



**AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND**

FOR

(CSBG Direct Financial Assistance)

AGREEMENT NO. _____

AGREEMENT AMOUNT: \$

This Agreement is made by and between the City of Austin (the City) acting by and through its Austin Public Health department (APH), a home-rule municipality incorporated by the State of Texas, and _____ (Grantee), a Texas _____, having offices at _____, Austin, TX.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Grantee.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Grantee is engaged to provide the services set forth in the attached Agreement Exhibits.

1.1.1 This Agreement entered into between the City and the Grantee is designated a Social Services DELIVERABLES Agreement.

1.2 **Responsibilities of the Grantee.** The Grantee shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Agreement Exhibits. The Grantee shall assure that all Agreement provisions are met by any Subgrantee performing services for the Grantee.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Grantee's activities in completing the Program Work Statement. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Grantee, and shall approve all requests for payment, as appropriate. The City's Contract Manager shall give the Grantee timely feedback on the acceptability of progress and task reports. The Contract Manager's oversight of the Grantee's activities shall be for the City's benefit and shall not imply or create any partnership or joint venture as between the City and the Grantee.

1.4 **Designation of Key Personnel.** The City's Contract Manager for this Agreement, to the extent stated in the preceding Section 1.3, shall be responsible for oversight and monitoring of Grantee's performance under this Agreement as needed to represent the City's interest in the Grantee's performance.

1.4.1 The City's Contract Manager or designee:

- may meet with Grantee to discuss any operational issues or the status of the services or work to be performed; and

-shall promptly review all written reports submitted by Grantee, determine whether the reports comply with the terms of this Agreement, and give Grantee timely feedback on the adequacy of progress and task reports or necessary additional information.

1.4.2 Grantee's Contract Manager or designee, shall represent the Grantee with regard to performance of this Agreement and shall be the designated point of contact for the City's Contract Manager.

1.4.3 If either party replaces its Contract Manager, that party shall promptly send written notice of the change to the other party. The notice shall identify a qualified and competent replacement and provide contact information.

SECTION 2. TERM

2.1 **Term of Agreement.** The Agreement shall be in effect for a term of 2 months beginning July 1, 2020 through August 31, 2020.

2.1.1 Upon expiration of the initial term or period of extension, the Grantee agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed upon in writing).

SECTION 3. PROGRAM WORK STATEMENT

3.1 **Grantee's Obligations.** The Grantee shall fully and timely provide all services described in the attached Agreement Exhibits in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable federal, state, and local laws, rules, and regulations.

SECTION 4. COMPENSATION AND REPORTING

4.1 **Agreement Amount.** The Grantee acknowledges and agrees that, notwithstanding any other provision of this Agreement, the maximum amount payable by the City under this Agreement for the initial 2 month term shall not exceed the amount approved by the Texas Department of Housing and Community Affairs, which is \$53,905 (*fifty three thousand nine hundred and five dollars*) for a total Agreement amount of \$53,905.

4.2 Reports.

4.2.1 Grantee must submit a fully and accurately completed payment request to the City's Contract Manager using the City's contract management system by the deadline outlined in Exhibit B.3. Grantee must provide complete and accurate supporting documentation. Upon receipt and approval by the City of each complete and accurate payment request, the City shall process the payment to the Grantee in an amount equal to the City's payment obligations, subject to deduction for any unallowable costs.

4.2.2 A Contract Closeout Summary Report using the forms in the City's contract management system shall be completed by the Grantee and submitted to the City within 30 calendar days following the expiration or termination of this Agreement. Any encumbrances of funds incurred prior to the date of termination of this Agreement shall be subject to verification by the City. Upon termination of this Agreement, any unused funds, unobligated funds, rebates, credits, or interest earned on funds received under this Agreement shall be returned to the City.

4.2.3 Grantee shall provide the City with a copy of the completed Agency Administration Profile (AAP) using the forms in the City's contract management system, and required AAP Attachments, including a copy of the Grantee's completed Internal Revenue Service Form 990 or 990EZ (Return of Organization Exempt from Income Tax) if applicable, for each calendar year to be due in conjunction with submission of the Grantee's annual financial audit report or financial review report as outlined in Section 4.5.4. If Grantee filed a Form 990 or Form 990EZ extension request, Grantee shall provide the City with a copy of that application of extension of time to file (IRS Form 2758) within 30 days of filing said form(s), and a copy of the final IRS Form 990 document(s) immediately upon completion.

4.2.3.1 Governmental Entities are not required to submit an Agency Administration Profile to the City under this Agreement.

4.2.4 Grantee shall provide other reports required by the City to document the effective and appropriate delivery of services as outlined under this Agreement as required by the City.

4.3 **Grantee Policies and Procedures.**

4.3.1 Grantee shall maintain written policies and procedures aligned with best practices and approved by its governing body and shall make copies of all policies and procedures available to the City upon request. At a minimum, written policies shall exist in the following areas: Financial Management; Subcontracting and/or Procurement; Equal Employment Opportunity; Personnel and Personnel Grievance; Nepotism; Non-Discrimination of Clients; Client Grievance; Drug Free Workplace; the Americans with Disabilities Act; Conflict of Interest; Whistleblower; and Criminal Background Checks.

4.3.2 Grantee shall provide the City with copies of revised Articles of Incorporation and Doing Business As (*DBA*) certificates (if applicable) within 14 calendar days of receipt of the notice of filing by the Secretary of State's office. Grantee shall provide the City with copies of revised By-Laws within 14 calendar days of their approval by the Grantee's governing body.

4.4 **Monitoring and Evaluation.**

4.4.1 Grantee agrees that the City or its designee may carry out monitoring and evaluation activities to ensure adherence by the Grantee and Subgrantees to the Program Work Statement, Program Performance Measures, and Program Budget, as well as other provisions of this Agreement. Grantee shall fully cooperate in any monitoring or review by the City and further agrees to designate a staff member to coordinate monitoring and evaluation activities.

4.4.2 The City expressly reserves the right to monitor client-level data related to services provided under this Agreement. If the Grantee asserts that client-level data is legally protected from disclosure to the City, a specific and valid legal reference to this assertion must be provided and is subject to acceptance by the City's Law Department.

4.4.3 Grantee shall provide the City with copies of all evaluation or monitoring reports received from other funding sources during the Agreement Term upon request following the receipt of the final report.

4.4.4 Grantee shall keep on file copies of all notices of Board of Directors meetings, Subcommittee or Advisory Board meetings, and copies of approved minutes of those meetings.

4.5 **Financial Audit of Grantee.**

4.5.1 Grantee shall annually contract with an independent auditor utilizing a Letter of Engagement to complete either a full financial audit or financial review. The auditor must be a Certified Public Accountant recognized by the regulatory authority of the State of Texas.

4.5.1.1 Governmental Entities are not required to submit a financial audit to the City under this Agreement.

4.5.2 In the event Grantee expends \$750,000 or more in a year in federal awards, Grantee shall have a single or program specific audit conducted in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations as required by the Single Audit Act of 1984, as amended (Single Audit Act), and shall submit to the City a complete set of audited financial statements and the auditor's opinion and management letters in accordance with Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and any guidance issued by the federal Office of Management and Budget covering Grantee's fiscal year until the end of the term of this Agreement.

4.5.3 If Grantee is not subject to the Single Audit Act, and expends \$750,000 or more during the Grantee's fiscal year, then Grantee shall have a full financial audit performed in accordance with Generally Accepted Auditing Standards (GAAS). If less than \$750,000 is expended, then a financial review is acceptable, pursuant to the requirements of this Agreement.

4.5.4 Grantee shall submit a complete financial audit report or financial review which has been presented and accepted by the Board of Directors, to include the original auditor Opinion Letter/Independent Auditor's Report within 270 calendar days of the end of Grantee's fiscal year, unless alternative arrangements are approved in writing by the City. The financial audit report or financial review report must include the Management Letter/Internal Controls Letter, if one was issued by the auditor.

4.5.5 Grantee shall submit an APH Board Certification Form that was signed and dated by the Grantee's Board Chair. The APH Board Certification Form confirms that the independent auditor presented the financial audit or financial review to the Grantee's Board or committee of the Board and that it was accepted by the Grantee's Board of Directors or a committee of the Board. The City will deem the financial audit report/financial review report incomplete if the Grantee fails to submit the Board Certification form, as required by this Section.

4.5.6 The inclusion of any Findings or a Going Concern Uncertainty, as defined by Chapter 200, Subpart F, of Title 2 of the Code of Federal Regulations and GAAS, in a Grantee's audit requires the creation and submission to the City of a corrective action plan formally approved by the Grantee's governing board. The plan must be submitted to the City within 60 days after the audit is submitted to the City. Failure to submit an adequate plan to the City may result in the immediate suspension of funding. If adequate improvement related to the audit findings is not documented within a reasonable period of time, the City may provide additional technical assistance, refer the Agreement to the City Auditor for analysis, or move to terminate the Agreement as specified in Section 5 of the Agreement.

4.5.7 The expiration or termination of this Agreement shall in no way relieve the Grantee of the audit requirement set forth in this Section.

4.5.8 **Right To Audit By Office of City Auditor.**

4.5.8.1 Grantee 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, and copy any and all records of the Grantee related to the performance under this Agreement during normal business hours (Monday – Friday, 8 am – 5 pm). In addition to any other rights of termination or suspension set forth herein, the City shall have the right to immediately suspend the Agreement, upon written notice to Grantee, if Grantee fails to cooperate with this audit provision. The Grantee shall retain all such records for a period of 5 years after the expiration or early termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of the Grantee are resolved, whichever is longer. The Grantee agrees to refund to the City any overpayments disclosed by any such audit.

4.5.8.2 Grantee shall include this audit requirement in any subagreements entered into in connection with this Agreement.

SECTION 5. TERMINATION

5.1 **Right To Assurance.** Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

5.2 **Default.** The Grantee shall be in default under the Agreement if the Grantee (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Grantee's Offer, or in any report or deliverable required to be submitted by Grantee to the City.

5.3 **Termination For Cause.** In the event of a default by the Grantee, the City shall have the right to terminate the Agreement for cause, by written notice effective 10 calendar days, unless otherwise specified,

after the date of such notice, unless the Grantee, within such 10 day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Grantee on probation for a specified period of time within which the Grantee must correct any non-compliance issues. Probation shall not normally be for a period of more than 9 months; however, it may be for a longer period, not to exceed 1 year depending on the circumstances. If the City determines the Grantee has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Grantee, the City may suspend or debar the Grantee in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Grantee from the City's vendor list for up to 5 years and any Offer submitted by the Grantee may be disqualified for up to 5 years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Grantee's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

5.4 **Termination Without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon 30 calendar-days prior written notice. Upon receipt of a notice of termination, the Grantee shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Grantee, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

5.5 **Fraud.** Fraudulent statements by the Grantee on any Offer or in any report or deliverable required to be submitted by the Grantee to the City shall be grounds for the termination of the Agreement for cause by the City and may result in legal action.

SECTION 6. OTHER DELIVERABLES

6.1 **Insurance.** The following insurance requirements apply:

6.1.1 **General Requirements**

6.1.1.1 The Grantee shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.

6.1.1.2 The Grantee shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Agreement execution and within 14 calendar days after written request from the City.

6.1.1.3 The Grantee must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

6.1.1.4 The Grantee shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Grantee hereunder and shall not be construed to be a limitation of liability on the part of the Grantee.

6.1.1.5 The Grantee must maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

6.1.1.6 The Grantee's and all Subgrantees' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

6.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Grantee's email address, and shall be mailed to the following address:

City of Austin
Austin Public Health
ATTN: Social Services Contracts
P. O. Box 1088
Austin, Texas 78767

6.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Grantee, shall be considered primary coverage as applicable.

6.1.1.9 If insurance policies are not written for amounts specified, the Grantee 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.

6.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Grantee.

6.1.1.12 The Grantee shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

6.1.1.13 The Grantee shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.14 The Grantee shall endeavor to provide the City 30 calendar-days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

6.1.2 **Specific Coverage Requirements.** The Grantee shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Grantee.

6.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000* for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

6.1.2.1.1 Blanket contractual liability coverage for liability assumed under the Agreement and all other Agreements related to the project

6.1.2.1.2 Independent Grantee's Coverage

6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period

6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

- 6.1.2.1.5 Thirty (30) calendar-days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
- 6.1.2.1.6 The "City of Austin" listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- 6.1.2.1.7 If care of a child is provided outside the presence of a legal guardian or parent, Grantee shall provide coverage for sexual abuse and molestation for a minimum limit of \$500,000 per occurrence.
- 6.1.2.1.8 The policy shall be endorsed to cover injury to a child while the child is in the care of the Grantee or Subgrantee.

* Supplemental Insurance Requirement. If eldercare, childcare, or housing for clients is provided, the required limits shall be \$1,000,000 per occurrence.

6.1.2.2 **Business Automobile Liability Insurance.**

Minimum limits: \$500,000 combined single limit per occurrence for all owned, hired and non-owned autos

- a. a. If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$1,000,000 per occurrence.
- b. If Grantee does not own any vehicles, a signed "Hired & Non-Owned Auto" Statement may be provided in conjunction with evidence of non-owned and hired Business Automobile Liability Insurance coverage.
- c. b. If no client transportation is provided but autos are used within the scope of work, and there are no agency owned vehicles, evidence of Personal Auto Policy coverage from each person using their auto may be provided. The following limits apply for personal auto insurance: \$100,000/\$300,000/\$100,000.

All policies shall contain the following endorsements:

- 6.1.2.2.1. Waiver of Subrogation, Endorsement CA 0444, or equivalent coverage
- 6.1.2.2.2. Thirty (30) calendar-days' Notice of Cancellation, Endorsement CA 0244, or equivalent coverage
- 6.1.2.2.3 The "City of Austin" listed as an additional insured, Endorsement CA 2048, or equivalent coverage

6.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage is required of Grantees providing services on City owned or leased property, and shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

- 6.1.2.3.1 The Grantee's policy shall apply to the State of Texas
- 6.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage
- 6.1.2.3.3 Thirty (30) calendar-days' Notice of Cancellation, Form WC 420601, or equivalent coverage

6.1.2.4 **Professional Liability Insurance.**

6.1.2.4.1 Grantee shall provide coverage at a minimum limit of \$500,000 per claim to pay on behalf of the assured all sums which the assured shall become legally

obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

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

6.1.2.5 **Blanket Crime Policy Insurance.** A Blanket Crime Policy shall be required with limits equal to or greater than the sum of all Agreement funds allocated annually by the City. Acceptance of alternative limits shall be approved by Risk Management.

6.1.2.6 **Directors and Officers Insurance.** Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Agreement and for not less than 24 months following the end of the Agreement. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Agreement or evidence of prior acts or an extended reporting period acceptable to the City may be provided. The Grantee shall, on at least an annual basis, provide the City with a Certificate of Insurance as evidence of such insurance.

6.1.2.7 **Property Insurance.** If the Agreement provides funding for the purchase of property or equipment the Grantee shall provide evidence of all risk property insurance for a value equivalent to the replacement cost of the property or equipment.

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

6.1.2.9 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of the City of Austin for general liability, auto liability and workers compensation policies."

6.2 **Equal Opportunity.**

6.2.1 **Equal Employment Opportunity.** No Grantee or Grantee's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Agreement awarded by the City unless the Grantee has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Grantee shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and the Grantee's suspension or debarment from participation on future City Agreements until deemed compliant with Chapter 5-4. Any Subgrantees used in the performance of this Agreement and paid with City funds must comply with the same nondiscrimination requirements as the Grantee.

6.2.2 **Americans with Disabilities Act (ADA) Compliance.** No Grantee, or Grantee's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

6.3 **Inspection of Premises.** The City has the right to enter Grantee's and Subgrantee's work facilities and premises during Grantee's regular work hours, and Grantee agrees to facilitate a review of the facilities upon reasonable request by the City.

6.4 **Rights to Proposal and Contractual Material.** All material submitted by the Grantee to the City shall become property of the City upon receipt. Any portions of such material claimed by the Grantee 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.

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

SECTION 7. WARRANTIES

7.1 **Authority.** Each party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the party.

7.2 **Performance Standards.** Grantee warrants and represents that all services provided under this Agreement shall be fully and timely performed in a good and workmanlike manner in accordance with generally accepted community standards and, if applicable, professional standards and practices. Grantee may not limit, exclude, or disclaim this warranty or any warranty implied by law, and any attempt to do so shall be without force or effect. If the Grantee is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Agreement from the Grantee, and purchase conforming services from other sources. In such event, the Grantee shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source. Grantee agrees to participate with City staff to update the performance measures.

SECTION 8. MISCELLANEOUS

8.1 **Criminal Background Checks.** Grantee and Subgrantee(s) agree to perform a criminal background check on individuals providing direct client services in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with Intellectual and Developmental Disabilities (IDD). Grantee shall not assign or allow an individual to provide direct client service in programs designed for children under 18 years of age, seniors 55 years of age and older, or persons with IDD if the individual would be barred from contact under the applicable program rules established by Title 40 of the Texas Administrative Code.

8.1.1 In accordance with the Grantee's personnel and records retention policies, the Grantee shall retain documentation that a criminal background check was completed.

8.2 **Compliance with Health, Safety, and Environmental Regulations.** The Grantee, its Subgrantees, 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), and those found in the Clean Air Act (42 U.S.C. 7401–7671q), the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387), and the Energy Policy and Conservation Act (42 U.S.C. 6201). In case of conflict, the most stringent safety requirement shall govern. The Grantee 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 Grantee's obligations under this paragraph.

8.2.1 The Grantee or Subgrantee(s) seeking an exemption for a food enterprise permit fee must present this signed and executed social services Agreement upon request to the City. (Source: City of Austin Ordinance 20051201-013)

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

8.4 **Indemnity.**

8.4.1 Definitions:

8.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

8.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Grantee, their respective agents, officers, employees and Subgrantees; the officers, agents, and employees of such Subgrantees; and third parties); and/or;

8.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Grantee, the Grantee's Subgrantees, and third parties),

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

8.4.2 THE GRANTEE SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE GRANTEE, OR THE GRANTEE'S AGENTS, EMPLOYEES OR SUBGRANTEES, IN THE PERFORMANCE OF THE GRANTEE'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE GRANTEE (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

8.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Grantee which arises under or concerns the Agreement, or which could have a material adverse effect on the Grantee's ability to perform hereunder, the Grantee shall give written notice thereof to the City within 10 calendar days after receipt of notice by the Grantee. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

8.6 **Business Continuity.** Grantee warrants that it has adopted a business continuity plan that describes how Grantee will continue to provide services in the event of an emergency or other unforeseen event, and agrees to maintain the plan on file for review by the City. Grantee shall provide a copy of the plan to the City's Contract Manager upon request at any time during the term of this Agreement, and the requested information regarding the Business Continuity Plan shall appear in the annual AAP documentation.

8.6.1 Grantee agrees to participate in the City's Emergency Preparedness and Response Plan and other disaster planning processes. Grantee participation includes assisting the City to provide

disaster response and recovery assistance to individuals and families impacted by manmade or natural disasters.

8.7 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Agreement shall be in writing and shall be deemed delivered 3 business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means. Notices to the City and the Grantee shall be addressed as follows:

| | | |
|---|-----------------|---|
| To the City: | To the Grantee: | With copy to: |
| City of Austin Austin Public Health Community Services Division | | City of Austin Austin Public Health |
| ATTN: Donna Sundstrom, Assistant Director | ATTN: | ATTN: Stephanie Hayden, Director |
| 7201 Levander Loop, Bldg. C Austin, TX 78702 | | 7201 Levander Loop, Bldg. E Austin, TX 78702 |

8.8 **Confidentiality.** In order to provide the deliverables to the City, Grantee may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Grantee acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Grantee (including its employees, Subgrantees, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Grantee promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Grantee agrees to use protective measures no less stringent than the Grantee uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

8.9 **Advertising.** Where such action is appropriate as determined by the City, Grantee shall publicize the activities conducted by the Grantee under this Agreement. Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for the Grantee shall recognize the City as a funding source and include a statement that indicates that the information presented does not officially represent the opinion or policy position of the City.

8.10 **No Contingent Fees.** The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement 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 Grantee 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 Agreement without liability and to deduct from any amounts owed to the Grantee, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8.11 **Gratuities.** The City may, by written notice to the Grantee, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Grantee or any agent or representative of the Grantee to any officer or employee of the City with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Agreement. In the event the Agreement 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 Grantee in providing such gratuities.

8.12 Prohibition Against Personal Interest in Agreements. 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 Agreement 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 Grantee shall render the Agreement voidable by the City.

8.13 Independent Grantee. The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Grantee's services shall be those of an independent Grantee. The Grantee agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

8.14 Assignment-Delegation. The Agreement shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Grantee without the prior written consent of the City. Any attempted assignment or delegation by the Grantee shall be void unless made in conformity with this paragraph. The Agreement 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 Agreement.

8.15 Waiver. No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Grantee 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 Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

8.16 Modifications. The Agreement can be modified or amended only by a written, signed agreement by both parties. No pre-printed or similar terms on any Grantee invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

8.17 Interpretation. The Agreement 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 Agreement. Although the Agreement 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 Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

8.18 Dispute Resolution.

8.18.1 If a dispute arises out of or relates to the Agreement, 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, 1 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.

8.18.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Grantee agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or an Agreement

interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Grantee 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.

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

MBE/WBE goals do not apply to this Agreement.

8.20 **Living Wage Policy (If Applicable)**

The City's Living Wage Program applies to City expenditure and revenue generating non-construction contracts where all of the following apply:

- Contract is predominantly for non-construction services *performed on City Property or on City Vehicles*;
- Contract results from a formal competitive solicitation, procedurally compliant with section 252.021 of the Texas Local Government Code;
- Contract requires authorization by City Council in accordance with Article VII, Finance, Section 15 (Purchase Procedure) of the City Charter; and
- Directly assigned Contractor Employees of the Prime Contractor and all tiers of subcontracting.

8.20.1 The Grantee shall maintain throughout the term of the Agreement basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).

8.20.2 The Grantee shall provide the Department's Contract Manager with the first invoice, individual Employee Certifications for all employees directly assigned to the Agreement. The City reserves the right to request individual Employee Certifications at any time during the Agreement term. Employee Certifications shall be signed by each employee directly assigned to the Agreement. The Employee Certification form is available on-line at:

https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.

8.20.3 Grantee shall submit employee certifications annually on the anniversary date of Agreement award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Agreement. The Employee Certification Forms shall be submitted for employees added to the Agreement and/or to report any employee changes as they occur.

8.20.4 The Department's Contract Manager will periodically review the employee data submitted by the Grantee to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph 8.20.1 above to verify compliance with this provision.

8.21 **Subgrantees.**

8.21.1 Work performed for the Grantee by a Subgrantee shall be pursuant to a written Agreement between the Grantee and Subgrantee. The terms of the Subagreement may not conflict with the terms of the Agreement, and shall contain provisions that:

8.21.1.1 require that all deliverables to be provided by the Subgrantee be provided in strict accordance with the provisions, specifications and terms of the Agreement. The City may require specific documentation to confirm Subgrantee compliance with all aspects of this Agreement.

8.21.1.2 prohibit the Subgrantee from further subcontracting any portion of the Agreement without the prior written consent of the City and the Grantee. The City may require, as a condition to such further subcontracting, that the Subgrantee post a payment bond in form, substance and amount acceptable to the City;

8.21.1.3 require Subgrantees to submit all requests for payment and applications for payments, including any claims for additional payments, damages or otherwise, to the Grantee in sufficient time to enable the Grantee to include the same with its invoice or application for payment to the City in accordance with the terms of the Agreement;

8.21.1.4 require that all Subgrantees obtain and maintain, throughout the term of their Subagreement, insurance in the type required by this Agreement, and in amounts appropriate for the amount of the Subagreement, with the City being a named insured as its interest shall appear;

8.21.1.5 require that the Subgrantees indemnify and hold the City harmless to the same extent as the Grantee is required to indemnify the City; and

8.21.1.6 maintain and make available to the City, upon request, Certificates of Insurance for all Subgrantees.

8.21.2 The Grantee shall be fully responsible to the City for all acts and omissions of the Subgrantees just as the Grantee is responsible for the Grantee's own acts and omissions. Nothing in the Agreement shall create for the benefit of any such Subgrantee any contractual relationship between the City and any such Subgrantee, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subgrantee except as may otherwise be required by law.

8.21.3 The Grantee shall pay each Subgrantee its appropriate share of payments made to the Grantee not later than 10 days after receipt of payment from the City.

8.22 **Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement 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.

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

8.24 **Holidays.** The following holidays are observed by the City:

| <u>HOLIDAY</u> | <u>DATE OBSERVED</u> |
|-----------------------------------|-----------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr's Birthday | Third Monday in January |
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving | Friday after Thanksgiving |
| Christmas Eve | December 24 |
| Christmas Day | December 25 |

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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

8.26 **Non-Suspension or Debarment Certification.** The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from federal, state, or City Agreements. By accepting an Agreement with the City, the Grantee certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the Exclusions records at SAM.gov, the State of Texas, or the City of Austin.

8.27 **Public Information Act.** Grantee acknowledges that the City is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and all related information within the City’s possession or to which the City has access are presumed to be public and will be released unless the information is subject to an exception described in the Public Information Act.

8.28 **HIPAA Standards.** As applicable, Grantee and Subgrantees are required to develop and maintain administrative safeguards to ensure the confidentiality of all protected client information, for both electronic and non-electronic records, as established in the Health Insurance Portability and Accountability Act (HIPAA) Standards CFR 160 and 164, and to comply with all other applicable federal, state, and local laws and policies applicable to the confidentiality of protected client information. Grantee must maintain HIPAA-compliant Business Associate agreements with each entity with which it may share any protected client information.

8.28.1 Business Associate Agreement. If performance of this Agreement involves the use or disclosure of Protected Health Information (PHI), as that term is defined in 45 C.F.R. § 160.103, then Grantee acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement, attached as Exhibit E.

8.29 **Political and Sectarian Activity.** No portion of the funds received by the Grantee under this Agreement shall be used for any political activity (including, but not limited to, any activity to further the election or defeat of any candidate for public office) or any activity undertaken to influence the passage, defeat, or final content of legislation; or for any sectarian or religious purposes.

8.30 **Culturally and Linguistically Appropriate Standards (CLAS).** The City is committed to providing effective, equitable, understandable and respectful quality care and services that are responsive to diverse cultural beliefs and practices, preferred languages, health literacy, and other communication needs. This commitment applies to services provided directly by the City as well as services provided through its Grantees. Grantee and its Subgrantees agree to implement processes and services in a manner that is culturally and linguistically appropriate and competent. Guidance on adopting such standards and practices are available at the U.S. Department of Health and Human Services Office of Minority Health’s website at: <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6>.

In some instances, failure to provide language assistance services may have the effect of discriminating against persons on the basis of their natural origin. Guidelines for serving individuals with Limited English Proficiency (LEP) are available at <https://www.lep.gov/faqs/faqs.html>.

8.31 **Entire Agreement.** This Contract, together with the below Exhibits, and any addenda and amendments thereto constitute the entire agreement between the parties, and this Contract shall not be modified, amended, altered, or changed except with the written consent of the parties.

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

CITY OF AUSTIN

Signature: _____

Signature: _____

Name: _____
Printed Name

Name: _____
PURCHASING OFFICE

Title: _____

Date: _____

Date: _____

DEFINITIONS

Agreement/Contract- General terms for a legally-binding undertaking between two parties that describes the terms, conditions, and specifications of the obligations, relationships, and responsibilities between them, and any related addenda and amendments. City of Austin Social Services Contracts are considered to be grant agreements, but commonly referred to as contracts. The terms are interchangeable throughout this Agreement.

Deliverables Agreement- An Agreement where an agency is reimbursed for a report or product that must be delivered to the City by the grantee (or by the Subgrantee to the Grantee) to satisfy contractual requirements. It can include goods or finished works, documentation of services provided or activities undertaken, and/or other related documentation.

Exhibit- An attachment to the agreement that is either programmatic (Program Exhibit) or contains additional terms and conditions (Standard Exhibit). Program Exhibits provide the detailed information for the program the City is funding through the Agreement.

Governmental Entity- An organization that is a unit of government, institution of higher education, or local taxing authority, such as a school district. Also includes quasi-governmental organizations, such as a local mental health authority

Grantee- A vendor agency that has entered into a Social Services grant agreement with the City to provide social services to the community

Subgrantee- An agency that has entered into a subagreement with a Grantee to provide direct client services under a Social Services Agreement, who is paid with City funds by the Grantee, and who must report program performance information to the Grantee for individuals served who are not existing clients of the Grantee for the contracted program. The Subgrantee is subject to the same terms and conditions in the Grantee's Social Services Agreement with the City.

EXHIBITS

Exhibit A – Program Work Statement

Exhibit B – Program Budget and Narrative

Exhibit C – Equal Employment/Fair Housing Office/Non-Discrimination Certification, Israel Verification, and Conflicts of Interest

Exhibit D – Business Associate Agreement

Exhibit E – TDHCA/CSBG Requirements

Exhibit F – Certification Regarding Lobbying

Exhibit G – Certification Regarding Debarment