

Travis County Commissioners Court Agenda Request

Meeting Date: October 8, 2013

Prepared By/Phone Number: Jason G. Walker/44562; Marvin Brice, CPPB, Assistant Purchasing Agent

Elected/Appointed Official/Dept. Head: Cyd Grimes

Commissioners Court Sponsor: Judge Biscoe

Agenda Language: Consider and take appropriate action on an Interlocal Cooperation Agreement between Travis County and the City of Austin Neighborhood Housing and Community Development Department for Joint Housing Market Study.

- **Purchasing Recommendation and Comments:** Purchasing concurs with department and recommends approval of requested action. This procurement action meets the compliance requirements as outlined by the statutes.
- A Joint Housing Market Study will examine the Travis County housing market, specifically looking at quality and volume of current housing, economic conditions, future housing demand and cost for Travis County as a whole, as well as for submarkets and individual census tracts. Additionally, this Joint Housing Market Study will help facilitate coordinated planning efforts between Travis County HHS/VS Community Development Block Grant Office (CDBG) and the City of Austin Neighborhood Housing and Community Development Office (NHCD) to ensure the same set of information is used to make affordable housing planning decisions. This will be the first time Travis County will have a comprehensive and detailed picture of housing throughout the County.
- In July 2013, a RFP process was issued by NHCD, where CDBG collaborated with NHCD for the development of the scope of service, as well as, was a part of the evaluation committee of potential consultants and the selection of the final consultant. It is anticipated that a contract for the study will be executed October 17, 2013, and the study will be completed in the late spring of 2014. Travis County will contribute up to

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, agenda@co.travis.tx.us by **Tuesdays at 5:00 p.m.** for the next week's meeting.

\$50,000.00 for the study components addressing areas outside the City limits of Austin.

- **Contract Expenditures:** Within the last N/A months \$0.00 has been spent against this contract/requirement.

- **Contract-Related Information:**

Award Amount: \$50,000.00

Contract Type: Interlocal

Contract Period: 10/8/13 – 9/30/14

- **Contract Modification Information: N/A**

Modification Amount:

Modification Type:

Modification Period:

- **Solicitation-Related Information: N/A**

Solicitations Sent:

Responses Received:

HUB Information:

% HUB Subcontractor:

- **Special Contract Considerations:**

Award has been protested; interested parties have been notified.

Award is not to the lowest bidder; interested parties have been notified.

Comments: N/A

- **Funding Information:**

Shopping Cart/Funds Reservation in SAP: 300000300

Fund Center(s): 1580060001

Comments:

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**TRAVIS COUNTY HEALTH and HUMAN SERVICES
and VETERANS SERVICE**
502 E. Highland Mall Blvd.
P. O. Box 1748
Austin, Texas 78767

Sherri E. Fleming
County Executive for HHS/VS
(512) 854-4100
Fax (512) 279-1608

MEMORANDUM

Date: September 23, 2013
To: Cyd V. Grimes, C.P.M., Purchasing Agent
From: *Sherri E. Fleming*
Sherri E. Fleming, County Executive for
Health and Human Services and Veterans Service
Subject: Request for Interlocal Agreement between Travis County HHS/VS CDBG with
the City of Austin Neighborhood Housing and Community Development
Department for a Joint Housing Market Study

On February, 15, 2013, the Department requested the execution of an Interlocal Agreement (ILA) between Travis County HHS/VS Community Development Block Grant (CDBG) Office and the City of Austin Neighborhood Housing and Community Development (NHCD) Office for the purchase of a Joint Housing Market Study. A final draft was negotiated with the appropriate legal staff, and prior to the Department sending it back to Purchasing to request final execution, NHCD staff had it signed. Please find attached the City of Austin signed interlocals for final execution.

Project Description and Background:

NHCD, with collaboration from CDBG, will procure consulting services through an RFP process to perform the study, which will examine the Travis County housing market, specifically looking at quality and volume of current housing stock, economic conditions, future housing demand and cost for the County as a whole as well as for submarkets and individual census tracts. Furthermore, the study will meet all of the requirements for the Housing Market Study for both jurisdictions' next 5 year Consolidated Plan. The City's consultant contract is expected to execute on October 17, 2013.

Both NHCD and CDBG are entitlement jurisdictions receiving funds from the U.S. Department of Housing and Urban Development (HUD) which requires the completion of a Consolidated Plan every three, five or six years. The City of Austin has been receiving CDBG dollars since the 1970s, but Travis County began receiving funds in 2006. For the last six years, the NHCD and

HHS/VS have discussed collaborating where possible on studies needed to meet grant requirements, but the City and the County were on different Consolidated Plan cycles. On January 19, 2010, the Travis County Commissioners Court approved a change in the planning timeline for its second CDBG Consolidated Plan. The Plan covers three years instead of five to align with NHCD planning timelines in order to accommodate joint studies beginning with the Program Year 2014-2018 Consolidated Plan.

Issues and Opportunities:

A joint study helps facilitate coordinated planning efforts between CDBG and NHCD, ensuring that both bodies are using the same set of information to make affordable housing planning decisions. Community agencies and other TCHHS/VS partners are in support of a joint study as well, as it will be the first time Travis County will have a comprehensive and detailed picture of housing throughout the County. Both jurisdictions are required to include a Housing Market Study as part of each Consolidated Plan. While the Joint Housing Market Study will meet all federal requirements for CDBG recipients, the study to be completed as a result of this ILA, is more comprehensive than what is required and will provide detailed information regarding what kinds of development and re-development are needed in Travis County.

The study went out for bid in July 2013, resulting in work anticipated to begin in October 2013, and completed in late spring of 2014. The next City/County Consolidated Plan is due August 15, 2014. Travis County will contribute up to \$50,000 in one time General Fund dollars toward the study. Travis County HHS/VS CDBG will pay for the study components addressing areas outside the City limits of Austin.

CDBG collaborated with NHCD to develop the scope of services for the study prior to execution of the RFP, to evaluate potential consultants and select the final consultant. CDBG staff will participate in the review, edit and approve the final study. The scope of work includes two visits to Commissioners Court to present the draft and final reports as well as additional meetings with City Council, stakeholder groups, etc.

Should the Commissioners Court decide not to execute the ILA; the NHCD will amend their contract with the Consultant to remove the components outside the City of Austin.

Budget:
 Funds Reservation: 300000300
 Fund Center: 1580060001
 Amount: \$50,000
 Recommended Product Category: Y81121500

I am requesting a Court date of October 8, 2013 to allow the City to remain on track for an anticipated October 17, 2013 approval date of the consultant contract. If you have questions or need further information, please call Christy Moffett at 512.854.3460.

CC: Mary Etta Gerhardt, County Attorney's Office
 Aerin Toussaint, Planning and Budget Office
 Marvin Brice, Purchasing
 Christy Moffett, Health & Human Services
 Kathleen Haas, Health & Human Services
 Kendra Tolliver, Health & Human Services

Funds Reservation 300000300

General Data			
Document type	NE	Document type	030
Company code	1000	Document date	09/21/2012
FM area	1000	Posting date	09/21/2012
Controlling area	1000	Currency	USD/ 1.00000
Statistics			
Entered by	TOLLIVK	Created on	09/21/2012
Last changed by		Last changed	
More Data			
Text	to cover the Joint Housing market study w/COA		
Reference			
Overall Amount	50,000.00 USD		

Document item 001			
Text	to cover the joint housing market study w/COA		
Commitment item	511010	Funds center	1580060001
Fund	0001	G/L account	511010
Cost center	1580060001	Due on	
Vendor		Customer	
Amount	50,000.00 USD		

DRAFT

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN TRAVIS COUNTY AND THE CITY OF AUSTIN
FOR THE PROCUREMENT OF CONSULTING SERVICES RELATED TO
A HOUSING MARKET STUDY FOR TRAVIS COUNTY/CITY OF AUSTIN**

This Interlocal Agreement ("Agreement") is entered into by the following parties: Travis County, a political subdivision of the State of Texas ("County"), and the City of Austin, a municipal corporation and political subdivision of the state of Texas ("City").

RECITALS

County and City have the authority to enter into an Interlocal Cooperation Agreement through Texas Constitution, Article 3, Sec. 64, and "The Interlocal Cooperation Act," Texas Government Code, Chapter 791.

County and City desire to facilitate the procurement of consulting services needed to perform a Housing Market Study ("Study") for Travis County and the City of Austin.

County and City desire to combine their purchasing efforts in order to achieve greater efficiency and cost-savings to both entities; to minimize duplication and maximize efficiency by coordinating their efforts; and to eliminate multiple government solicitations and reduce related expenses.

County has the authority to provide for the care of indigents and other qualified recipients (TEX. LOC. GOV'T. CODE, Sec. 81.028, and other statutes) and to provide for public health, education and information services (Texas Health and Safety Code Chapters 121 and 122, and other statutes); and desires to further those service through the information to be collected under the Study, thus achieving a public purpose.

City has the authority to enter into this Agreement pursuant to its home-rule authority under Section 5, Article 11 of the Texas Constitution and Section 5, Article IX of the City Charter.

In consideration of the agreements, covenants and payments set forth in this Agreement, the sufficiency of which are acknowledged, County and City mutually agree to the following terms and conditions.

AGREEMENT

1.0 DEFINITIONS. In this Agreement,

1.01 "Agreement Term" means the Initial Term and/or any subsequent Renewal Term(s) or other period of time designated in writing as an Agreement Term by the Parties.

1.02 "Bid Specifications" means the documents prepared by the City to solicit consultant(s) from whom to purchase services under this Agreement.

1.03 "City Council" means the City Council of the City of Austin.

1.04 "City Department" means the City of Austin's Neighborhood Housing and Community Development Office.

1.05 "City Manager" means the City Manager of the City of Austin.

1.06 "City Purchasing Officer" means Byron E. Johnson, C.P.M., or his successor or designee, the City entity performing purchasing functions for the City of Austin under this Agreement.

1.07 "Commissioners Court" means the Commissioners Court of Travis County.

1.08 "Consultant" means the individual/company providing goods or services related to the Study under a contract entered into pursuant to this Agreement.

1.09 "County Executive" means Sherri Fleming, County Executive for Travis County Health, Human Services and Veterans Services.

1.10 "County Purchasing Agent" means Cyd Grimes, the Travis County Purchasing Agent, or her successor or designee, who performs purchasing services for Travis County.

1.11 "Days" means calendar day(s) unless otherwise specifically noted in any individual provision.

1.12 "Fiscal Year" means that time period which begins October 1 and ends on the next following September 30.

1.13 "TCHHSVS" means the Travis County Health, Human Services and Veterans Services Department.

1.14 "Travis County Auditor" means Nicki Riley, Travis County Auditor, or her successor in office or designated representative.

2.0 TERM

2.01 **Initial Agreement Term.** This Agreement shall continue in full force for the Initial Agreement Term which will commence when executed by both Parties, and terminate on September 30, 2014, unless sooner terminated pursuant to this Agreement.

2.02 **Renewal Term(s).** Upon approval by the City Council of the City Department budget and by the Commissioners Court of the TCHHSVS budget, this Agreement may be renewed in writing by the Parties on October 1, 2014, for an additional one year period. The terms and conditions of any renewal will remain the same as those in the previous term unless and until amended in writing pursuant to the terms of this Agreement.

3.0 ADMINISTRATION AND SUPPORT

3.01 **City Administration.** City herein designates the City Department as the department responsible for the City's administration of this Agreement and all matters pertaining to this Agreement.

3.02 **County Administration.** County herein designates TCHHSVS as the department responsible for the County's administration of this Agreement and all matters pertaining to this Agreement. It is acknowledged that no officer, agent, employee or representative of County has the authority to change the terms of this Agreement unless expressly granted that authority by the Commissioners Court.

3.03 **Issuance of Solicitation.** The Parties agree that the City will be the Party actually issuing the solicitation and entering into the contract for the Study. The City's procurement policies and procedures will apply to this procurement.

3.04 **Insurance.** The Parties acknowledge and agree that each Party is self-insured and will maintain such coverage at a level sufficient to cover the needs of City and County, respectively, pursuant to applicable generally accepted business standards. Each Party shall require all subcontractors providing

services under this Agreement to have insurance coverage sufficient to cover the needs of the Parties and/or subcontractor pursuant to applicable generally accepted business standards.

4.0 SCOPE OF AGREEMENT

4.01 **Purpose.** City and County agree to work cooperatively to develop the terms of a mutually agreed to RFQ which will be released and processed by the City to procure consulting services necessary to perform the Study described in this Agreement in order to achieve cost savings and efficiencies by eliminating multiple government solicitations and reducing administrative and overhead costs of both suppliers an City and County. The Parties agree that the Study will provide information necessary for both Parties to better provide the services and activities which that entity is authorized to provide. The study will look at the Housing Market in Travis County, will meet all Community Development Block Grant Program ("CDBG") Consolidated Plan requirements, and will contain information including, but not limited to, rental and owner housing stock, demand, gaps and need at a variety of income levels.

4.02 **Applicable Law.** All procurement under this Agreement shall be conducted in accordance with all applicable statutes, ordinances, rules and regulations and policies that govern the City's procurement practices.

4.03 Solicitation.

4.03.1 **Coordination.** Representatives from TCHHSVS, City Department, City Purchasing Office and County Purchasing Agent will coordinate all procurement efforts under this Agreement.

4.03.2 **Notice.** City shall provide County with notice of the initiation of the procurement process with sufficient time for County to respond with input as to the particular procurement.

4.03.3 Information.

(a) **Opportunity to Provide Information.** Upon reasonable request by a party to this Agreement, and subject to convenience, each Party shall have the opportunity to make available and provide information and requirements relating to the procurement which is the subject of this Agreement to the other party upon notice that such procurement has been initiated.

(b) **Review.** Each Party shall have the opportunity to review and comment on any procurement documents, including the Scope of Work, prior to release. No bid document shall be released until both Parties have approved the content. County will be given the opportunity to review and approve the final document, including all attachments, prior to release, to ensure that all provisions required by County have been included.

(c) **Opt Out.** Either Party will have the ability to opt out of any bid procedure by written notice to the other Party at any time during the procurement procedure as long as such notice is given prior to the award of the contract to the Consultant ("Contract"). IF County decides to opt out of the procedure prior to the award of the Contract, County will not be liable for any payment to City under this Agreement. If City decides to opt out of the procedure prior to the award of the Contract, this Agreement will be terminated and County will not be liable for any payment to City.

4.03.4 **Issuance Procedure.** The City shall coordinate all procurement processes through City's Purchasing Office, including the posting of advertisements and receiving of all responses. Copies of any advertisements and other related documents shall be provided to County in a timely manner.

4.03.5 Review of Response(s). City shall provide opportunity for County to have input concerning responses to the procurement issuance and final award of contract(s) as a result of that procurement process. County staff will participate on the evaluation committee to determine the Consultant selected and in the negotiations of the final contract. No contract will be awarded under this Agreement until the City and County have agreed on the Consultant to be awarded the contract and the terms of that contract.

4.03.6 Materials and Publications. The Parties agree that any publications or other materials produced pursuant to this Agreement and the resulting Study will be jointly owned by City and County. City, County and the Consultant will comply with the applicable standard patent rights clauses in 37 Code of Federal Regulations, Section 401.13 or Federal Acquisition Regulations, Section 52.227.1. All reports, charts, schedules, or other materials submitted by Consultant under the terms of this Agreement, and all work performed under this Agreement shall be the property of the City and County. Either Party may publish the results of this Agreement performance at their own expense. Any publication or other use shall include acknowledgement of any support received from the other Party and the appropriate reference to any copyright. Subject to rights of third parties and compliance with confidentiality or privacy laws, each Party hereby grants the other Party an irrevocable, non-exclusive, non-transferable and royalty-free license to use, reproduce, publish, revise and make disposition of, prepare derivative works from, distribute to the public, to perform and display publicly, for or on behalf of that Party according to law, any material (including software) that may be developed as part of the work under this Agreement, provided that it is an original work of authorship under the U. S. Copyright Act.

4.04 Study Costs and Payment.

4.04.1 Joint Costs. City and County agree to share the costs for the Study's Consultant fees as stated more particularly below. Each party will make payments of those costs from current revenues available to the paying party. The Parties expect that the total cost of the Study will be at least \$100,000, with each Party paying one-half of those total costs, or \$50,000. If the total cost of the Study exceeds \$100,000, City agrees to pay any excess amount. If the total cost of the Study is less than \$100,000, then County's total amount will be reduced to reflect one-half of the actual total amount.

4.04.2 County Costs. Subject to Section 4.04.1 above, County agrees to reimburse City for one-half of the total actual costs of the Study in an amount not to exceed Fifty Thousand Dollars (\$50,000.00).

4.04.3 City Costs. City agrees to pay one-half of the total actual costs of the Study up to \$50,000.00, and any additional costs beyond the total cost of \$100,000.00 as stated in Section 4.04.1.

4.04.4 Payment. County shall make payments for invoices for performance of governmental functions and services under this Interlocal and the resulting Consultant contract from current revenue funds available to County and set aside for this purpose. The Parties agree that the payment made under this Contract is in an amount that will fairly compensate the City for services provided, either directly by City or indirectly by subcontract. County will pay City upon within thirty (30) days of receipt of a full and complete invoice for services provided by Consultant under the contract entered into as a result of this Interlocal.

4.04.5 Invoice Content. The invoice will show, at a minimum:

- (i) the total costs billed by Consultant,
- (ii) services provided related to those costs,

- (iii) amount paid by City (one-half the total amount billed, until the total reaches \$100,000.00; then all other billed expenses will be paid by City); and
- (iv) amount due from County (one-half the total amount billed, up to \$50,000.00).

4.04.6 **Methodology.** It is expected that billing by Consultant to City under the Contract may be set up relevant to completion of milestone performance measures by Consultant as follows (using a \$100,000.00 total Contract amount, and adjusted based on the actual contracted amount). The County's pro rata share of each monthly invoice will be billed by the City using the same methodology:

	Milestone	Payment Level
1	City acceptance of project plan, as approved by County.	up to 20% of total (\$ 20,000)
2	City acceptance of 1 st draft of comprehensive housing market study draft, as approved by County.	up to 30% of total (\$ 30,000)
3	City acceptance of final draft of comprehensive housing market study as approved by County.	up to 30% of total (\$ 30,000)
4	Completion of all public meetings before Council, Commissioners Court and stakeholders as approved by County.	up to 20% of total (\$ 20,000)

4.04.7 **Fee Description.** Section 4.04.6 notwithstanding, the Parties understand and agree that specific details of the services provided and fees to be paid will be set forth in the contract with the Consultant as approved by both Parties prior to execution by the Consultant, with the total Contract amount for each Party limited according to this Section 4.04.

4.05 **Monitoring.** Each Party shall allow the regular monitoring of operation of any services provided pursuant to this Agreement by the other Party; and each Party shall have the right to conduct periodic on-site monitoring of the other's compliance with the terms of this Agreement. Monitoring by either Party shall be accomplished with as little disruption to the operation of the other Party as possible. After any monitoring visit, a written report may be provided if any deficiencies are noted, with provision for correction of such deficiencies within thirty (30) days of receipt of such notice.

5.0 RETENTION AND ACCESSIBILITY OF RECORDS

5.01 **City Retention.** Unless otherwise specified herein, City shall maintain all fiscal records and documentation for all expenditures pertaining to this Agreement in a readily available state and location until an audit in conformance with generally accepted accounting principals and procedures for governmental organizations is completed and all questions arising from it are resolved satisfactorily or three (3) years from after the end of the Agreement period, whichever occurs later.

5.02 **County Access.** Subject to applicable laws, City shall give the County, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by City pertaining to this Agreement at reasonable times and for reasonable periods. These rights to access shall continue as long as the records are retained by City.

5.03 **County Retention.** Unless otherwise specified herein, County shall maintain all fiscal records and documentation for all expenditures pertaining to this Agreement in a readily available state and location until an audit in conformance with generally accepted auditing standards and generally accepted government auditing standards (in conformance with a basis that complies with State financial laws and the State Constitution and OMB A-87) is completed and all questions arising from it are resolved satisfactorily or three (3) years from after the end of the Agreement period, whichever occurs later.

5.04 City Access. Subject to applicable laws, County shall give the City, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by County pertaining to this Agreement at reasonable times and for reasonable periods. These rights to access shall continue as long as the records are retained by County.

5.05 Access/Claims.

5.05.1 Notice. If there is any incident in which claims are made against the City or any City employee, or County or any County employee, as a result of the activities performed under this Agreement, the Party against whom the claim is made shall give the duly authorized representative(s) of the other Party full and reasonable access to and the right to examine documentation related to this matter at reasonable times and for reasonable periods with these rights to access continuing until all claims are resolved or three years after the termination of this Agreement, whichever is later.

5.05.2 Address. The address for notice provided under this Section 5.05 shall be delivered either personally or by mail and shall be directly sent to the address set forth in Section 11.0 of this Agreement.

5.06 Exclusions. The Parties agree that the terms of Section 5.0, "Retention and Accessibility of Records," and Section 6.0, "Audit," specifically exclude the required disclosure by either party of confidential information, including attorney work product and/or attorney/client communication.

6.0 AUDIT

6.01 County Audit. Except as otherwise provided herein, County has the right to conduct a financial and compliance audit of the performance of this Agreement on an annual basis. City agrees to permit County or its authorized representative, or any authorized representative of any other governmental agency with a direct interest in services provided under this Agreement, to audit the records that relate to this Agreement and to obtain and make available for inspection, audit and/or reproduction any documents, materials, or information necessary to facilitate such audit. City shall take whatever action is appropriate to facilitate the performance of any audits conducted pursuant to this Agreement that County may require of City. This includes, to the extent such detail will properly reflect, all costs: direct and indirect costs of labor, material, equipment, supplies, and services and all other costs and expenses of whatever nature for which reimbursement is claimed under provisions of this Agreement or services provided under this Agreement. City agrees to provide County and any of County's authorized representatives and representatives from any governmental agency related to Grant funds full and complete access to all records related to Grant activities as necessary to complete any audits required or requested pursuant to the Grant terms.

6.02 City Audit. Except as otherwise provided herein, City has the right to conduct a financial and compliance audit of the performance of this Agreement on an annual basis. County agrees to permit City or its authorized representative, or any authorized representative of any other governmental agency with a direct interest in services provided under this Agreement, to audit the records that relate to this Agreement and to obtain and make available for inspection, audit and/or reproduction any documents, materials, or information necessary to facilitate such audit. County shall take whatever action is appropriate to facilitate the performance of any audits conducted pursuant to this Agreement that City may require of County. This includes, to the extent such detail will properly reflect, all costs: direct and indirect costs of labor, material, equipment, supplies, and services and all other costs and expenses of whatever nature for which reimbursement is claimed under provisions of this Agreement or services provided under this Agreement. County agrees to provide City and any of City's authorized representatives and representatives from any governmental agency related to Grant funds full and complete access to all records related to Grant activities as necessary to complete any audits required or requested pursuant to the Grant terms.

7.0 INDEPENDENT ENTITY AND ACKNOWLEDGEMENT OF RESPONSIBILITIES

7.01 **Independent Entities.** The Parties expressly acknowledge and agree that City and County are independent entities and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. No employee of the City shall be considered an employee, agent, or representative of the County or gain any rights against the County pursuant to the County's personnel policies. No employee of the County shall be considered an employee, agent, or representative of the City or gain any rights against the City pursuant to the City's personnel policies. The relationship of County and City under this Agreement is not and shall not be construed or interpreted to be a partnership, joint enterprise or joint venture. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other Party or which shall hold itself out to be binding on the other Party.

7.02 **Responsibilities.** City shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of the County or its employees in relation to this Agreement. County shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of City or its employees in relation to this Agreement. City and County acknowledge that each entity is otherwise responsible for any claims or losses from personal injury or death or property damages that were caused by the acts or omissions of that entity, its agents, employees, or representatives in the performance of the services and activities under this Agreement; and that each entity will be responsible for the handling of the portion of any claim which is based solely on the assertion that a policy of that entity is illegal or unenforceable in any way.

7.03 **Claims Notification.** If any claim, or other action, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against City or County; the party against whom the claim or other action is made shall give written notice to the other party of the claim, or other action within three (3) working days after being notified of it or the threat of it. Such notice shall include the name and address of the person, firm, corporation or other entity that made or threatened to make a claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner provided in Section 11.0 of this Agreement. Except as otherwise directed, the party against whom the claim has been made shall furnish to the other party copies of all pertinent papers received by that party with respect to these claims or actions.

8.0 TERMINATION

8.01 **Termination.** Unless otherwise specified herein, either party shall have the right to terminate this Agreement, in whole or in part, at any time before the date of termination for the following reasons:

8.01.1 During the budget planning and adoption process, Commissioners Court or City Council, respectively, fails to provide funding for the Agreement during the next Agreement period;

8.01.2 Either party has failed to comply with any term or condition of this Agreement.

8.01.3 Grant funding upon which services under this Agreement are being provided ceases to be available to either or both Parties.

8.01.4 Either Party is unable to conform to changes required by federal, state or local laws or regulations.

8.02 **Mutual Termination.** Either party has the right to terminate this Agreement, in whole or in part, when both parties agree that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds; provided that both parties agree, in writing, upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion of the contract to be terminated.

8.03 **Termination Procedure.** At least thirty (30) days prior to the effective date of termination, the party seeking termination shall notify the other Party of the reasons for termination, the effective date of termination, and, in the case of a partial termination, the portion of the agreement to be terminated. The other Party may avoid termination if that Party corrects the cause(s) for termination to the satisfaction of the termination Party prior to the effective date of termination if the breach is based on 8.01.2.

8.04 **Continued Liability.** Notwithstanding any exercise by County of its right of termination, City shall not be relieved of any liability to County for damages due to County by virtue of any breach of this Agreement by City. Notwithstanding any exercise by City of its right of termination, County shall not be relieved of any liability to City for damages due to City by virtue of any breach of this Agreement by County.

8.05 **Rights Surviving Termination.** If either party terminates this Agreement in whole or in part, City has the right to receive payment for all purchases provided before the date of termination and not previously paid.

8.06 **Right to Assurance.** Whenever one Party to this Agreement in good faith has reason to question the other's intent to perform, the Party may demand that the other Party provide written assurance of their intent to perform. In the event a demand is made under this Section 8.06, and the other Party gives no such written assurance within thirty (30) days of receipt of the written notice of such demand, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement.

9.0 MISCELLANEOUS PROVISIONS

9.01 **Civil Rights/ADA Compliance.** City and County shall each provide, or contract to provide, all services and activities under this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state and local orders, laws, regulations, rules, policies and certifications governing any activities undertaken during the performance of this Agreement including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504 (29 U.S.C., Section 794), the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933], Chapter 73, Texas Administrative Code, Section 85.113 (relating to workplace and confidentiality guidelines regarding AIDS and HIV), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Neither City nor County shall discriminate against any employee, applicant for employment, or Client based on race, religion, color, sex, national origin, age or handicapped condition.

9.02 **Non-Waiver.** No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of City which then exists or may subsequently exist. No payment, act or omission by City may constitute or be construed as a waiver of any breach or default of County which then exists or may subsequently exist. The failure of either Party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.

9.03 **Reservation of Rights and Remedies.** All rights of County under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or belonging right to County under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. All rights of City under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right belonging to City under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

9.04 **Binding Agreement.** This Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the parties to this Agreement.

9.05 **Entire Agreement.** All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

9.06 **Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate Courts of Travis County, Texas.

9.07 **Severability.** If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding, and shall continue to have full force and effect and shall in now way be impaired or invalidated by that holding..

9.08 **Political Activity.** Neither County nor City shall use any of the performance under this Agreement or any portion of the Agreement funds for any activity related to the result of an election for public office or any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of either Party from furnishing to any member of its governing body upon request or to any other local or state official or employee, or to any citizen, information in the hands of the employee or official not considered under law to be confidential. No Agreement Funds can be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive or judicial branches of the government of City, County, the State of Texas or the government of the United States.

9.09 **Sectarian Activity.** County and City shall ensure that activities performed under this Agreement shall be carried on in a manner free from religious influence. Neither County nor City shall execute any agreement with any primarily religious organization to receive Agreement funds from City unless the agreement includes provisions, as provided by County, to effectuate this assurance. Each party shall submit such agreements to the other party prior to the release of Agreement funds. Neither City's nor County's selection of a Subcontractor nor expenditure of funds under this Agreement is an endorsement of the Subcontractor's charitable or religious character, practices or expressions. No expenditures have as their objective the funding of sectarian worship, instruction or proselytization. City and County agree to be bound by the provisions of Section 702 of the Civil Rights Act [42 U.S.C., Section 2000E-1(a)] regarding employment practices and Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C., Section 604a) regarding additional rights and responsibilities for charitable and faith-based providers of social services, assisted individuals and providers of such services.

9.10 **Publicity.** When appropriate, County and City shall publicize the services and activities of County and City under this Agreement. In any publicity prepared or distributed by or for County or City, the funding through County and City shall be mentioned as having made the project possible.

9.11 **Interpretational Guidelines**

9.11.1 **Computation of Time.** When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that County or City has declared a holiday for its employees these days shall be omitted from the computation.

9.11.2 **Number and Gender.** Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Agreement clearly requires otherwise.

9.11.3 **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Agreement.

9.12 **Compliance With Applicable Law.** In the performance of the services required of each party pursuant to this Agreement, City and County agree to comply with all applicable federal, state, county and city statutes, ordinances, rules and regulations.

9.13 **Immunity or Defense.** It is expressly understood and agreed by all Parties that neither the execution of this Agreement, nor any conduct of any representative of City or County relating to this Agreement, shall be considered to waive, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit. It is understood and agreed that a decision by one Party to waive immunity or to compensate a claim for which immunity would have been a defense and would have operated to prevent payment does not operate as a waiver or decision to compensate by the other Party; nor will such action by one Party operate to incur any expense or charge to the other Party.

9.14 **Agreement Limitation.** This Agreement sets out the agreements and obligations between County and City only, and does not obligate either Party to the other Party's subcontractors or to any third party. This Agreement creates no third party beneficiary rights.

9.15 **Survival of Conditions.** Applicable provisions of this Agreement shall survive beyond termination or expiration of this Agreement until full and complete compliance with all aspects of these provisions has been achieved where the Parties have expressly agreed that those provisions should survive any such termination or expiration or where those provisions remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

9.16 **Dispute Resolution/Mediation.** Initial disputes and unresolved questions or issues of City or County shall initially be presented by City to County by submission in writing to TCHHSVS with a copy to the County Purchasing Agent and by County to City by submission in writing to the Director. If satisfactory resolution cannot be achieved between the Parties within a reasonable time, and should mediation be acceptable to both Parties in resolving a dispute arising under this Agreement, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE, Section 154.023. Unless both Parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in TEX. CIV. PRAC. AND REM. CODE, Sec. 154.073, unless both Parties agree, in writing, to waive the confidentiality.

9.17 **County Public Purpose.** By execution of this Agreement, the Commissioners Court and City hereby find that the needs to be addressed by the services to be provided under the terms of this Agreement and specifically set forth in the attached Work Statements, constitute a significant public concern impacting members of the population which the County and City serve. The Commissioners Court and City further find that the provision of services to be provided by City pursuant to this Agreement will further the public purpose of addressing those health and human services issues, problems and needs identified in this Agreement for identified individuals.

10.0 AMENDMENTS

10.01 **Written Amendments.** Unless specifically provided otherwise in this Agreement, any change to the terms of this Agreement or any attachments to it shall be made in writing and signed by all parties. It is acknowledged by City that no officer, agent, employee or representative of County has any authority to change the terms of this Agreement or any attachments to it unless expressly granted that authority by the Commissioners Court.

10.02 **Submission of Amendment.** City shall submit all requests for alterations, additions or deletions of the terms of this Agreement or any attachment to it to the County Purchasing Agent, with a copy to the County Executive Manager for consideration. Requests for alterations, additions or deletions of the terms of this Agreement by County shall be submitted to the City Manager and City Director, with a copy to the Purchasing Officer.

11.0 NOTICES

11.01 Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this Section 11.0 for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address hereinafter specified.

11.02 **Address.** The address of County for all purposes under this Agreement shall be:

Cyd Grimes, Purchasing Agent
P. O. Box 1748
Austin, Texas 78767

With copies to (registered or certified mail with return receipt is not required):

Honorable David Escamilla (or his successor in office)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

and

Sherri Fleming
County Executive, TCHHSVS
P. O. Box 1748
Austin, Texas 78767

11.03 **City Address.** The address of the City for all purposes under this Agreement and for all notices hereunder shall be:

Byron E. Johnson, C. P. M.
P. O. Box 1088
Austin, Texas 78767

11.04 **Change of Address.** Each party may change the address for notice to it by giving notice of the change in compliance with Section 11.0 and delivering a copy of the notice to the County Clerk and City Clerk for attachment to this Agreement no later than ten (10) days after the effective date of the notice.

12.0 LEGAL AUTHORITY

12.01. **Legal Authority to Enter Agreement.**

12.01.1 City guarantees that City possesses the legal authority to enter into this Agreement, receive funds authorized by this Agreement, and to perform the services City has obligated itself to perform under this Agreement.

12.01.2 County guarantees that County possesses the legal authority to enter into this Agreement, receive funds authorized by this Agreement, and to perform the services County has obligated itself to perform under this Agreement. It is acknowledged by City that no officer, agent, employee or representative of County has any authority to modify, alter or amend this Agreement unless expressly granted that authority by the Commissioners Court.

12.02 **Signors.**

12.02.1. The person or persons signing this Agreement on behalf of City, or representing themselves as signing this Agreement on behalf of City, do hereby warrant and guarantee that he, she or they have been duly authorized by City to sign this Agreement on behalf of City and to bind City validly and legally to all terms, performances, and provisions in this Agreement.

12.02.2. The person or persons signing this Agreement on behalf of County, or representing themselves as signing this Agreement on behalf of County, do hereby warrant and guarantee that he, she or they have been duly authorized by County to sign this Agreement on behalf of County and to bind County validly and legally to all terms, performances, and provisions in this Agreement.

13.0 PROHIBITIONS

13.01 **Conflict of Interest.** In performing duties under this Agreement, City employees shall comply with the conflict of interest requirements and ethics provisions set forth in the Austin City Code, Article 4 (a copy of which has been provided to County). Both Parties shall comply with the conflict of interest provisions in Chapter 171 of the Texas Local Government Code and other applicable laws.

13.02 **Solicitation.** Both Parties warrant that no persons or selling agency was or has been retained to solicit this Agreement upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by that Party to secure business. For breach or violation of this warranty, the non-breaching Party shall have the right to terminate this Agreement without liability, or, in its discretion, to, as applicable, add or to or deduct from the Agreement price for consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

13.03 **Gratuities.** Either Party may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the other Party or any agent or representative to any official or employee with a view toward securing favorable treatment with respect to the performing of this Agreement. In the event this Agreement is cancelled pursuant to this provision, the canceling Party shall be entitled, in addition to any other rights and remedies, to recover from the other Party a sum equal in amount to the cost incurred by the offending Party in providing such gratuities. Neither Party's employees, officers and agents shall solicit nor accept gratuities, favors or anything of monetary value from Subcontractors or potential Subcontractors.

13.04 **Nepotism.** City and County agree that they will comply with TEX. GOVERNMENT CODE ANN., Ch. 573, by ensuring that no officer, employee or member of the governing body of that Party shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person.

14.0 ASSIGNABILITY

14.01 No party may assign any of the rights or duties created by this Agreement without the prior written approval of the other parties. It is acknowledged by City that no officer, agency, employee or representative of County has any authority to grant such assignment unless expressly granted that authority by the Commissioners Court.

15.0 FORCE MAJEURE.

15.01 Neither Party shall be financially liable to the other Party for delays or failures to perform under the Agreement where such failure is caused by force majeure (i.e. those causes generally recognized under Texas law as constituting impossible conditions). Such delays or failures to perform shall extend the period of performance until these exigencies have been removed. The Party seeking to avail itself of this clause shall notify the other Party in the manner set forth in Section 11.0 within five (5) business days or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as

timely a manner as possible. City agrees that breach of this provision entitles County to reduce or stop payments or immediately terminate this Agreement.

EXECUTED in duplicate originals this the __ day of ____, 2013.

TRAVIS COUNTY

By:  _____ Date: _____
Samuel T. Biscoe, County Judge

APPROVALS:

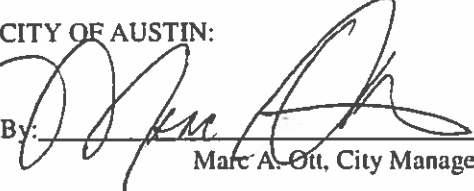
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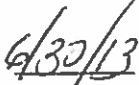
Assistant County Attorney Date: _____
Funds Certified By:

Nicki Riley, County Auditor Date: _____
Purchasing:

Cyd Grimes, Purchasing Agent Date: _____

CITY OF AUSTIN:

By:  _____
Marc A. Ott, City Manager


Date