

**ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF AUSTIN
AND ATHENAHEALTH, INC.**

This Economic Development Agreement ("Agreement") is made and entered into as of January 30, 2014 (the "Effective Date") by and between **athenahealth, Inc.** (the "Company"), a foreign for-profit corporation, with its principal places of business in Watertown, MA, authorized to do business in the State of Texas, and the **City of Austin**, a home-rule municipal corporation situated in Hays, Travis and Williamson Counties acting by and through its duly authorized City Manager or his designee (the "City"). The City is authorized by Chapter 380 of the Texas Local Government Code to create programs for the grant of public money to promote state and local economic development and to stimulate local business and commercial activity.

The City has authorized the creation of an economic development program under Chapter 380 of the Texas Local Government Code and has authorized the City Manager to make a grant of money to the Company to (i) expand an IT Services Center in Austin and make capital investments in the Desired Development Zone, and (ii) create New Full-Time Jobs at the IT Services Center ((i) and (ii) together are the "Project").

The expansion of the Company's IT Services Center in Austin will further state and local economic development and stimulate business and commercial activity in Austin. The Company accepts the City's grant and agrees to carry-out the Project, the terms of which are the subject of this Agreement.

The City and the Company agree as follows:

AGREEMENT

I. Company's Obligations

- 1.01 Investment in the Desired Development Zone. The Company shall expand its IT Services Center (the "IT Services Center") in the Central Business District in Austin, Texas. The Company shall ensure that after the Effective Date of this Agreement and before December 31, 2023 the Company has invested at least Seven million, seven hundred fifty thousand, five hundred and No/100 Dollars (\$7,750,500.00) in the purchase and installation or use of business personal property at the IT Services Center to be used at the IT Services Center to support the operations of the IT Services Center.

The Company shall purchase and install or use business personal property as follows:

- a. \$1,134,000 before December 31, 2014;
- b. An additional \$43,500, for total investment of \$1,177,500 before December 31, 2015;
- c. An additional \$1,188,000, for total investment of \$2,365,500 before December 31, 2016;
- d. An additional \$126,000, for total investment of \$2,491,500 before December 31, 2017;
- e. An additional \$1,227,000, for total investment of \$3,718,500 before December 31, 2018;
- f. An additional \$169,500, for total investment of \$3,888,000 before December 31, 2019;
- g. An additional \$1,542,000, for total investment of \$5,430,000 before December 31, 2020;

- h. An additional \$202,500, for total investment of \$5,632,500 before December 31, 2021;
- i. An additional \$1,851,000, for total investment of \$7,483,500 before December 31, 2022; and
- j. An additional \$267,000, for total investment of \$7,750,500 before December 31, 2023.

1.02 **Creation and Retention of New Full-Time Jobs.** The Company shall create at least 607 New Full-Time Jobs (as hereafter defined) located at the Company’s IT Services Center, by December 31, 2023. A “**New Full-Time Job,**” is a full-time job created after the Effective Date of this Agreement that is performed at the IT Services Center by an employee of the Company, and created as the result of the improvements to and operation of the IT Services Center.

(a) The Company shall create and retain the New Full-Time Jobs as follows:

- (i) 35 New Full-time Jobs before December 31, 2014;
- (ii) 64 New Full-time Jobs before December 31, 2015;
- (iii) 100 New Full-time Jobs before December 31, 2016;
- (iv) 155 New Full-time Jobs before December 31, 2017;
- (v) 217 New Full-time Jobs before December 31, 2018;
- (vi) 275 New Full-time Jobs before December 31, 2019;
- (vii) 341 New Full-time Jobs before December 31, 2020;
- (viii) 418 New Full-time Jobs before December 31, 2021;
- (ix) 506 New Full-time Jobs before December 31, 2022; and
- (x) 607 New Full-time Jobs before December 31, 2023.

(b) The Company shall maintain the required New Full-Time Jobs as of December 31st of each year thereafter throughout the term of this Agreement.

(c) Employee Compensation:

1. Every employee in a New Full-time Job shall be compensated at a rate of at least \$11 per hour, excluding benefits and bonuses, throughout the term of this Agreement.
2. The average annual compensation, excluding health insurance and retirement benefits, for all New Full-time Jobs must not be less than the following amounts:

<u>Year</u>	<u>Average Annual Compensation</u>
2014	\$109,000
2015	\$112,000
2016	\$116,000
2017	\$119,000
2018	\$123,000
2019	\$127,000
2020	\$130,000
2021	\$134,000
2022	\$138,000
2023	\$142,000

If the average annual compensation for all New Full-time Jobs is less than the amount required, the Company shall not be entitled to receive the Chapter 380 Payment for that year.

- (d) If the number of people employed in New Full-Time Jobs falls below the number of jobs required by Sections 1.02(a) & (b), the notice required in Section 3.04 does not apply; instead the Company automatically has 90 days to cure, as follows:
 - 1. The Company shall create or reinstate the requisite number of New Full-Time Jobs within ninety (90) days after December 31st of the applicable year; and
 - 2. The average annual compensation for all New Full-time Jobs must not be less than the amount required in Section 1.02(c) as of the date which is 90 days after December 31st of the applicable year.
- (e) The Company shall retain throughout the term of this Agreement the 36 full-time jobs that are currently located in Austin. To count towards satisfaction of this provision, each retained job must be a full-time job performed in the City of Austin by an employee of the Company (an "Existing Job").
- (f) If on December 31 of any year during the term of this Agreement the number of Existing Jobs retained is less than 36, the number of New Full-Time Jobs required under Section 1.02 shall be increased job -for -job by the amount of the deficit in Existing Jobs.
- (g) Throughout the term of this Agreement, the Company shall provide health insurance coverage for all employees in New Full-time Jobs and their families/dependents, including same-sex domestic partners of employees in New Full-Time Jobs.
- (h) If the Company fails to comply with the preceding requirements in Section 1.02, the City, at its sole discretion, may terminate this Agreement in accordance with Section 3.08(b) after giving the Company notice and an opportunity to cure said failure in accordance with Section 3.04 below.

1.03 Recruitment.

- (a) In addition to its own efforts, the Company shall make commercially reasonable efforts to work with local non-profit organizations such as the Austin Gay and Lesbian Chamber of Commerce, the Austin/Travis County Reentry Roundtable, the Greater Austin Asian Chamber of Commerce, the Greater Austin Black Chamber of Commerce, the Greater Austin Hispanic Chamber of Commerce, Minorities for Equality in Employment Education Liberty and Justice (MEEELJ), the Texas Department of Assistive and Rehabilitative Services (DARS), and/or other appropriate organizations to expand its pool of diverse candidates in hiring recruitment efforts for jobs at the IT Services Center. The Company shall provide documentation of its efforts to the City upon request.
- (b) The Company shall make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs, such as posting open position listings on websites, publications, or services used by residents of the Austin area to find

employment. The Company shall provide documentation of its efforts to the City upon request.

- (c) The Company shall adhere to its equal employment policies and practices (attached hereto as Exhibit A), and ensure that such policies and practices protect employees at the IT Services Center from discrimination based on sexual orientation and gender identity.
- (d) If the Company fails to comply as provided for in paragraphs (a), (b), or (c) above, the Company will be required to forfeit the Chapter 380 Payment scheduled to be paid pursuant to Section 2.01 for the year in which such default occurred.

1.04 City Certified Minority- and Women-Owned and Local Small Business Participation.

- (a) **GENERAL.** The Company shall comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City's Code and Program Rules for M/WBEs ("**M/WBE Program**") in the purchase of commodities and services at its IT Services Center by its employees at the IT Services Center, and in the design and construction of its IT Services Center (including leasehold improvements), in effect at the time of the solicitation for the particular scope of work or commodity purchase is to be completed. It is the Company's responsibility to contact the City's Small and Minority Business Resources Department ("**SMBR**") to ensure the Company is complying with the current and applicable ordinances and rules.
- (b) **INFORMATIONAL MEETING.** Prior to the Company expending money subject to the requirements of this Section 1.04, or no less than ninety (90) days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the M/WBE Program and the City will advise the Company of all available resources to assist with compliance.
- (c) **SUPPLIES/COMMODITIES.** In an effort to further stimulate and positively impact the local economy, the Company shall use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City an equal opportunity to participate as suppliers for materials and services purchased by the Company if such purchases are exclusively for use at its Austin IT Services Center or are made by the Austin IT Services Center. Section 1.04 does not apply to centralized purchase agreements made from Company's locations outside of Austin that apply to one or more other Company facilities. To assist in recruiting efforts, the Company is required to contact SMBR for a list of available City certified minority-owned, women-owned and local small businesses prior to procuring supplies.
 - 1. **SUPPLIER DIVERSITY POLICY.** Within ninety (90) days after the Effective Date, the Company shall submit to the City a supplier diversity policy consistent with the Program regarding the Company's procurement of materials and services subject to this Subsection 1.04(c). The supplier diversity policy may be reasonably modified from time to time by the Company, provided the policy and all modifications are approved by SMBR, such approval not to be unreasonably withheld.

2. **THRESHOLD AMOUNT.** The Company agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter, and for which there are qualified local certified M/WBE suppliers, providing competitive prices and with sufficient financial resources in light of the particular materials and services to be supplied. The City Manager's purchasing authority is \$57,000.00 for 2013, and may increase or decrease each year per the formula in the Charter. The City shall advise the Company annually of any changes to this threshold amount, and the Company may contact the City at any time for such information.
 3. **EXISTING CONTRACTS.** This Section 1.04 shall not apply to valid contracts the Company has in existence on the Effective Date of this Agreement for the procurement of supplies.
- (d) **NON-COMPLIANCE.** Failure to comply with this obligation shall be considered a breach of this Agreement. Should SMBR determine that the Company has failed to satisfy its obligation under this section 1.04 the Company will forfeit the next anticipated Chapter 380 Payment as described in paragraph (j). With respect to any individual procurement of materials or services for which the cost is less than the amount established in section 1.04 (c) paragraph b above, the Company is encouraged, but not required, to adhere to the requirements of this section 1.04. The Company shall maintain and provide documentation of its efforts to comply with this paragraph to SMBR as part of its monthly reports required under subsection 1.04(i) below.
- (e) **DESIGN AND CONSTRUCTION.** The Company shall comply with the applicable standards and principles of the **M/WBE Program** in the design and construction of its IT Services Center, including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. It is the Company's responsibility to contact SMBR to ensure the Company is complying with the current and applicable ordinances and rules.
1. With respect to any design or construction projects for the Company's IT Services Center, including, but not limited to, leasehold improvements, the Company, the architect and the general contractor shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program.
 2. Prior to advertising a bid for any portion of the design or construction work, the Company shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Company and described in the bid documents, and the availability of each group of M/WBEs to perform elements of the work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project M/WBE participation goals as provided in Section 2-9A-19 (*Establishment of MBE/WBE Participation Levels for*

Individual Contracts in Construction), or as may subsequently be amended. The Director shall have ten business days from receipt of a bid package from the Company in order to evaluate and determine the required level for utilization of M/WBE project or phase-specific goals or subgoals, if any, and shall notify the Company in writing of the Director's determination.

- (f) **OUTREACH.** In an effort to meet the gender and ethnic-specific M/WBE utilization goals, the Company shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. The Company may seek the assistance of SMBR in these outreach efforts as described in paragraph (h) below.
- (g) **ACHIEVING GOALS AND MAKING GOOD FAITH EFFORTS.** For any year in which the Company, the architect and the general contractor fail to meet each of the goals or subgoals established by the Director, the Company, the architect and the general contractor must demonstrate good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance. The Company shall submit documentation demonstrating its own and the architect's and general contractor's good faith efforts to meet the goals as is required under the following paragraph (i). If the Company provides documentation to SMBR evidencing its own and its architect's and general contractor's good faith efforts, the Company shall be deemed in compliance with these paragraphs (e),(f) and (g). Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require the Company to modify, nullify or abrogate any contracts that the Company has entered into prior to the Effective Date of this Agreement.
- (h) **ASSISTANCE FROM SMBR.** The Company shall apprise SMBR when the Company desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals established for the purchase of commodities and supplies procured by and for the IT Services Center, and design and construction of improvements. This assistance may include providing a list of certified M/WBE firms from which the Company may solicit or cause the architect or its general contractor to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting the Company, its architect, or general contractor in soliciting M/WBE firms to provide bids. The Company is not required to solicit participation during a period in which the Company is not engaged in designing and/or constructing its IT Services Center, but rather, the Company is required to incorporate the standards and principles of the City's M/WBE Program including the M/WBE utilization goals established by the Director into its development process as and when such process exists in connection with the IT Services Center.
- (i) **MONTHLY REPORTING.** The Company shall provide monthly reports to SMBR no later than the 10th day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of M/WBE firms in the purchase of commodities and/or supplies by and for the IT Services Center; and (iii) a summary of the Company's efforts to implement the standards and principles of the City's M/WBE

Program. SMBR shall provide the forms to be used by the Company in submitting such reports.

- (j) **ANNUAL DETERMINATION OF COMPLIANCE.** Failure to comply with the obligations of Section 1.04 shall be considered a material breach of this Agreement. Within thirty (30) days of receipt of the Company's final monthly report (as is required under paragraph (i) above for the preceding year, January 1st through December 31st (the "**SMBR Compliance Period**"), SMBR shall determine whether the Company is in compliance with the requirements of this Section 1.04. Should SMBR determine that the Company (or its architect or general contractor), has not complied with the obligations of this Section 1.04, the Company will forfeit the next anticipated annual Chapter 380 Payment. For example, if the Company (or its architect or general contractor) fails to comply with its obligations under Section 1.04 for one year, the Company will be required to forfeit one Chapter 380 Payment. If the Company fails to comply with the obligations for two years, the Company will be required to forfeit two Chapter 380 Payments, and so on.

1.05 **Compliance with City Regulations.** For the construction of leasehold improvements to the Company's IT Services Center, or the construction or remodeling of any future facilities in the City's planning jurisdiction during the term of this Agreement, the Company will comply with all City Code regulations, including water quality regulations in effect at the time any site plan application is filed, unless the Company has negotiated an agreement with the City to comply with overall impervious cover limits and provide the currently required water quality controls. This means the Company will not assert possible Chapter 245 rights to avoid compliance with water quality regulations during the term of this Agreement. If, during the term of this Agreement, a development does not comply with water quality regulations in effect at the time any site plan application is filed for such development the City may terminate this Agreement by giving the Company written notice of its election to terminate.

1.06 **Certificate of Compliance and Inspection.**

- (a) Beginning March 31, 2015 and continuing each year thereafter during the term of this Agreement, the Company shall deliver to the City before March 31 of each year a Certificate of Compliance utilizing the form attached as Exhibit "B".
- (b) In the Certificate of Compliance, the Company shall warrant to the City that it is in full compliance with each of its obligations under this Agreement.
- (c) The City, and/or its representative(s), including third-parties contracted by the City, has the right to inspect all relevant records of the Company as are reasonably necessary to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two weeks' notice in writing to the Company.

1.07 **Texas Government Code Chapter 2264.** In accordance with Chapter 2264 of the Texas Government Code, the Company agrees not to knowingly employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("**Undocumented Worker**").

- (a) During the term of this Agreement, the Company shall notify City of any complaint brought against the Company alleging that the Company has employed Undocumented Workers.
- (b) If the Company, or a branch, division or department of the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received, together with interest at the rate of five percent (5%) from the date of each payment of an economic development grant, shall be repaid by the Company to the City not later than the one hundred twentieth (120th) day after the date the City notifies the Company of the violation.
- (c) The City shall recover court costs and reasonable attorney's fees incurred if it prevails in an action brought pursuant hereto to recover past economic development grants and interest. The Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom the Company contracts.

1.08 **Failure to Meet Obligations.** In the event that the Company fails to fulfill its obligations under this Agreement, and does not cure such failure after City sends notice of an Event of Default (as hereafter defined) to the Company and expiration of the cure period described in Section 3.04, City may, at its option, terminate this Agreement in accordance with Section 3.08 (b) below. Upon termination of this Agreement for the Company's failure to cure an Event of Default, the City shall not be required to further pay, and the Company shall not be entitled to receive any further payments under this Agreement. The foregoing sentence shall not release the City from its obligation to make payment for any prior year(s) of this Agreement during which the Company did fulfill its obligations under the performance guidelines set forth in Sections 1.01 through 1.07, above.

1.09 **Construction Worker Requirements.**

- (a) Company agrees to pay and shall require its contractors to pay workers retained for any construction on the Project described in Section 1.01 (Investment in the Desired Development Zone), including remodeling and leasehold improvements, a minimum hourly wage of \$11.00 per hour.
- (b) A statement of annual compliance shall be signed and notarized by the party identified in section (c) below, to demonstrate that the requirements contained in section (a) above have been met.
- (c) The Company shall provide a contact person responsible for monitoring and enforcing the Company's requirements set forth in section (a) above.

II. City's Obligations

- 2.01 **Economic Development Incentive.** As consideration for the Company's performance of its obligations under this Agreement, during the Term of the Agreement City shall pay to the Company annual Chapter 380 payments calculated according to the following formula:
- (a) The City's total obligation to the Company under this Agreement shall not exceed Six hundred seventy nine thousand, five hundred and No/100 Dollars (\$679,500.00).
 - (b) For the Company's obligations performed during calendar years 2014 through 2023, the City shall pay the Company \$250 for each New Full-Time Job created and retained as of December 31st of the applicable year if the Company has complied with all of its obligations under this Agreement.
- 2.02 The City's first payment shall be made on or before October 31, 2015 for the Company's performance for the year ending December 31, 2014. The City's final payment shall be in consideration for the Company's performance during the year ending December 31, 2023. The City shall make the payments required under this section on or before October 31 following each qualifying year. The City is not obligated to make a grant payment for any year which does not qualify (*i.e.*, the City has determined that the Company has failed to meet the required performance measure or condition applicable to the Company for that year) and has provided written notice to the Company of such determination on or before October 31st of the following year and has given the Company an opportunity to cure such failure in accordance with Section 3.04 below.

III. General Terms

- 3.01 **Term.** The term for this Agreement is ten (10) years. This Agreement shall become enforceable upon execution and delivery by the City and the Company. Unless this Agreement is terminated earlier in accordance with Section 3.08, the Company's obligations to perform under this Agreement shall be completed on December 31, 2023 and the City shall make its final payment to the Company under this Agreement on or before October 31, 2024.
- 3.02 **Payments Subject to Future Appropriation.** This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to the Company.
- (a) All payments or expenditures made by the City under this Agreement are subject to the City's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
 - (b) The payment(s) to be made to the Company, or other expenditure(s) under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.
 - (c) In the event the City does not appropriate funds in a given fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to the

Company for such payments or expenditures unless and until appropriation of the necessary funds is made; provided, however, that the Company, in its sole discretion, shall have the right, but not the obligation, to terminate this Agreement and shall have no obligations under this Agreement for the year in which the City does not appropriate the necessary funds.

- (d) To the extent there is a conflict between this Section 3.02 and any other language or covenant in this Agreement, this Section 3.02 shall control.

- 3.03 **Representations and Warranties.** The City represents and warrants to the Company that the economic development program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the economic development program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. The Company represents and warrants to the City that it has the requisite corporate authority to enter into this Agreement.
- 3.04 **Event of Default.** If either the City or the Company should fail in the performance of any of its obligations under this Agreement, such failure or omission to perform shall constitute an “**Event of Default**” under this Agreement. When an Event of Default occurs, the non-defaulting party shall provide the defaulting party with written notice of the alleged Event of Default (pursuant to Section 3.09, below), and allow the defaulting party a minimum period of ninety (90) calendar days after the receipt of this notice to cure such Event of Default, prior to terminating this Agreement, instituting an action for breach of contract or pursuing any other remedy for the event of default.
- 3.05 **Entire Agreement.** This Agreement contains the entire agreement between the Parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties and others relating to the Parties’ obligations are superseded by this Agreement. This Agreement may only be modified, altered or revoked by written amendment signed by the City and the Company.
- 3.06 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 3.07 **Assignment.** Except as provided below, the Company may not assign its rights or obligations under this Agreement to a third party without prior written approval of the City. The City’s approval of the assignment shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, the Company may assign all or part of its rights and obligations under this Agreement without the prior consent of the City to an affiliate of the Company in which the Company owns at least a fifty percent (50%) interest, or to a third party lender advancing funds for the acquisition, construction or operation of the Company’s IT Services Center.
- 3.08 **Termination.**
- (a) **Termination by the Company for convenience.** In the event the Company elects not to proceed with the Project as contemplated by this Agreement, the Company shall notify the City in writing, and this Agreement and the obligations on the part of both Parties shall be deemed terminated and of no further force or effect.

(b) **Termination for Cause.** If either Party to this Agreement fails to meet its obligations under this Agreement, and the non-defaulting party provides notice of the Event of Default as set forth in Section 3.04, above, and the Event of Default is not cured within the ninety (90) calendar day cure period, this Agreement may be terminated by the non-defaulting party after expiration of the ninety (90) calendar day cure period.

3.09 **Notice.** Any notice and/or statement required or permitted to be delivered shall be deemed delivered by actual delivery, by facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

To the Company:

athenahealth, Inc.
Attn: General Counsel
311 Arsenal Street
Watertown, MA 02472
Phone: (617) 402-1000
Fax: (617) 402-1099
Re: Austin Economic Development Agreement

To the City:

City of Austin
Attn: City Manager
301 West 2nd Street
Austin, Texas 78701
(P.O. Box 1088, Austin, Texas 78767)
Phone: (512) 974-2200

with copies to:

City of Austin
Attn: Director, Economic Development Department
301 West 2nd Street
Austin, Texas 78701
Phone: (512) 974-7802

City of Austin
Attn: Jacqueline Cullom, Assistant City Attorney
301 West 2nd Street, 4th Floor
Austin, Texas 78701
Phone: (512) 974-2268

Either party may designate a different address at any time upon written notice to the other party.

- 3.10 **Interpretation.** Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall be interpreted as being drafted by both Parties in conjunction with the other, neither more strongly for, nor against any party.
- 3.11 **Applicable Law and Venue.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas. Venue for any dispute arising under this Agreement shall lie in the state courts of Travis County, Texas.
- 3.12 **Severability.** In the event any provision(s) of this Agreement is deemed illegal, invalid or unenforceable under present or future law(s) by a court of competent jurisdiction, it is the intention of the Parties that the remainder of this Agreement shall not be affected. It is also the intention of the Parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision will be substituted by written amendment to this Agreement which is legal, valid or enforceable and similar in terms to the provision deemed to be illegal, invalid or unenforceable.
- 3.13 **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- 3.14 **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 3.15 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, current and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the IT Services Center or the design, construction or operation of any portion thereof.
- 3.16 **Public and Confidential Information.** All records and information provided to the City and its representatives to verify compliance with this Agreement, including monthly and annual reports shall be considered public information, and shall be available for public inspection, and may be posted on the City's website without further advance notice to the Company. Other information provided by or on behalf of the Company under or pursuant to this Agreement that the Company considers as proprietary shall be maintained as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act, the City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests, and the Company shall be responsible for defending the confidentiality of such information. Other records and information provided to the City and its representatives to verify compliance with this Agreement shall be available for public inspection.
- 3.17 **Counterparts.** This Agreement may be executed in several identical counterparts by the Parties on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts combined shall constitute one (1) original agreement.

EXECUTED by the authorized representatives of the Parties on the dates indicated below.

athenahealth, Inc.,
a foreign, for-profit corporation

By: 
Dan Haley
Vice President, Gov't and Regulatory Affairs

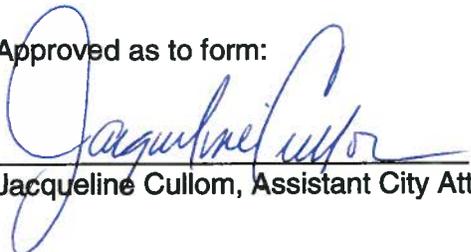
Date: 1/30, 2014

CITY OF AUSTIN,
a home-rule municipal corporation

By: 
Marc A. Ott
City Manager

Date: 1.31.14, 2014

Approved as to form:


Jacqueline Cullom, Assistant City Attorney

EXHIBITS:

- Exhibit "A": Fair Employment Policies and Practices
- Exhibit "B": Certificate of Compliance

EXHIBIT "A"
Fair Employment Policies and Practices

Please refer to following page.

Equal Employment Opportunity

athenahealth is committed to a policy of equal employment opportunity. We recruit and hire applicants without regard to race, color, religion, sex (including pregnancy), national origin, disability, age, sexual orientation, veteran status, genetic information, or any other factor prohibited by law.



G-111-DISCRIMINATION

Guidance #11:

We must not permit unlawful discrimination or harassment

(Italicized terms are defined or explained – in electronic versions check definitions by clicking; in paper versions consult the “Definitions” section)

❖ **To meet this standard, follow these rules:**

- Do not discriminate against anyone based on their *legally protected status* or harass them in connection with their employment at athena or in connection with any other activity at, by, or on behalf of athena
- Do not *sexually harass* anyone or inappropriately introduce any sexual activities or comments into the work environment at athena
- Without limiting the above rules, here are examples of what you **must do**
 - Act politely -- in a sensitive manner and with regard to others’ feelings
 - Treat others with respect regardless of whether or not they are in a *legally protected status*
 - Address issues with others constructively and allow them to speak for themselves and be heard
 - Confine decisions about employment and employment-related activities and benefits to factors that in fact relate to employment and those activities, not to appearance, status, behavior, beliefs, values or other aspects of individuals that are not rationally relevant
 - Seek to accommodate the needs and desires of others, consistent with our Integrity Standards and with the legitimate business goals, needs and limitations of athena
- Without limiting the foregoing, here are examples of what you **must not do**:
 - Do not make comments, gestures and actions that have a chance of being interpreted as offensive or intimidating by reasonable people, understanding that reasonable people may have values, expectations and sensitivities that are different from yours
 - Do not verbally or in writing abuse others, including but not limited to:
 - Making offensive comments or jokes, innuendos or threats
 - Communicating using *derogatory language, slurs, stereotypes or epithets*
 - Do not have, provide, communicate, download, view or store *offensive items* at work or using athena systems or property, whether or not they are exhibited to others
 - Do not engage in
 - Unwelcome flirtations, advances or propositions
 - Physical contact or touching that is unwanted or uninvited
 - *Indecent exposure*
 - Do not consider *legally protected status* or the characteristics that place an individual in such status as *factors in determination* for contracting, commercial terms, hiring, job advancement, job benefits or job termination
 - Do not engage in any *romantic involvement* between individuals at different cohort levels at athena that, if it were known by others, would *impact the workplace*
- Retaliation is not permitted against anyone for reporting or making a complaint for any violation of this Integrity Standard or this Guidance or for assisting in an investigation. Such retaliation is illegal, it will not be tolerated by athena and it will be considered by athena as a violation of our Integrity Standards.
- athena will maintain *special procedures for investigating and addressing complaints* of violation of this Integrity Standard and of this Guidance.

- **There are no exceptions to these rules**

Below, this Guidance contains definitions, explanations, and examples as well as information about administration of the rules in this Guidance. Please review these additional materials as and when you need to in order understand defined terms, to make sure that you understand and can follow the above rules and to find out about procedural aspect of this Guidance. If this Guidance is not clear to you or you have questions about it, please ask General Counsel, the Compliance Team, any HR representative or your manager for help.

❖ **Why this behavior is necessary**

Not only is it morally wrong to violate another person's rights, either in or out of the workplace, but also it is illegal and causes real harm to the person whose rights are violated, to athena and to the society around us.

It is important for us to treat co-workers with respect and maintain an environment where people are not hindered from doing their work. It is vital that each member of the athena team feel comfortable not only coming to work, but also working collaboratively with others at athena. Unlawful discrimination and harassment erodes the ability of athena personnel to work effectively and degrades our workplace.

In our dealings with individuals and organizations outside of athena, discrimination and harassment are also damaging to athena's interests. The prospect that our commercial relationships could be tainted by discriminatory motives or could be poisoned by harassment is not acceptable to athena.

Multiple state and Federal laws forbid forms of discrimination and harassment. Those who engage in unlawful discrimination or harassment can face civil and criminal penalties in addition to sanctions from athena itself.

athena fully supports the right of all persons to hold employment without suffering sexual harassment or unlawful discrimination or unlawful harassment or retaliation of any kind. It is athena's policy to maintain a work environment that is free of sexual harassment, unlawful discrimination, unlawful harassment and retaliation. Sexual harassment and unlawful discrimination, unlawful harassment and retaliation by or against officers, managers, supervisors, employees, clients, vendors or contractors will not be tolerated. athena will investigate complaints of violations of this Integrity Standard or this Guidance. athena personnel found to have violated this Integrity Standard or this Guidance will be subject to disciplinary action.

Each of us must remember that what is unwelcomed, threatening or derogatory to another person may not seem so to us and that our actions and words can be interpreted differently from the way we intend them. Therefore, it is paramount that athena personnel act unquestionably professional at work at all times.

Discrimination and harassment can take on forms that are as varied as the range of human behavior, and it is not possible for athena to anticipate and catalogue that entire range. This Guidance therefore does not purport to provide an all-inclusive list of behavior that is either good or bad in this respect. Instead this Guidance must be read and followed with the understanding and expectation that we must behave consistently with its principles in situations and in ways that are not explicitly mentioned in it.

❖ **Definitions and explanations:**

Derogatory language, slurs, stereotypes or epithets are descriptive and usually disparaging words or phrases used in place of the name of a person, persons or thing. Such language is used to detract from the character of the person who is being described and expresses a low opinion. These are commonly interpreted as insults or as ridicule.

Impact the workplace means that it could lead others to assume or interpret actions at work to be occurring as a result of personal relationships or favoritism or as a result of willingness to endure discrimination or harassment. This destroys morale and can create pressure on observers to themselves endure or participate in discriminatory or harassing behavior.

Indecent exposure is showing any part of the body which would normally be covered in the business setting.

Factors in determination are reasons or justifications that support or explain the action taken or decision made. These should only be factors related to quality and timeliness of athena work and/or to athena's legitimate business goals, needs and limitations -- all as consistent with the Integrity Standards.

Legally protected status refers to any status, condition or information having to do with an individual that is protected by state or Federal law. This includes race, color, age, gender (including pregnancy), sexual orientation, religion, national origin, ancestry, mental or physical disability, genetic information, veteran or military status or membership in uniformed service.

Offensive items means materials, objects or images of all types that are offensive. These include but are not limited to images, narratives (such as emails or stories), objects, cartoons, video, figurines, and calendars. These

may be offensive for any of a number of reasons, including that they are pornographic, otherwise sexually explicit, racist, threatening, or depicting or promoting abuse, insult or intimidation of others.

Romantic involvement with a co-worker means relations that go beyond professional and beyond simple friendship. Flirting and dating fall into this category, for example, as well as any voluntary activity of a sexual nature.

Special procedures for investigating and addressing complaints. athena hereby adopts the following procedures with respect to investigation and resolution of complaints that this Integrity Standard or this Guidance have been violated with respect to athena employees:

- athena employees who believe that they have been sexually harassed or discriminated against or harassed on the basis of a *legally protected status* are to follow the complaint procedures described herein.
- Informal Resolution:
If an employee believes that he or she has been sexually harassed or subjected to unlawful discrimination or harassment, the most immediate goal is to stop the offensive conduct. Often, this can be accomplished by confronting whoever is doing the harassing or discriminatory conduct, telling them what is offensive and requesting that they stop. If this process does not work, or if the offender is the employee's supervisor, or for any other reasons such approach is not practical or acceptable for the employee, the employee is to report the conduct in accordance with the formal procedure described below.

Please note that an individual is not required to take this informal approach and may immediately follow the Formal Procedure, described below.

- Formal Procedure:
As used below, Responding Party means a person believed to have engaged in conduct in violation of this Integrity Standard or this Guidance and Complaining Party means the employee believed to have been the target of, or subjected to, such conduct.

A Complaining Party, or individual who witnesses conduct in violation of this Integrity Standard or this Guidance is to contact one of the Contact Persons listed below directly, or contact his/her supervisor, to report that conduct. Supervisors must bring the matter to the attention of one of the Contact Persons as soon as practicable.

The following persons have been designated as Contact Persons and as Investigators of complaints of violations of this Integrity Standard or this Guidance: Jonathan Bush, CEO (x21113), Leslie Locke, SVP, People & Process (x21147), Margo Hendrickson, VP, Human Resources (x21105), Rob Cosinuke, Chief Marketing Officer (x21446), David Tassoni, SVP, Operations, any one of athena's HR Business Partners and any member of the Compliance Team.

Depending upon the nature of the claim, one or more of the Investigators (or their designees) may meet with witnesses whom they believe may assist in the factual investigation and/or review documents they believe may assist in the factual investigation.

If at any time during the investigation it appears that an informal resolution may be feasible and acceptable to the Complaining Party and the Responding Party, as well as to athena, one of the Investigators (or their designee) will discuss such with the Complaining Party and/or Responding Party.

Upon completion of the investigation, a determination will be made as to whether the conduct at issue violates this Integrity Standard or this Guidance, and the nature of the disciplinary action to be imposed.

The Complaining Party and the Responding Party will be informed of the outcome of the investigation.

Please note that while the general investigation process for claims raised under this Integrity Standard or this Guidance is set forth above, athena must retain the flexibility as to the investigation process in order

to achieve its goal of properly investigating and resolving any such claims.

Disciplinary Action

If the findings of the investigator indicate that a violation of this Integrity Standard or this Guidance has occurred, further action will be taken, including but not limited to a determination of the appropriate discipline, such as but not limited to reprimand, change in work assignment, suspension and termination.

No Retaliation for Making a Complaint for a Violation of this Integrity Standard or this Guidance

In line with athena's Integrity Standard that forbids retaliation, retaliation by an employee, supervisor, manager, or officer against an individual for making a complaint of sexual harassment or of other unlawful harassment or discrimination, or for assisting in the investigation of such a complaint is illegal and will not be tolerated. Any acts of retaliation will be subject to appropriate discipline, as described above.

State and Federal Agencies

There are state and federal agencies which administer laws protecting employees from sexual harassment and other unlawful harassment and unlawful discrimination and retaliation. Employees may seek further information from and/or file complaints with the agencies listed below. **Using the complaint process described herein does not prohibit an individual from filing a complaint with these agencies.** The agencies are:

The Massachusetts Commission Against Discrimination (MCAD) -- One Ashburton Place - Room 601 Boston, MA 02108 (617) 727-3990

Maine Human Rights Commission -- State House Station 51 Augusta, ME 04333-0051 (207) 624-6050

Georgia Commission on Equal Opportunity – Suite 1002-West Tower, 2 Martin Luther King, Jr. Drive, S.E., Atlanta GA 30334 (404) 656-1736 and (800) 473-OPEN

The United States Equal Employment Opportunity Commission (EEOC) -- Boston Area Office 475 Government Center JFK Federal Building, Room 475 Boston, MA 02203 (617) 565-3200 and (800) 669-4000

Sexually harass means to engage in or commit sexual harassment. Sexual harassment is a form of sex discrimination that is illegal under both federal and state law, including Title VII of the Civil Rights Act of 1964, Massachusetts General Laws c. 151B, §16; Maine Revised Statutes Annotated Title 26, c. 7, subchapter IV-B, §§ 806 and 807 and O.C.G.A 45-19-20 et seq (1996).

Generally, these laws provide that unwelcome sexual advances, requests for sexual favors and other physical or verbal conduct of a sexual nature constitute sexual harassment when:

- Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of an individual's employment or a basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably or substantially interfering with an individual's work performance or creating an intimidating, hostile, humiliating or sexually offensive work environment.

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome and occurs in a variety of situations, which share a common element: the inappropriate introduction of sexual activities or comments into the work environment.

Sexual harassment often involves relationships of unequal power. Such situations may contain elements of

coercion, such as when compliance with requests for sexual favors becomes a condition for granting privileges or favorable treatment on the job. However, sexual harassment may also involve relationships among persons of equal authority or power such as when repeated advances or demeaning verbal comments by a co-worker towards another co-worker have a harmful effect on a person's ability to perform his or her work. Sexual harassment can also involve employee behavior directed at non-employees or non-employee behavior directed at employees.

❖ **Questions and Answers**

You are encouraged to ask questions and seek any follow-up information that you may require with respect to the matters discussed in this Guidance. Please direct all questions to the General Counsel, the Compliance Officer or your manager.

When is this Guidance effective? This Guidance is effective as a company policy on the date indicated in the header and supersedes the following guidance, policy or procedure document: C-702 Harassment and Discrimination Policy. This Guidance will remain effective until and to the extent that it is replaced by one or more guidance, policy or procedure documents that state that it is superseded.

Who is responsible for this Guidance? The Vice President of Human Resources is responsible for this Guidance. (S)he will review this Guidance at least annually, to update it as necessary to keep it current with sound practice and legal requirements and to exercise oversight over its implementation and application. athena personnel should follow any direction given by the Vice President of Human Resources related to this Guidance, provided that it does not otherwise violate athena's Integrity Standards.

athena may at any time change this Guidance or adopt such other policies or procedures which it considers appropriate to carry out the purposes of its rules with respect to disclosure of material information. Notice of any such change will be delivered to you by regular or electronic mail or by company-wide announcement published on our intranet (or other delivery option used by athena) by the Vice President of Human Resources or his or her designee. You will be deemed to have read and agreed to any change unless you object in writing to the Vice President of Human Resources within two business days of the publication of a change.

❖ **Examples of Unlawful Discrimination and Harassment**

Please note: Whether conduct constitutes a violation of this Integrity Standard or this Guidance is dependent upon the totality of the facts and circumstances of each situation, including the severity or pervasiveness of the conduct. Therefore, the examples below are not, and cannot be, exhaustive. Instead, the listings are meant to provide some examples of conduct which could violate this Standard or Guidance, depending upon the circumstances. Also, even if the conduct does not constitute sexual harassment, unlawful harassment, discrimination or retaliation within the meaning of the law, it may nonetheless be inappropriate for the work environment and unacceptable to athena. Such inappropriate conduct may result in disciplinary action regardless of whether the conduct is unlawful.

- Promising a raise or promotion in exchange for sexual favors
- Demeaning a person based on *legally protected status*
- Joking that it's time for another employee to retire
- Calling someone out for having reduced physical or mental faculties
- Criticizing a female co-worker for not dressing "more feminine" or suggesting she is "manly"
- Mocking a male co-worker for not being a sports fan, or suggesting he is "feminine"
- Repeated offensive sexual flirtations, advances, or propositions which are offensive
- Verbal abuse or innuendo of a sexual nature which is continued or repeated
- Physical contact such as touching, hugging, patting or pinching which is uninvited and unwanted by the other person

- Offensive verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual
- An open display of sexually suggestive objects or pictures which are offensive
- Jokes or remarks of a sexual nature which are offensive
- Unwanted prolonged and apparent staring or leering at a person
- Obscene gestures or suggestive or insulting sounds made towards people who find them offensive
- Demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment
- Romantic involvement between supervisors and subordinates that is known to others in the work place and which impacts the work place in areas such as assignments, advancements and benefits; and
- Disseminating, accessing or downloading through athena equipment or systems any sexually explicit voice-mail, electronic mail, graphics, photographs, movies, videos, clips or written materials

Exhibit B

Certificate of Compliance

Company: athenahealth, Inc.

Reporting Year: January 1 through December 31, 20 Year # of 10

1.0 Investment

- 1.1 §1.01 of the Agreement requires that after the Effective Date of this Agreement and before December 31, 2023 the Company shall invest at least \$7,750,500 in the purchase and installation of business personal property at the IT Services Center according to the following schedule:

<i>Due Date</i>	<i>Additional Investment Required</i>	<i>Cumulative Investment Required</i>
December 31, 2014	\$1,134,000	\$1,134,000
December 31, 2015	\$43,500	\$1,177,500
December 31, 2016	\$1,188,000	\$2,365,500
December 31, 2017	\$126,000	\$2,491,500
December 31, 2018	\$1,227,000	\$3,718,500
December 31, 2019	\$169,500	\$3,888,000
December 31, 2020	\$1,542,000	\$5,430,000
December 31, 2021	\$202,500	\$5,632,500
December 31, 2022	\$1,851,000	\$7,483,500
December 31, 2023	\$267,000	\$7,750,500

- 1.2 To date the City has not verified athenahealth, Inc.'s investment in Business Personal Property.
- 1.3 athenahealth, Inc. has invested \$_____ in Business Personal Property at the IT Services Center for the reporting year ending December 31, 20.

2.0 Employment

- 2.1 §1.02(a) and 1.02(b) of the Agreement require athenahealth, Inc. to create 607 New Full-time Jobs at the IT Services Center by December 31, 2023 and retain those New Full-time Jobs throughout the term of the Agreement. The job creation schedule is as follows:
- a. 35 New Full-time Jobs before December 31, 2014;
 - b. 64 New Full-time Jobs before December 31, 2015;
 - c. 100 New Full-time Jobs before December 31, 2016;
 - d. 155 New Full-time Jobs before December 31, 2017;
 - e. 217 New Full-time Jobs before December 31, 2018;
 - f. 275 New Full-time Jobs before December 31, 2019;
 - g. 341 New Full-time Jobs before December 31, 2020;
 - h. 418 New Full-time Jobs before December 31, 2021;
 - i. 506 New Full-time Jobs before December 31, 2022; and
 - j. 607 New Full-time Jobs before December 31, 2023.
- 2.2 Number of New Full-time Jobs created and retained as of December 31, 20 : _____
- 2.3 §1.02(g) requires that throughout the term of this Agreement, athenahealth, Inc. shall provide health insurance coverage for all employees in New Full-time Jobs and their families/dependents, including same sex partners of employees in New Full-time Jobs.
- 2.4 §1.02(c)(1) requires that each employee in a New Full-time Job must be compensated at a rate of at least \$11 per hour throughout the term of the Agreement.

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Company: athenahealth, Inc.

Reporting Year: January 1 through December 31, 20 Year # of 10

2.5 Did athenahealth, Inc. provide health insurance coverage and compensation of at least \$11 per hour to all employees in New Full-time Jobs during the year ended December 31, 20 as required in §1.02 of the Agreement?

Yes No

2.6 §1.02(c)(2) of the Agreement requires that the average annual compensation, excluding health insurance and retirement benefits, of the New Full-Time Jobs created and retained shall be as follows:

<u>Year</u>	<u>Average Annual Compensation</u>
2014	\$109,000
2015	\$112,000
2016	\$116,000
2017	\$119,000
2018	\$123,000
2019	\$127,000
2020	\$130,000
2021	\$134,000
2022	\$138,000
2023	\$142,000

2.7 Did the average annual compensation, excluding health insurance and retirement benefits, of the New Full-Time Jobs created and retained during the year ended December 31, 20 equal or exceed the requirements in §1.02(c) of the Agreement?

Yes No

2.8 §1.02(e) of the Agreement requires athenahealth, Inc. to retain at least 36 Existing full-time Jobs at its IT Services Center throughout the term of this Agreement.

2.9 Number of Existing Jobs retained as of December 31, 20 : _____

2.10 If as of December 31, 20 the number of Existing Jobs was less than 36, was the deficiency made up by increasing the number of New Full-time Jobs as required in §1.02(f) of the Agreement?

Yes No

2.11 As of December 31, 20 did the number of New Full-time Jobs created and retained fall below the numbers required under §1.02 of the Agreement?

Yes No

If not, skip to Section 3.

2.12 Did athenahealth, Inc. create or reinstate the required number of New Full-time Jobs within 90 days after December 31, 20 as required by §1.02(d) of the Agreement?

Yes No

2.13 Number of New Full-time Jobs created and retained as of March 31, 20 : _____

2.14 Number of Existing full-time Jobs retained as of March 31, 20 : _____

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Certificate of Compliance

Company: athenahealth, Inc.

Reporting Year: January 1 through December 31, 20 Year # of 10

- 2.15 Did the average annual compensation, excluding health insurance and retirement benefits, of the New Full-Time Jobs created and retained as of March 31, 20 equal or exceed the requirements in §1.02(c) of the Agreement?

Yes

No

3.0 Recruitment

- 3.1 §1.03 of the Agreement requires athenahealth, Inc. to:
- a. make commercially reasonable efforts to work with local non-profit organizations such as the Austin Gay and Lesbian Chamber of Commerce, the Greater Austin Black Chamber of Commerce, the Greater Austin Asian Chamber of Commerce, the Greater Austin Hispanic Chamber of Commerce, the Austin/Travis County Reentry Roundtable, Minorities for Equality in Employment Education Liberty, the Texas Department of Assistive and Rehabilitative Services (DARS), and/or other appropriate organizations to expand its pool of diverse candidates in hiring recruitment efforts for jobs at the IT Services Center.
 - b. Make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs; and
 - c. Adhere to its Equal Employment Policies and Practices attached as Exhibit A to the Agreement, and ensure that such policies and practices protect employees at the IT Services Center from discrimination based on sexual orientation and gender identity.

- 3.2 Did athenahealth, Inc. comply with the recruiting requirements in §1.03 of the Agreement during the year ended December 31, 20 ?

Yes

No

4.0 Local Business Participation

- 4.1 §1.04(a) of the Agreement requires athenahealth, Inc. to comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City's ordinance and Program Rules for M/WBEs ("**M/WBE Program**") in the purchase of commodities at its IT Services Center by its employees at the IT Services Center, and design and construction of its IT Services Center (including leasehold improvements), in effect at the time of the solicitation for the particular scope of work or commodity purchase is to be completed. It is the Company's responsibility to contact the City's Small and Minority Business Resources Department ("**SMBR**") to ensure the Company is complying with the current and applicable ordinances and rules.

Did athenahealth, Inc. comply with the requirements in §1.04(a) of the Agreement during the year ended December 31, 20 ?

Yes

No

- 4.2 §1.04(b) of the Agreement requires that prior to athenahealth, Inc. expending money subject to the requirements of this Section 1.04, or no less than ninety (90) days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the M/WBE Program and the City will advise the Company of all available resources to assist with compliance.

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Company: athenahealth, Inc.

Reporting Year: January 1 through December 31, 20 Year # of 10

Did athenahealth, Inc. comply with the requirements in §1.04(b) of the Agreement during the year ended December 31, 20 ?

Yes

No

- 4.3 §1.04(c) of the Agreement requires athenahealth, Inc., in an effort to further stimulate and positively impact the local economy, to use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City an equal opportunity to participate as suppliers for materials and services purchased by the Company if such purchases are exclusively for use at its Austin IT Services Center or are made by the Austin IT Services Center. To assist in recruiting efforts, the Company is required to contact SMBR for a list of available City certified minority-owned, women-owned and local small businesses prior to procuring supplies.
- a. SUPPLIER DIVERSITY POLICY. Within ninety (90) days after the Effective Date, the Company shall submit to the City a reasonable supplier diversity policy which will not conflict with the Program regarding the Company's procurement of materials and services to be used exclusively at the IT Services Center which may be reasonably modified from time to time by the Company, provided the policy and all modifications are approved by SMBR.
- a. THRESHOLD AMOUNT. The Company agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter, and for which there are qualified local certified M/WBE suppliers, providing competitive prices and with sufficient financial resources in light of the particular materials and services to be supplied.
- b. EXISTING CONTRACTS. This Section 1.04 shall not apply to valid contracts the Company has in existence on the Effective Date of this Agreement for the procurement of supplies.

Did athenahealth, Inc. comply with the requirements in §1.04(c) of the Agreement during the year ended December 31, 20 ?

Yes

No

- 4.4 §1.04(e) of the Agreement requires athenahealth, Inc. to comply with the applicable standards and principles of the **M/WBE Program** in the design and construction of its IT Services Center including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. It is the Company's responsibility to contact SMBR to ensure the Company is complying with the current and applicable ordinances and rules.
- a. With respect to any design or construction projects for the Company's IT Services Center, including, but not limited to, leasehold improvements, the Company, the architect and the general contractor shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program.
- b. Prior to advertising a bid for any portion of the design or construction work, the Company shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project.

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Company: athenahealth, Inc.

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Did athenahealth, Inc. comply with the requirements in §1.04(e) of the Agreement during the year ended December 31, 20 ?

Yes

No

- 4.5 §1.04(f) of the Agreement requires athenahealth, Inc., in an effort to meet the gender and ethnic-specific M/WBE utilization goals, to implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally.

Did athenahealth, Inc. comply with the requirements in §1.04(f) of the Agreement during the year ended December 31, 20 ?

Yes

No

- 4.6 §1.04(h) of the Agreement requires athenahealth, Inc. to apprise SMBR when the Company desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals established for the purchase of commodities and supplies procured by and for the IT Services Center, and design and construction of improvements. This assistance may include providing a list of certified M/WBE firms from which the Company may solicit or cause the architect or its general contractor to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages, scheduling and hosting outreach meetings, and assisting the Company, its architect, or general contractor in soliciting M/WBE firms to provide bids. The Company is not required to solicit participation during a period in which the Company is not engaged in designing and/or constructing its IT Services Center, but rather, the Company is required to incorporate the standards and principles of the City's M/WBE Program including the M/WBE utilization goals established by the Director into its development process as and when such process exists in connection with the IT Services Center.

Did athenahealth, Inc. comply with the requirements in §1.04(h) of the Agreement during the year ended December 31, 20 ?

Yes

No

- 4.7 §1.04(i) of the Agreement requires athenahealth, Inc. to provide monthly reports to SMBR no later than the 10th day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of M/WBE firms in the purchase of commodities and/or supplies by and for the IT Services Center; and (iii) a summary of the Company's efforts to implement the standards and principles of the City's M/WBE Program. SMBR shall provide the forms to be used by the Company in submitting such reports.

Did athenahealth, Inc. comply with the requirements in §1.04(i) of the Agreement during the year ended December 31, 20 ?

Yes

No

Exhibit B

Certificate of Compliance

Company: athenahealth, Inc.

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5.0 Additional Covenants

5.1 Did athenahealth, Inc. timely submit this Certificate of Compliance as is required under §1.06 of the Agreement during the year ended December 31, 20?

Yes

No

5.2 Did athenahealth, Inc. comply with the other provisions of the Agreement during the year ended December 31, 20?

Yes

No

5.3 Did athenahealth, Inc. pay and require its contractors to pay workers retained for any construction work on the Project described in Section 1.01 of the Agreement (including remodeling and leasehold improvements) a minimum wage of \$11.00 per hour as required in Section 1.09(a) of the Agreement?

Yes

No

5.4 Is the notarized statement of annual compliance required by Section 1.09(b) regarding construction worker pay of the Agreement attached to this Certificate of Compliance?

Yes

No

6.0 Chapter 380 Payment Request

6.1 In return for athenahealth, Inc.'s performance of its obligations under the Agreement, the City will pay annual economic development incentive payments. The City's total obligation to athenahealth, Inc. shall not exceed \$679,500.

6.2 For the Company's obligations performed each year during 2014 through 2023, the City shall pay \$250 per New Full-time Job created and retained as of December 31 of the applicable year, provided athenahealth, Inc. has complied with all its obligations under the Agreement.

6.3 To date, the City has not made any economic development incentive payment to athenahealth, Inc.

6.4 Number of New Full-time Jobs from §2.2 or §2.13 above: _____

6.5 Total request for year 20 : _____

Exhibit B

Certificate of Compliance

Company: athenahealth, Inc.

Reporting Year: January 1 through December 31, 20 Year # of 10

I, the authorized representative for athenahealth, Inc. hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement. I further certify that athenahealth, Inc. complied fully with all terms of the Chapter 380 Economic Development Agreement during the year ended December 31, 20, including Section 1.05 regarding Compliance with City Regulations and Section 1.07 regarding Texas Government Code Chapter 2264. I understand that providing a false statement regarding athenahealth, Inc.'s compliance or non-compliance with the terms of the agreement may subject athenahealth, Inc. to not receive incentives or the City seeking remedies or termination of the agreement.

Signature: _____

Printed Name: _____

Title (Chief Financial Officer or equivalent): _____

Date: _____

State of Texas
County of Travis

This instrument was acknowledged before me on _____ (date) by _____,
(Date) (Name of Officer)

_____, of athenahealth, Inc., a foreign, for-profit corporation, on behalf of said
(Title of Officer)
corporation.

Notary Public's Signature

(Personalized Seal