to the City any underpayments disclosed by any such audit, and City agrees to provide Contractor a credit against Contractor's Compensation payments due to City to refund any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit in accordance with Section 1.19 below in this Exhibit A, subject to Section 1.21 below in this Exhibit A.
- 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 three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

1.7 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 and audited financial statements and reports. Failure of the Contractor to comply with this requirement shall be subject to Section 1.10 and Section 1.11 below in this Exhibit A. As security for the proper performance of this Contract, prior to any installation of any Kiosks

under this Agreement, Contractor agrees to provide a valid and binding corporate surety performance bond (the "Performance Bond") in favor of City, in the amount of \$10,000 per Kiosk to be installed. The insurance company issuing the Performance Bond shall be a reputable insurance company that (a) is authorized to do business in the state of Texas; and (b) possesses all permits, licenses, or other approvals required pursuant to applicable law to issue such Performance Bond in the state of Texas.

1.8 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 thirty (30) days after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

1.9 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 reasonably determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work associated with the Stop Work Notice until notified by the City that the violation or unsafe condition identified in the Stop Work Notice has been corrected. The Contractor shall reimburse City for all costs incurred by the City as a result of the issuance of such Stop Work Notice within ten (10) days of its receipt of written demand therefor from City.

1.10 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 within thirty (30) days following its receipt of written notice of the same from the City, or, if such failure is of a nature cannot be reasonably remedied within such thirty (30) day period, and Contractor fails to promptly commence to remedy such failure following its receipt of written notice of the same from City and thereafter diligently pursue such remedy to completion, (b) fails to provide adequate assurance of performance in accordance with Section 1.8 above in this Exhibit A, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes an intentional material misrepresentation in Contractor's Offer, or in any report or other instrument required to be submitted by the Contractor to the City under this Contract.

The City shall be in default if it fails to perform any of its material obligations under this Contract within thirty (30) days following its receipt of written notice of the same from the Contractor, or, if such failure is of a nature cannot be reasonably remedied within such thirty (30) day period, and City fails to promptly commence to remedy such failure following its receipt of written notice of the same from Contractor and thereafter diligently pursue such remedy to completion.

1.11 TERMINATION FOR CAUSE; DEFAULT REMEDIES:

In the event of a default by either party pursuant to Section 1.10 above in this Exhibit A, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice to the other party.

Following a default by either party pursuant to Section 1.10 above in this Exhibit A, 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 defaulting party'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.

1.12 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.

1.13 INTENTIONALLY OMITTED.

1.14 FRAUD:

Fraudulent Statements by the Contractor on any Offer or in any report or other instrument 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.

1.15 DELAYS:

The City may delay due dates set forth in this Contract by written notice to the Contractor if the City deems it is in its best interest and the same does not materially and adversely impact the rights of Contractor hereunder. If any such delay causes an increase in the costs incurred by Contractor in connection with the completion of the work required of Contractor pursuant to this Contract ("Increased Costs"), the Contractor shall deliver written notice to City of the same alongside reasonable supporting documentation within 30 calendar days from the date of receipt of the notice of delay from the City. Thereafter, Contractor shall receive a credit against Compensation due to City under this Contract in an amount equal to such Increased Costs until Contractor is reimbursed in full therefor. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.16 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.

1.17 INDEMNITY:

- A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:
- i. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
 - ii. "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
 - iii. 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 THIRD PARTY CLAIM OF:
 - a. 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;
 - b. 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 THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
 - c. 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, AT ITS OWN EXPENSE, SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL 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.

1.18 NOTICES:

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing, delivered to the applicable party at its respective notice address set forth below, and shall be deemed sent upon the

actual date sent and deemed delivered on the earlier of (i) the date of actual delivery, or (ii) three business days after postmarked (if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested).

CONTRACTOR: IKE Smart City, LLC
250 North Hartford Avenue
Columbus, Ohio 43222
Attn: Jibran Shermohammed
Email: jibran@obm.com

With a copy to: Kooperman Mentel Crossley Yaross, Ltd.
250 E Town St, Suite 200
Columbus, Ohio 43215
Attn: Brian Kooperman, Esq.
Email: bkooperman@kmcylaw.com

CITY: City of Austin, Economic Development Department
[5202 E Ben White Blvd SVRD WB
[Austin, TX 78741]
Attn: [Anthony Segura, Interim] Director
Email: [Anthony.Segura@austintexas.gov]

With a copy to: COAContractNotice@austintexas.gov

1.19 CONFIDENTIALITY:

As the result of this Contract, each of the Parties may be granted access to certain of the other Party's "Confidential Information", defined as all information of a secret, confidential, or proprietary nature, whether written or oral, whether technical or non-technical, whether or not marked or designated as confidential (including intellectual property, inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential). 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. In the event that, in the opinion of a Party's counsel, any Confidential Information of the other Party is required to be disclosed by applicable law or an order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction, the receiving Party agrees, to the extent permitted by law, to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective order, and shall work together in good faith with the disclosing Party in connection with the same. 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 performing this Contract, (ii) not to disclose Confidential Information to any third party other than to its employees, consultants and representatives who have a need to know the Confidential Information for furtherance of this Contract, 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 this Section 1.19 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 this Section 1.19, in addition to any other available remedies, the adversely affected Party may seek temporary and permanent injunctive relief restraining the other Party from disclosing or using, in whole or in part, any Confidential Information.

1.20 NO COLLECTION OF USER DATA:

The Contractor shall not collect any personally identifiable information from any devices users connect to a Kiosk's Wi-Fi services. Any data required to provide the Wi-Fi services shall not be retained beyond the time needed to provide the Wi-Fi services.

1.21 TEXAS PUBLIC INFORMATION ACT:

- A. Subject to the remainder of this Section 1.21 below, 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 (the "TPIA").
- B. Both Contractor and City acknowledge and agree that (i) the City is a governmental entity required to comply with the TPIA and all other applicable law when responding to records requests thereunder; (ii) Texas Government Code 552.305(a) provides that "[i]n a case in which information is requested under this chapter and a person's privacy or property interests may be involved...a governmental body may decline to release the information."; (iii) Texas Government Code 552.110(b) and (c) provides that: information is excepted from disclosure if it "is demonstrated based on specific factual evidence that the information is a trade secret" or if the information is "commercial or financial information ... [the disclosure of which] would cause substantial competitive

harm to the person from whom the information was obtained.”; and (iv) Texas Government Code 552.110(a) defines “trade secret” as “all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.”

- C. Notwithstanding anything stated in this Contract to the contrary, the parties agree that all information provided from Contractor to City in connection with this Contract which is excepted from disclosure under the TPIA pursuant to the Texas Government Code provisions cited in subclause (b) above or any other applicable provision of the Texas Government Code, including Confidential Information (the “Excepted Information”), shall not be presumed to be public information subject to disclosure under the TPIA without exhausting the administrative processes of the TPIA and shall be treated as Confidential Information pursuant to Section 1.19 above in this Exhibit A, subject to subclause (d) below.
- D. If the City receives a request for any Excepted Information, the City will notify Contractor of its receipt of the request and work together in good faith with Contractor in responding to such request, including by redacting any Excepted Information in accordance with the TPIA and this Section prior to disclosing the same. Nothing in this Contract shall require Contractor to institute or participate in any litigation relating to an open records request for information that Contractor considers to be confidential. In addition to any other remedies available to the City and Contractor, the City and Contractor shall each have the right to seek equitable relief, including, without limitation, injunctive relief or specific performance, against the other party or its representatives in order to enforce the provisions of this Section 1.21. This Section 1.21 shall survive the termination or expiration of this Contract.

1.22 PUBLICATIONS:

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

1.23 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.

1.24 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.

1.25 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.

1.26 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.

1.27 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.

1.28 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.

Notwithstanding anything to the contrary in this Contract, (a) in the event that (i) substantially all operations of Contractor are being transferred to (1) another entity by way of merger, consolidation or sale of substantially all of the stock therein or assets thereof, or (2) any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Contractor; or (ii) there is a transfer of outstanding capital stock or other listed equity interests in and to Contractor through the "over-the-counter" market or any recognized national or international securities exchange, then in either case, the consent of City shall not be required for such transfer and any assignment and/or sublease arising therefrom, provided that the acquiring entity, if applicable, shall agree to assume and perform all of the duties and

obligations of Contractor under this Contract; (b) the consent of City shall not be required for a collateral or conditional assignment of this Contract to a lender of Contractor; and (c) the sale of time for the display of Advertisements on the Kiosks by Contractor shall not be construed as an assignment of this Contract by Contractor. If this contract is assigned by the Contractor in any manner except as permitted by this Section 1.28, the City shall have the right to terminate this Contract within 30 days of notice of such assignment, if it reasonably believes it is in the best interests of the City.

Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Section. 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.

1.29 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.

1.30 MODIFICATIONS:

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

1.31 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.

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

1.33 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.

1.34 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. In such an event, 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.

1.35 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.

1.36 SURVIVABILITY OF OBLIGATIONS:

All provisions of the Contract that expressly 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.

1.37 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's Financial Services Department a current Non- Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- 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.

1.38 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 Economic Development Department
 - Attn: Anthony Segura, Interim Director
 - 5202 E. Ben White Blvd., Suite 300
 - Austin, TX 78741
- 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. 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.
- v. 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.

- vi. 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.
- vii. 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.
- viii. 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.
- ix. 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.
- x. 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.
- xi. 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.
- xii. 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. The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - 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). The policy shall contain the following provisions:
 - Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - Independent Contractors coverage (Contractor/Subcontracted work);
 - Products/Completed Operations Liability for the duration of the warranty

period;

- If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.

The policy shall also include these endorsements in favor of the City of Austin:

- Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
- 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
- The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

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:

- Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
- 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
- The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

iv. Professional Liability: Contractor shall provide Professional Liability coverage, at a minimum limit of \$1,000,000 per occurrence, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Contract.

v. Property Insurance: Contractor shall provide Property Insurance coverage on an All Risk (Special Form) including, but not limited to, fire, wind, hail, theft, vandalism, malicious mischief, and equipment/mechanical breakdown for all real and personal property owned by the City and in the care, custody, and control of the Contractor. Property insurance limit will be equal to the value of the City property in Contractor's care, custody and control, subject to a minimum insurance value of \$500,000. If the City owned property is being transported or stored off-site, then the policy will include coverage for transit and storage. The City shall be added to the property policy as a Loss Payee as their interest may appear.

vi. Media Liability Insurance: Contractor shall provide Media Liability Insurance coverage, with a minimum limit of \$1,000,000 per occurrence/policy aggregate to extend coverage to content creation, media, and publishing activities including all electronic publishing activities for sums which the contractor shall become legally obligated to pay arising out of or caused by real or alleged defamation, invasion of privacy, prima facie torts, trademark infringement, copyright infringement, personal injury, and/or breach of confidentiality.

vii. Technology Errors and Omissions: Contractor shall provide Technology Errors and Omissions Insurance coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Contract. The required coverage shall extend to technology licensed and/or purchased, including any software licensed or

Hardware purchased under this Contract. The policy must include coverage for, but not be limited to, claims involving security breach, system failure, data recovery (including damage to, alternation of, or destruction of information regardless of format - electronic or hard copy), alteration, corruption, destruction or deletion of information stored or processed on a computer system

- viii. Cyber Liability Insurance: If Contractor provides, or contracts with any Contractor/Subcontractor to provide, services that involve the collection, retention, or transfer of personally identifiable, private, or non-public information, the Contractor shall provide Cyber Liability Insurance coverage of not less than \$1,000,000 for each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from
- a. breach of network security,
 - b. alteration, corruption, destruction or deletion of information stored or processed on a computer system,
 - c. invasion of privacy, including identity theft and unauthorized transmission or publication of personal information,
 - d. unauthorized access and use of computer systems, including hackers,
 - e. the transmission of malicious code, and
 - f. 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.

1.39 IMPAIRMENT COVENANT. During the Term, City shall not install and/or operate, nor permit the installation and/or operation of, any advertising supported digital street furniture other than the Kiosks within the City's public right-of-way. Additionally, following the City's approval of the plans for a Kiosk, City shall not install and/or operate, nor permit the installation and/or operation of, any improvements within the City's public right-of-way or upon any City owned property which materially impair the use, visibility, or viewability of such Kiosk. For convenience, City's covenants set forth in this Section 1.39 are collectively referred to herein as the "City's Kiosk Impairment Covenant". For clarity, City's Kiosk Impairment Covenant shall not apply to any advertising supported digital street furniture within the City's public right-of-way that was contracted for by City, approved for installation by City, or installed by City or its designee prior to the Effective Date.

1.40 OWNERSHIP. The City acknowledges that the Kiosks, their software (including any enhancements thereto), Contractor's patents, registered designs and trademarks, together with applications therefor and copyrights of any kind (the "IPR") and any intellectual property rights in and to any of the content created by Contractor and displayed on the Kiosks, shall belong to Contractor and no part thereof shall become or be deemed the property of the City. Each party shall do all such acts and things as the other party may reasonably require for the purpose of preserving or perfecting the foregoing. The City shall promptly notify Contractor of any infringement or unauthorized use of the Kiosks, their software, any IPR or any content created for the Kiosks, of which it becomes aware and will cooperate fully to take all actions necessary to terminate such infringing or unauthorized use. Additionally, Contractor acknowledges that all

logos, trademarks and other marks of the City belong to the City and no part thereof shall become or be deemed to be the property of Contractor.

1.41 Reserved

1.42 REMOVAL OF KIOSKS. Upon the expiration or earlier termination of this Agreement (or, alternatively, following Contractor's removal of a Kiosk from its original location pursuant to Section 1.43 below), Contractor shall (i) remove the Kiosks (or, in the case of a Relocation Event or Temporary Removal Event (each as defined in Section 1.43 below), only the impacted Kiosk) and restore the Kiosk locations (or, in the case of a Temporary Removal Event or Relocation Event, only the impacted location) as close as reasonably practical to their original conditions, subject to reasonable wear and tear and damage caused by casualty, and excepting damage that would have occurred regardless of the existence of a Kiosk at a location; and (ii) do such work as is reasonably necessary to cap off the utilities serving the locations (or, in the case of a Temporary Removal Event or Relocation Event, only the impacted location).

1.43 REQUESTS TO TEMPORARILY REMOVE OR PERMANENTLY RELOCATE A KIOSK.

1.43.1 After a Kiosk has been installed at a mutually agreed location, the City may, subject to the terms and conditions set forth in this Section 1.43 below, require Contractor to (a) temporarily remove such Kiosk from its location and reinstall such Kiosk at such location at a later date (a "Temporary Removal Event"), or (b) permanently remove such Kiosk from its location and thereafter reinstall such Kiosk at a new mutually agreed Location (a "Relocation Event").

1.43.2 With respect to Temporary Removal Events, promptly following the date on which City becomes aware of the existence or anticipated existence of a Temporary Removal Event, City shall deliver written notice of the same to Contractor (a "Temporary Removal Notice"), which shall describe in reasonable detail when Contractor may reinstall the impacted Kiosk at its original location following the Temporary Removal Event. Thereafter, City shall deliver written notice to Contractor at least forty-five (45) days prior to the date on which the City anticipates that the work associated with such Temporary Removal Event will be completed. Upon completion of the Temporary Removal Event, City shall again deliver written notice to Contractor, and following its receipt of such notice, Contractor shall commence commercially reasonable efforts to reinstall such Kiosk at its original Location and thereafter diligently pursue the same to completion.

1.43.3 With respect to Relocation Events, promptly following the date on which the City determines that a Relocation Event is necessary, City shall deliver written notice (a "Relocation Notice") of the same to Contractor, which shall include a reasonably detailed description of the nature of the Relocation Event. Following Contractor's receipt of a Relocation Notice, City and Contractor shall use commercially reasonable efforts to work together in good faith to mutually agree upon a new alternative location for the impacted Kiosk to be reinstalled by Contractor (a "New Location") following the removal of such Kiosk from its original location, and the City shall not unreasonably withhold, condition, or delay its consent to any such location proposed by Contractor. Upon the parties mutual agreement on a New Location, Contractor shall commence commercially reasonable efforts to remove the impacted Kiosk and restore its original location in accordance with Section 1.42 above in this Exhibit A, and shall thereafter diligently pursue the same to completion. Upon Contractor's receipt of any additional Required Approvals necessary

to complete the reinstallation of, and for the continued operation of, the impacted Kiosk at the New Location, if any (the "Relocation Required Approvals"), Contractor shall commence commercially reasonable efforts to reinstall such Kiosk at the New Location and shall thereafter diligently pursue the same to completion.

1.43.4 The City agrees that it shall not permit any person or entity other than Contractor to remove any Kiosks impacted by this Section 1.43, except as set forth to the contrary in this Section 1.43.4 below. Subject to the remainder of this Section 1.43 below, Contractor shall be responsible for all costs and expenses arising from any removal and reinstallation of a Kiosk pursuant to this Section 1.43, including costs to restore the Kiosk's original Location in accordance with Section 1.42 above in this Exhibit A, and to obtain the Relocation Required Approvals, if any (collectively, the "Removal and Reinstall Costs"). As used herein, "Bona Fide Emergency" means situations where (a) the immediate removal of a Kiosk is reasonably required by City as the result of (i) an imminent danger to the public, (ii) a major casualty event (e.g., an electrical fire) caused by reasons beyond the control of either party hereto, or (iii) the occurrence of an act of God (e.g., a flood, lightning strike, etc.); and (b) it would be impractical for City to provide Company with notice of the need for such removal and the opportunity to complete such removal without creating or exacerbating an imminent danger to the public. Upon the occurrence of a Bona Fide Emergency, City may remove the impacted Kiosk and take any actions deemed reasonably necessary by the City to remedy such Bona Fide Emergency. In such an event, City shall not be liable to Company for any damage to the impacted Kiosk or its location, except to the extent caused by City's gross negligence or willful misconduct. Following the conclusion of the Bona Fide Emergency, City shall work together in good faith with Company to either (1) permit Company to reinstall the Kiosk at its original location; or (2) mutually agree upon a reasonably suitable alternative location for such Kiosk to be re-installed by Company.

1.43.5 In the event that the City delivers two (2) Temporary Removal Notices and/or Relocation Notices to Contractor during any year of the Term (the "Quota"), and subsequently delivers any additional Temporary Removal Notice(s) and/or Relocation Notice(s) to Contractor during such year of the Term, City shall bear the Removal and Reinstall Costs arising from such additional Temporary Removal Notice(s) and/or Relocation Notice(s) in accordance with this Section 1.43; provided, however, that any Temporary Removal Notices and/or Relocation Notices delivered to Contractor as the result of a condition creating an imminent danger to public health, safety, or welfare shall not contribute towards the Quota. Following the City's delivery of such additional Temporary Removal Notice(s) and/or Relocation Notice(s) beyond the Quota to Contractor, and Contractor's completion of the removal and reinstallation of the affected Kiosk in accordance with this Section 1.43, Contractor shall deliver written notice to the City of all Removal and Reinstall Costs reasonably incurred by Contractor in connection with the same, together with reasonable supporting documentation, and Contractor shall thereafter receive a credit against the MAG in an amount equal to such Removal and Reinstall Costs until Contractor is reimbursed in full therefor.

2 SERVICES

2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING KIOSKS:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Kiosk, the City prefers to accept it, the City may do so.

2.2 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:
- Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - 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.

2.3 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 for each Kiosk shall be at least one year from the Operational Date of such Kiosk. 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 give the Contractor written notice of the breach of warranty and opportunity to cure the same in accordance with Section 1.10 above.

2.4 PLACE AND CONDITION OF WORK:

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. Accordingly, the City hereby grants Contractor the right to construct, install, operate, maintain, repair, replace, upgrade, and remove one hundred (100) Kiosks at the locations mutually agreed upon in accordance with this Contract, as well as a non-exclusive right of ingress and egress over and across any and all City owned property as reasonably necessary for the purposes set forth in this Contract.

2.5 COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:

The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable Federal, State, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those

promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this Section.

2.6 WAGE THEFT:

Any employer that submits an offer to the City seeking award of a City contract shall comply with the requirements of Austin City Code, Chapter 4-22 Wage Theft. ([Ordinance No. 20221201-031 | Code of Ordinances | Austin, TX | Municode Library](#)).

- A. Any employer that submits an offer to the City is required to provide certification that they have not been adjudicated for certain offenses related to Wage Theft.
- B. All employers must complete the City of Austin Wage Theft Training within 30 days of being awarded a contract with the City.

3 TECHNOLOGY TERMS AND CONDITIONS

3.1 PERFORMANCE:

- A. DELIVERABLE ACCEPTANCE. Any Deliverable provided by the Contractor will be deemed accepted by the City unless the City has delivered notice to Contractor, in writing, that the Deliverable does not comply with this Contract.
- B. SPECIFICATIONS. All Specifications are, and will be continually updated and maintained so that they continue to be, current, complete, and accurate so that they do and will continue to fully describe the Deliverables, including any Services, in all material respects so that at no time during the term of this Contract will the Deliverables have any material undocumented feature. The Contractor will provide the City point of contact with written notice of any changes to the Specifications.
- C. SOFTWARE DEVELOPMENT. The Contractor will ensure that the software lifecycle development process for any Software provided as a Deliverable, including Software as a Service, has followed or will follow the Open Web Application Security Project (OWASP) Secure Coding Practices.
- D. DEFAULT. The Contractor's failure to ensure that a Deliverable complies and remains compliant with the acceptance criteria, the Specifications, OWASP Secure Coding Practices, and other material Contract terms relating to security and privacy shall be considered a default under this Contract, subject to Section 1.10 above.

3.2 GEOGRAPHIC LOCATION FOR DATA PROCESSING & DELIVERABLE ORIGINATION:

A. DATA PROCESSING.

- i. If the security categorization of City Data to be processed or stored under this Contract has a potential impact of Moderate or High as defined in the Federal Information Processing Standards Publication 199 (FIPS 199), the Contractor shall restrict the geographic location of City Data processing and City Data storage under this Contract to facilities located within the legal jurisdictional boundary of the United States or geographic locations where there is U.S. jurisdiction.
- ii. If the security categorization of City Data to be processed or stored under this Contract has a potential impact of Low as defined in FIPS 199, the Contractor shall restrict the geographic location of City Data processing and City Data storage under this Contract to facilities not located in any country that is subject to U.S. sanctions.
- iii. The Contractor is responsible for ensuring that all persons with access to City Data

comply with this section.

- B. DELIVERABLE ORIGINATION. If any component of any Deliverable has been created, developed, produced, compiled, or manufactured (“Originated”) outside the legal jurisdictional boundary of the United States or a geographic location where there is not U.S. jurisdiction, then prior to providing the City with the Deliverable, the Contractor will provide the City with written documentation identifying the country where such component Originated. City acknowledges and agrees that (i) as of the Effective Date, the Kiosks are manufactured in Taiwan, and (ii) this sentence is sufficient to satisfy the foregoing requirement. If, during the term of this Contract, the Contractor changes the location of its manufacturing, it will notify the City.

3.3 **WARRANTY:**

- A. PERFORMANCE: Contractor represents and warrants that: (a) Deliverables provided under this Contract shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) Contractor shall use industry best practices to fulfill its obligations under this Contract; and (c) any Deliverables provided by the Contractor shall operate in conformance with the terms of this Contract, including any Service Level Agreement that the City and Contractor may enter into. In the event of a conflict between this Contract and any addendum or other document provided to the City by the Contractor, the terms of this Contract shall prevail.

- B. SOFTWARE: Unless otherwise expressly provided in this Contract, Contractor for itself and for and on behalf of its subcontractors, licensors, employees and agents represents and warrants that: (a) the functions contained in the Deliverables provided under this Contract shall meet the City’s requirements as stated in this Contract, (b) the operation of the Deliverables shall be in accordance with this Contract, (c) the Deliverables shall have the capacity to meet the demand during the times specified in the Contract, and (d) the Deliverables shall comply with all other terms set forth in this Contract. The Contractor further represents and warrants that the software lifecycle development process for any Software provided as a Deliverable, including as part of the Services, followed or will follow the Open Web Application Security Project (OWASP) Secure Coding Practices. Contractor shall indemnify the City for any damages that City may suffer arising out of the Deliverables provided under this Contract not being in compliance with the terms and conditions set forth herein as the result of any act or omission of Contractor or its agents. 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, CONTRACTOR, SUBCONTRACTOR, CONSULTANT, OR EMPLOYEE TO RESULT IN, HARMFUL OR OTHERWISE UNAUTHORIZED ACCESS INTO ANY OF THE CITY’S SYSTEMS, CITY DATA, CITY’S TECHNOLOGY, OR CITY OPERATIONS.

- i. Contractor represents and warrants that, to its actual knowledge, no Deliverable provided to the City contains Harmful Code or otherwise poses a security risk to City Data and City systems. If the Contractor becomes aware that any Deliverable contains Harmful Code or otherwise poses a security risk to the City at any time while this Contract is in effect, the Contractor will notify the City within twenty-four (24) hours of discovering the Harmful Code or security risk, and will promptly take all necessary

steps to remediate the situation and ensure that the Harmful Code or other condition creating security risk is eliminated and no longer poses a threat to City Data and City systems.

- ii. Notwithstanding any provision in this Contract to the contrary, if any Deliverable does not comply with this Section 3.3(B), Contractor shall be in default of this Contract subject to Section 1.10 above. At the request of and at no cost to City, Contractor shall act in accordance with Section 1.10 above to bring the Deliverable into compliance with the terms of this Section 3.3.
- iii. To protect City from damages that may be caused intentionally or unintentionally by the introduction of Harmful Code into City's computer systems, no software may be installed, executed or copied onto City's equipment without express warranty to City that Harmful Code does not exist. Contractor agrees that in the event of any dispute with City regarding an alleged breach of this Contract or a dispute relating to payment, Contractor shall not use any type of electronic means to prevent or interfere with City's use of any portion of the Deliverables in accordance with this Contract. 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, in such an event, City may obtain injunctive relief against Contractor which Contractor agrees not to contest.

3.4 DATA

- A. DATA OWNERSHIP: The City owns all rights, titles and interests in City Data. Contractor agrees it has no rights, titles, or interests in City Data.
- B. DATA ACCESS: The Contractor shall not access City User accounts or City Data except (1) as required by the express terms of this Contract or as necessary to perform the Contractor's obligations under this Contract, (2) in response to service or technical issues, or (3) at the City's written request. The Contractor shall not allow anyone to access or use City Data other than Authorized Persons who have a need to know or otherwise access or use City Data to enable the Contractor to perform its obligations under this Contract, unless the Contractor receives the City's prior written consent for specific deviations from this requirement. The Contractor shall be responsible for, and shall remain liable to, the City for its actions and omissions of all Authorized Persons concerning the treatment of City Data.
- C. DATA USE: The Contractor shall not use any data or information collected in connection with the Deliverables it provides under the Contract for any purpose other than fulfilling the Contract requirements.
- D. DATA PORTABILITY: The Contractor shall ensure that any City Data created, processed, stored, or maintained on behalf of the City by the Contractor or any subcontractor is in a structured, commonly used, and machine-readable form for the purposes of data portability and interoperability.
- E. EXPORT OF DATA: The City shall have the ability to copy and 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. This section is subject to Section 1.19 above.
- F. 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 and from other Contractors. This section is subject to Section 1.19 above.

- G. DENIAL OF ACCESS PROHIBITED: The Contractor acknowledges that under Texas Local Government Code § 205.009, a person under contract or agreement with a local government to create, file, or store local government record data electronically or to provide services, equipment, or the means for the creation, filing, or storage, may not, under any circumstances, refuse to provide local government record data to the local government in a timely manner in a format accessible and useable by the local government.
- H. RETURN OF DATA: Within thirty (30) days following the City's written request, the Contractor shall return any and all City Data as requested by the City and the Contractor shall verify, in writing, that the Contractor has complied with any instructions provided by the City relating to return of City Data.
- I. COPY, DISCLOSURE, AND RETENTION: At no time shall any City Data be copied, disclosed, or retained by the Contractor or any Contractor Affiliate for a use inconsistent with the terms of this Contract. Within thirty (30) days following the termination or expiration of this Contract, the Contractor will provide the City with a written plan for returning or destroying any City Data in possession of the Contractor or any Authorized Persons, consistent with any written direction provided by the City. The Contractor must receive the City's approval in writing before executing the plan. Within fourteen (14) business days of executing this plan, the Contractor will provide the City with a written certificate confirming that the Contractor has completed performance of all obligations related to the handling of City Data.

3.5 DATA SECURITY

Protection of 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. The Contractor shall implement and maintain appropriate administrative, physical, and technical controls to safeguard City Data. The Contractor will use the National Institute of Standards and Technology (NIST) publications as the foundation for data security and privacy protection under this Contract, including but not limited to the Federal Information Processing Standards and the NIST Special Publications. For all references to NIST publications in this Contract, the most recent final publication of reference applies. If the Contractor receives, stores, processes, transmits, or has access to City Data, the Contractor shall comply with the following provisions in this section and shall be responsible for ensuring that all Authorized Persons comply.

- A. Policies: The Contractor will have documented security and privacy policies that address the administrative, physical, and technical controls needed to preserve and maintain the confidentiality, integrity, and availability of City Data. Such security and privacy policies shall be in accordance with the NIST Cybersecurity Framework, NIST Privacy Framework, Federal Information Processing Standards, NIST Special Publications, and other guidance pertaining to the NIST Risk Management Framework.
- B. Training: The Contractor will provide proof of at least annual cybersecurity training for all Authorized Persons with access to City Data.
- C. Controls and Baselines: The Low, Moderate, and High baselines of security and privacy controls are maintained by the National Institute of Standards and Technology (NIST) in the Special Publication 800-53 Series. At minimum, the Contractor will implement the security and privacy controls from the National Institute of Standards and Technology Special Publication 800-53 Moderate Baseline

plus the Privacy Baseline/Overlay (NIST SP 800-53 Moderate with addition of the Privacy Baseline/Overlay). The Contractor will provide evidence from an independent assessor of such implementation. The Contractor and the City will work together to determine which controls will be the responsibility of the Contractor and which controls will be the responsibility of the City. The document containing the controls that will be the responsibility of the City will be known as the Customer Responsibility Matrix (CRM). If a control is not in the CRM, the Contractor will provide and maintain the control to ensure that security is maintained as needed to safeguard City Data. For required controls in the baselines, please see NIST SP 800-53B.

- NIST SP 800-53:
<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf>
 - NIST SP 800-53B:
<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53B.pdf>
- D. Assessment: The Contractor will perform ongoing assessment of the Contractor-implemented controls, consistent with the NIST Special Publication 800-53 Series, and the City may request results of the ongoing assessments at any time during the term of this Contract. In addition, the Contractor will, at its own expense, have an independent assessor complete an annual written assessment of the Contractor-implemented controls. The Contractor will provide the assessment or the overall result to the City annually in writing. FedRAMP or StateRAMP authorization is an acceptable way for the Contractor to demonstrate that the Contractor has met the requirements of this section.
- E. Encryption: All City Data shall be encrypted at rest and in transit with current Federal Information Processing Standard (FIPS)-140 authorized encryption protocol with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the City Data not explicitly marked as public. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the Service Level Agreement, or otherwise made a part of this Contract.
- F. Exceptions: Any exceptions to the above data security and safeguard standards shall follow the City of Austin Information Security Program exception process for written approval of an allowable exception.
- G. Notice of a Significant Change: The Contractor will notify the City point of contact in writing at least 10 business days prior to making a Significant Change to the environment or any of the required controls, unless a Significant Change is necessary in order to contain or otherwise prevent or remedy harm from a Security Incident or Data Breach, in which case the Contractor will notify the City in writing within at least 48 hours of making the Significant Change.
- H. Default. The Contractor's failure to comply with this Section 3.5 shall be considered a default under this Contract, subject to Section 1.10 above.

3.6 SECURITY INCIDENT AND DATA BREACH RESPONSIBILITIES.

- A. Reporting Requirements: The Contractor shall report a Security Incident or Data Breach by calling (512) 974-8300 or emailing cybersecurity@austintexas.gov promptly but no later than twenty-four (24) hours after the Contractor becomes aware of the Security Incident or Data Breach, unless a shorter time is required by applicable law.
- B. Response Requirements: The Contractor will take commercially reasonable measures to address Security Incidents and Data Breaches in a timely manner. 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 subsequent communication, will 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. In addition, the Contractor will cooperate with the City as reasonably requested (1) to investigate and resolve the Security Incident or Data Breach, (2) to promptly implement necessary remedial measures, and (3) to document responsive actions taken related to the Security Incident or Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the Services.

- C. Unless otherwise stipulated, if a Security Incident or a Data Breach is a direct result of the Contractor's actions or omissions regarding industry standards and best practices, legal standards, or 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) completion of all corrective actions as reasonably determined by Contractor based on root cause analysis; (3) notifications to individuals, regulators, or others required by any applicable law or regulation; (4) provision of a credit monitoring service required by any applicable law or regulation; (5) provision of credit monitoring services if the Data Breach includes "sensitive personal information" as defined by Texas statutes; and (6) provisions for other notifications and actions necessary to notify and manage a breach such as development of a website, procurement and costs of a toll-free number and call center for affected individuals required by applicable law or regulation. Prior to providing legally required written notice of a Security Incident or Data Breach to an individual, governmental entity, the media, or a credit reporting agency, the Contractor will submit the notice to the City Attorney for review and comment. Nothing in this Section shall be construed to relieve the Contractor of its responsibility to provide a legally required notice and to do so at its own expense.
- D. The Contractor's failure to comply with this Section will be considered a default under this Contract, subject to Section 1.10 above.

DEFINITIONS

- 1. **"Affiliate"** – means 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.
- 2. **"Amendment"** – a written document executed by authorized representatives of both Parties that modifies the terms of this Contract, including referenced attachments.
- 3. **"Authorized Persons"** – the Contractor personnel (including employees, consultants, representatives and subcontractor personnel) who have a need to know or otherwise access City Data to enable the Contractor to perform its obligations under this Contract, and who are advised of the confidentiality and other obligations in this Contract sufficiently to protect City Data in accordance with the terms of this Contract.

4. **“City Data”** – data or information (in any form) regarding the City or persons who interact with the City (including but not limited to customers, employees, and residents) that is created, collected, provided, processed, or obtained by City and transmitted, or otherwise made available by City to Contractor in connection with this Contract, expressly excluding (i) any Confidential Information of Contractor, (ii) any CMS content obtained by Contractor in connection with its operation of the Kiosks pursuant to this Contract, and (iii) any other information which is the property of Contractor pursuant to this Contract (including, without limitation, the information described in Section 1.40 above. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any City Data are themselves also City Data. For the avoidance of doubt, City Data includes all Confidential Information of the City and all Personal Information made available to City by Contractor in connection with this Contract.
5. **“Data Breach”** – the unauthorized access by a non-Authorized Person(s) that results in the use, disclosure or theft of City Data, including but not limited to unencrypted Personal Information.
6. **“Deliverable”** – all of the goods, products, Services, work, items, materials, and property to be created, developed, produced, delivered, performed, or provided by or on behalf of, or made available through, Contractor (or any agent, contractor, or subcontractor of Contractor) in connection with this Contract.
7. **“Harmful Code”** – any: (a) virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive Customer or Authorized Users of their lawful right to use the Services or Provider Systems.
8. **“Party” or “Parties”** – the City and Contractor, individually or together, as applicable.
9. **“Personal Information”** – data or information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, either directly or indirectly, with a particular person. Personal Information includes but is not limited to Personally Identifiable Information, Personal Identifying Information, and Sensitive Personal Information as defined by state and federal breach laws and regulations, including Chapter 521, Texas Business and Commerce Code and other jurisdictions such as other applicable states and federal data breach laws.
10. **“Security Incident”** – (i) any act or omission that compromises either the security, confidentiality, availability, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or the City that relate to the protection of the security, confidentiality, availability, or integrity of City Data or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Person or a breach or alleged breach of this Contract relating to such privacy and data security practices. Without limiting the foregoing, a Security Incident shall include any actual or potential unauthorized access to or disclosure or acquisition of Personal Information, and shall also include any violation or imminent threat of violation of industry standard security practices.
11. **“Service Level Agreement”**– 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 Contractor’s 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.

12. **"Services"** – work, direction of work, installation services, technical information, technical consulting, Software, software programming and development, software maintenance and support services, cloud services (including software as a service, platform as a service, and infrastructure as a service), or other professional and technical services furnished by Contractor pursuant to this Contract.
13. **"Significant Change"** – a change that is likely to substantively affect the security or privacy posture of a system.
14. **"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 Contractor or licensed to Contractor by a third party which has authorized Contractor 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.
15. **"Specifications"** – those technical, functional, and other specifications included in this Contract and to which the Deliverables supplied by Contractor must conform.
16. **"Third Party"** – any natural person or legal entity other than Contractor and City.
17. **"User"** – City's employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use software or other technology Services in the performance of their duties for City.

Exhibit D

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

OFFEROR HEREBY CERTIFIES

Offeror has read the following and will comply with Austin City Code, Sec. 5-4-2.

1. Not to engage in any discriminatory employment practice defined in this chapter;
2. To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment;
3. To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
4. To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
5. To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
6. To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
7. To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City’s Minimum Non-Discrimination and Non-Retaliation Policy set forth below.

MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY

1. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations. The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination. Section 5-4-2 of the City Code and set forth above, as the Contractor's
2. 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.
3. Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.
4. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and nonretaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in

Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

Discrimination and Non- Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

5. UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NONDISCRIMINATION

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NO

N- RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

6. Contractor agrees that non-compliance with Chapter 5- 4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.
7. The Contractor agrees that this Non-Discrimination and Non-Retaliation Certificate, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-

SUSPENSION AND DEBARMENT CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.

OFFEROR HEREBY CERTIFIES

Offeror has **NOT** been debarred from contracting with the City of Austin, any other local governments or states, or the US federal government.

Suspended or Debarred Offerors. The City finds that offerors, including any subcontractors that may be included in the Offer, that are suspended or debarred from contracting with the US federal government, any state or local government, as of the submission date of their offer, are not sufficiently responsible to contract with the City. The City may reject and set aside any offer, or terminate for cause any contract resulting from an offer, in which the offeror falsely certified they were not suspended or debarred when in fact they were.

**EMPLOYER CERTIFICATION
WAGE THEFT ORDINANCE – RESPONSIBILITY CRITERIA
CITY OF AUSTIN**

Any Employer that submits an offer to the City seeking award of a city contract prior to awarding a contract are required to certify that they have not been adjudicated for certain offenses related to wage theft. See City of Austin Ordinance No. 20221201-031. "Wage theft" and "adjudicated" are to be understood per the definitions set forth in Austin City Code Chapter 4, § 4-22-1 (G) and (H).

Solicitation or Agreement Title:

Solicitation Posting Date or Agreement Start Date:

All Employers are required to complete the City of Austin Wage Theft Training within 30 days of being awarded a contract with the City.

Contact the Wage Compliance Team to register for a class.

I hereby certify, under penalty of perjury under the laws of the State of Texas, that the below certification is true and correct and that I am authorized to make the following certification on behalf of the firm listed herein.

CERTIFICATION:

This firm has NOT been adjudicated for wage theft related incidents as defined in Austin City Code Chapter 4, § 4-22-1 (G) & (H) within five (5) years prior to the above-stated date. Furthermore, this firm agrees to abide by the items outlined in Section 4-22-5 (B) and Section 4-22-6 (A) of the Austin City Code.

Firm

Name: _____

Name of Employer - Print Full Legal Entity Name of Firm

Signed: _____

Signature of Authorized Person

Print Name of Person Making Certification for Firm

Title: _____

Title of Person Making Certificate

Place: _____

Print City and State Where Signed

Date: _____

EMPLOYER CERTIFICATION – WAGE THEFT PROGRAM