

CONTRACT #26
RFS # 330.02-58512
Edison # 31378

**Department of Economic and
Community Development**

VENDOR:
Austin Building and Design,
Inc. d.b.a.
The Austin Company



Department of Economic and Community Development

William F. Hagerty
Commissioner

Bill Haslam
Governor

To: Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee

From: Department of Economic and Community Development

Date: July 31, 2014

Re: Request for approval of contract amendment one Austin Building & Design LLC dba The Austin Company

Please consider the enclosed request for amendment 1 to contract # 31378 with Austin Building & Design LLC dba The Austin Company. This contract for site certification services for ECD's Select Tennessee Certified Sites Program was procured via RFP and was effective beginning April 13, 2012. The original contract was written as a three-year contract. The maximum liability of the contract for three years was \$1,399,000.00. During the first two years of the program, ECD has identified ancillary services to those already being performed that are needed to make the program more beneficial to Tennessee communities that apply for this certification. The certification is provided based on national standards and has helped several Tennessee communities attract large international corporations which provide benefits to the local economy. These ancillary services can be offered under the current contract without increasing the maximum liability of the contract. In addition, ECD is requesting to extend the contract period for two years, without increasing the maximum liability. The current vendor's reputation and hard work for the State has been material to the success of the program thus far and securing those services for an additional two years will ensure the continued success of the program as well as contribute to significant cost savings for the State. ECD believes extending this contract is in the best interests of the State due to the cost savings that will be realized as well as the benefits of continuing a program that has been successful in helping both urban and rural communities attract large employers. Therefore, ECD respectfully requests approval of this contract amendment by the Fiscal Review Committee.

If you have any further questions, please contact Summer Carr at 615-253-1944 or summer.carr@tn.gov.

Attachments:

- Supplemental Documentation Required for Fiscal Review Committee
- Edison Documentation—Contract Payments
- Original Edison Contract
- Non-Competitive Amendment Request—Submitted to CPO for approval
- Proposed Contract Amendment—Draft

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Summer Carr, Dept. of Economic and Community Development	*Contact Phone:	615-253-1944		
*Presenter's name(s):	Kendrick Curtis, Director of Community and Rural Development, ECD				
Edison Contract Number: <i>(if applicable)</i>	31378	RFS Number: <i>(if applicable)</i>	N/A		
*Original or Proposed Contract Begin Date:	4/13/2012	*Current or Proposed End Date:	4/13/2015		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	October 1, 2014				
*Department Submitting:	Economic and Community Development				
*Division:	Community and Rural Development				
*Date Submitted:	07/28/2014				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	Austin Building & Design, Inc. dba The Austin Company				
*Current or Proposed Maximum Liability:	\$1,399,000.00				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:12	FY:	FY:	FY:	FY	FY
\$1,399,000.00	\$	\$	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY: 12	FY: 13	FY: 14	FY: 15	FY	FY
\$ 0	\$ 446,000	\$ 127,500	\$ 8,500.00	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$1,399,000.00	Federal:	N/A
<i>Interdepartmental:</i>	N/A	<i>Other:</i>	N/A
If “ <i>other</i> ” please define:		N/A	
If “ <i>interdepartmental</i> ” please define:		N/A	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>		RFP	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		This contract was bid in 2012 in conjunction with ECD’s new Select Tennessee Certified Sites program. ECD anticipated a cost of approximately \$2 million for the three-year contract term. The winning bidder came in under ECD’s expected cost at \$1.4 million for the three-year contract.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		This contract was procured via RFP in 2012. Three proposers bid on this contract. The winning bidder, Austin Building & Design was the lowest bidder.	

Payments on a Contract

Unit	Vendor Name	Contract Type	Maximum Amt	Voucher ID	Monetary Amount	GL Descr	Payment Date	Contract Expire Date	Agency Name	Agency BU	GL Acct Effective D	Amount
33001	The Austin Company	DFA	1,399,000.00	00006384	20,000.00	Non medical payments	8/31/2012	4/13/2015	Econ & Community Dev	33001	1/1/1901	20,000.00
33001	The Austin Company	DFA	1,399,000.00	00006508	10,000.00	Non medical payments	9/17/2012	4/13/2015	Econ & Community Dev	33001	1/1/1901	10,000.00
33001	The Austin Company	DFA	1,399,000.00	00006726	11,000.00	Non medical payments	10/16/2012	4/13/2015	Econ & Community Dev	33001	1/1/1901	11,000.00
33001	The Austin Company	DFA	1,399,000.00	00006968	57,500.00	Non medical payments	11/20/2012	4/13/2015	Econ & Community Dev	33001	1/1/1901	57,500.00
33001	The Austin Company	DFA	1,399,000.00	00007112	170,000.00	Non medical payments	12/19/2012	4/13/2015	Econ & Community Dev	33001	1/1/1901	170,000.00
33001	The Austin Company	DFA	1,399,000.00	00007254	52,000.00	Non medical payments	1/9/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	52,000.00
33001	The Austin Company	DFA	1,399,000.00	00007588	3,000.00	Non medical payments	2/25/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	3,000.00
33001	The Austin Company	DFA	1,399,000.00	00008109	60,500.00	Gen Business Consulting Srvc	5/2/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	60,500.00
33001	The Austin Company	DFA	1,399,000.00	00008335	44,000.00	Gen Bus Consulting Srvc>25K	6/4/2013	4/13/2015	Econ & Community Dev	33001	11/2/2011	44,000.00
33001	The Austin Company	DFA	1,399,000.00	00008504	18,000.00	Gen Business Consulting Srvc	6/24/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	18,000.00
33001	The Austin Company	DFA	1,399,000.00	00009000	18,000.00	Gen Business Consulting Srvc	8/29/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	18,000.00
33001	The Austin Company	DFA	1,399,000.00	00009293	13,500.00	Gen Business Consulting Srvc	10/2/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	13,500.00
33001	The Austin Company	DFA	1,399,000.00	00009531	32,000.00	Gen Business Consulting Srvc	11/4/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	32,000.00
33001	The Austin Company	DFA	1,399,000.00	00009806	28,000.00	Gen Business Consulting Srvc	12/6/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	28,000.00
33001	The Austin Company	DFA	1,399,000.00	00009960	9,000.00	Gen Business Consulting Srvc	12/30/2013	4/13/2015	Econ & Community Dev	33001	1/1/1901	9,000.00
33001	The Austin Company	DFA	1,399,000.00	00010268	5,500.00	Gen Business Consulting Srvc	2/4/2014	4/13/2015	Econ & Community Dev	33001	1/1/1901	5,500.00
33001	The Austin Company	DFA	1,399,000.00	00011104	21,500.00	Gen Business Consulting Srvc	6/3/2014	4/13/2015	Econ & Community Dev	33001	1/1/1901	21,500.00
33001	The Austin Company	DFA	1,399,000.00	00011404	8,500.00	Gen Business Consulting Srvc	7/3/2014	4/13/2015	Econ & Community Dev	33001	1/1/1901	8,500.00
											582,000.00	
											582,000.00	

Amendment Request

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Request Tracking #	33007-58512	
1. Procuring Agency	Department of Economic and Community Development	
2. Contractor	Austin Building and Design, Inc. DBA The Austin Company	
3. Contract #	31378	
4. Proposed Amendment #	1	
5. Edison ID #	150960	
6. Contract Begin Date	4/13/2012	
7. Current Contract End Date – with ALL options to extend exercised	4/13/2015	
8. Proposed Contract End Date – with ALL options to extend exercised	4/13/2017	
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 1,399,000.00	
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 1,399,000.00	
11. Office for Information Resources Pre-Approval Endorsement Request – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Pre-Approval Endorsement Request – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment		
<p>This amendment will extend the contract period for an additional two years (for a total term of five years) and make adjustments to the scope of services. The maximum liability of the contract will not be increased.</p> <p>Due to the requirement for a high standard, certification under ECD's Select Tennessee Certified Sites Program is not possible or appropriate for all communities or properties. In some instances, there are inherent weaknesses in a site that prevents it from ever being certified. However, one goal of Select Tennessee when launched was that it would benefit the rural areas of the state where economic development</p>		

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<p>staffs are often small and focused on numerous local efforts, only one of which is site preparation. While experienced economic developers in their own right, many have little experience with the technical aspects of preparing property or have properties that were acquired prior coming to the community. It is for all of these reasons and others—such as local funding limitations—that many areas are lacking in quality sites attractive to industrial prospects.</p> <p>Due to the lack of quality industrial properties in many areas, ECD has identified the additional need since the program's launch in 2012 for a service line to assist communities in evaluating the market potential for industrial properties (both greenfield sites and buildings) existing and under consideration for development. Built on the principals and foundation of Select Tennessee and informed from the Contractor's experience in corporate site location work, this additional service line would allow ECD to assist communities striving to develop industrial properties by providing professional advice about the value and the market potential for new investment in various properties. Additionally, this service would provide guidance and direction regarding the steps that should be taken to prepare them and opportunities for the most promising investments. <u>This service can be provided to communities under the current contract with Austin through a modification of the contract term and scope of services without increasing the maximum liability of the contract.</u></p>	
<p>15. Name & Address of the Contractor's Principal Owner(s) <i>– NOT required for a TN state education institution</i></p> <p>The Austin Company is a C- Corporation, and is incorporated in the State of Delaware as Austin Building and Design, Inc. Austin's main offices are located at the following location:</p> <p>The Austin Company, 6095 Parkland Blvd., Cleveland, OH 44124</p> <p>Austin branch offices are located in California, Georgia, and Michigan.</p> <p>In December 2005, certain assets of The Austin Company (company formerly known solely as "The Austin Company") were acquired by Kajima USA, Inc. These assets were purchased via bankruptcy proceedings by Kajima USA, Inc. which formed a new legal entity named Austin Building and Design, Inc., Federal Tax ID 74-3155428. Austin Building and Design, Inc. has the legal authority to operate as The Austin Company as the Copyright to this name was also acquired by Austin Building and Design, Inc.</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Goods or Services</p> <p>ECD's contract with the Contractor was competitively bid in early 2012. The Contractor began work in mid-2012 and has provided excellent services for ECD throughout the launch of the Select Tennessee Certified Sites Program.</p> <p>The Austin Company has been in business for over 130 years, serving industry since 1878. The Austin Company and its site selection division, Austin Consulting bring a wealth of experience in corporate location strategy, site selection, property and community due diligence, site planning and industrial park design. Austin's corporate site location clients primarily include manufacturing and distribution sector clients across a wide spectrum of industries including food and beverage, pharmaceuticals, consumer products, aviation/aerospace, general manufacturing, broadcasting, publishing, and information technology.</p> <p>The Austin Company has over eight years of formal site certification experience, as has been performing "site certification" work to economic development agencies, property owners, and others since 2006. However, Austin has been advising communities on their readiness for business investment for over 20 years.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>In 2011, ECD undertook an extensive assessment and inventory of the greenfield sites available in the state for industrial development. Through this assessment the department identified a need to assist communities improve and market industrial properties. To address this need, ECD launched a new program—Select Tennessee—in 2012 designed to elevate the quality and competitiveness of industrial greenfield sites in the state. Austin Building and Design was procured competitively via RFP in early 2012. The Austin company</p>	

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<p>was extremely competitive in all areas of evaluation and was selected as the best option due to their combination of experience and cost. The contract was written for \$1,399,000 with a term of three years. Austin Consulting designed the Select Tennessee program in cooperation with ECD and performs certification services for the program. The reputation of Austin Consulting, a national site selection firm, lends great credibility to ECD's Select Tennessee Certified Sites Program. Due to the program's and the Contractor's, excellent reputation, several large projects representing the creation of over 2,000 new jobs for Tennesseans have recently been located on Select Tennessee certified sites.</p> <p>Since June of 2012, communities have submitted letters of intent for over 80 sites and applications have been received for 66 of these. Representatives from the Austin team and ECD have visited over 50 sites and 26 of these have completed the review process and achieved certification. However, through this review process, Austin and ECD staff have encountered communities and site owners that are not prepared for the undertaking of site certification. This presents the challenge of how to make a certification program beneficial to more of Tennessee's rural communities. One option would be to relax the requirements for certification in order to allow more communities to participate. However, this would erode the credibility of the program. Maintaining the program's high standard is important because it ensures the highest degree of respect and trust with industry professionals and prospects evaluating the sites. This has led ECD to decide that the best course of action would be to expand the scope of services with the Contractor, Austin Consulting, to include additional services which would assist communities in preparing industrial properties for jobs and capital investment.</p> <p>ECD does not believe that competitive bidding of the additional services would be in the best interest of the State. A new vendor would not have the level of program knowledge or reputation, both nationally and as ECD's partner in the Select Tennessee program, as the current Contractor. Austin's original bid for this project was the lowest of all bids received. The difference between the Austin bid of \$1,399,000 and the next highest bid (\$2,278,800) was \$879,800. Therefore, it is unlikely that another firm with as high a quality would be able to offer the quality product required at a lower cost. Additionally, ECD believes it can provide these services at a cost savings to the State by extending the current contract for an additional two years with the current Contractor and adding new items to the Scope of Services to assist more rural communities without increasing the maximum liability of the contract signed by the Contractor in 2012. If these additional services were competitively procured and offered to another vendor, this would represent additional costs to the State.</p>	
<p>18. Justification</p> <p>ECD has identified the need for additional services under its Select Tennessee Program. ECD believes the best course of action, both with respect to the credibility of the program and with respect to providing these services at the lowest cost to the State, is to extend the department's current contract with the vendor to include additional services that may be rendered by the Contractor if needed by Tennessee's communities. The Contractor has expended less than 50% of the funds under its current contract and will be able to provide these services within the budget of the original contract that was signed in 2012.</p>	
<p>Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented circumstances</i></p> <p> 7/23/2014</p>	



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # -	Edison ID	Contract # 31378	Amendment # 1		
Contractor Legal Entity Name Austin Building & Design LLC dba The Austin Company			Edison Vendor ID		
Amendment Purpose & Effect(s) Term extension; amend scope items					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: 4/13/2017			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
12	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
13	\$446,000.00	\$0.00	\$0.00	\$0.00	\$446,000.00
14	\$127,500.00	\$0.00	\$0.00	\$0.00	\$127,500.00
15	\$412,750.00	\$0.00	\$0.00	\$0.00	\$412,750.00
16	\$412,750.00	\$0.00	\$0.00	\$0.00	\$412,750.00
TOTAL:	\$1,399,000.00	\$0.00	\$0.00	\$0.00	\$1,399,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE</i>		
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1
OF CONTRACT 31378**

This Amendment is made and entered by and between the State of Tennessee, Department of Economic and Community Development, hereinafter referred to as the "State" and Austin Building & Design, Inc. dba The Austin Company, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section A is deleted in its entirety and replaced with the following:

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall review ECD's preliminary design for the Tennessee Premier Sites Program and, shall as necessary and in consultation with the State, revise criteria, application process, site review process as well as program implementation to create a site certification program in Tennessee.
- A.3. The Contractor shall develop a marketing campaign for the Tennessee Premier Sites Program.
- A.4. The Contractor shall design/develop a plan to incorporate and integrate, as possible, sites previously certified under another program, including the DealReady program, as found at <http://www.dealready.com/about-dealready.php>, into ECD's Tennessee Premier Sites program.
- A.5. The Contractor shall prepare, for State approval, a detailed work plan for each deliverable (A.2.-A.15) that incorporates the development of schedules for the activities of this contract. The work plan shall include the steps for all project work tasks and deliverables including initiation and completion dates, task responsibilities to avoid any disruption of services, requirements or deliverables to the State.

The annual work plan will outline by task and due date each activity to be performed under this contract. The annual work plan must describe all activities related to the development and implementation of each item listed in this scope of services, including each stage of production. It shall provide due dates for each activity and indicate areas of responsibility for the Contractor and the State. The annual work plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled.

The initial annual work plan shall be due to the State within fifteen (15) days of the execution of this contract. Subsequent annual work plans will be due no later than April 15 of each year.

- A.6. The Contractor shall be responsible for receipt, management and review of applications from communities interested in pursuing site certification. Contractor shall forward a digital version of the application for certification to the ECD staff person assigned to this program. The Contractor shall conduct a desktop review of application for certification to verify that the material submitted demonstrates that the site meets program requirements. Contractor shall notify in writing the applicant and the state of deficiencies identified through the desktop review.
- A.7. The Contractor shall notify the State within 30 days of receipt of an application for certification from a community of results of the desktop review and findings. The

Contractor shall also provide a progress report to assigned ECD staff at the end of each calendar quarter on applications in the review process. The round report (A.13) will satisfy the requirement for the progress report for quarters two (ending in June) and four (ending in December).

- A.8. The Contractor shall conduct a site visit with assigned ECD staff to inspect each site applying for certification that passed the desktop review.
- A.9. Upon completion of the certification site visit/review, the Contractor shall conduct an in-person conference with applicant and ECD staff to review the application and accompanying materials. This meeting may be held in coordination with the site visit. Only one (1) meeting per site application is required.
- A.10. The Contractor shall notify applicants in person or via telephone if the determination is made after the site visit/review that the site does not meet the certification program requirements. Contractor shall also provide applicant and the state with written explanation outlining reasons the site did not pass certification test (final approval phase). A subsequent site re-evaluation/desktop review may be scheduled as needed to reevaluate applicant's status.
- A.11. The Contractor shall notify in writing the applicant and the State of the Contractor's decision to certify the site in the program. This notification shall be provided at no cost to the State.
- A.12. At the end of each round of certification, the Contractor shall provide the State with a narrative report detailing reviews of all applications submitted for certification and a summary overview of the applications submitted for evaluation during the specified time frame.
- A.13. The Contractor shall coordinate the recertification process for sites, including receipt, management and conducting of the desktop review for recertification of applications. Contractor shall notify applicants and the State of recertification in writing. Contractor shall also notify in writing applicants that are not recertified of outstanding issues.
- A.14. The Contractor shall provide to the State a list of sites that are re-certified and a narrative report for applicants that are not recertified, outlining reasons for denial of certification.
- A.15. The Contractor shall in consultation with the State prepare program materials specific to and necessary for the implementation of the industrial property evaluation service. These materials shall include, but not be limited to, a brief program explanation overview, a pre-application form, an application to include the site-building comparative form, and other instructions needed to implement the evaluation service.
- A.16. The Contractor shall review and discuss with the state each pre-application accepted into the evaluation service element of the program and discuss any known limitations or issues.
- A.17. The Contractor shall conduct an introductory webinar to prepare the community for submitting the application for property evaluation. During this webinar the contractor shall facilitate a preliminary discussion of the sites and buildings being considered for evaluation and review with the community the application requirements and process for evaluation.
- A.18. The Contractor shall be responsible for receipt, management and review of applications from communities submitting properties (up to 8 sites or buildings total) for evaluation. The contractor shall provide a digital copy of the evaluation application to ECD staff assigned to this program. The Contractor shall conduct a desktop review of the application to assess the issues and opportunities for each property as it relates to industrial recruitment and economic development and shall prepare a preliminary

assessment of the properties submitted to determine which should be visited during the site visit phase.

- A.19. Based on the findings of the desktop review and in consultation with the state, the Contractor shall conduct a site visit with assigned ECD staff to evaluate the merit of the most promising properties (up to 5 sites or buildings total) identified in the application. This shall be a single day visit consisting of such activities as a site selection workshop, site tours, meetings with utility providers and local officials as well as a discussion of additional information needed from the community.
- A.20. The Contractor shall provide the State and applicant with a written report inclusive of a general characterization and assessment of the properties visited through the evaluation service element as well as an evaluation of each property's strengths and weaknesses with recommendations for next steps, if appropriate, for each property to attract development. This report shall address the long-term potential for investment of each property.

2. Contract section B. is deleted in its entirety and replaced with the following:

- B.1. This Contract shall be effective for the period beginning April 13, 2012, and ending on April 13, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

3. Contract section C.3.b. is deleted in its entirety and replaced with the following:

C.3.b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment) April 13, 2012—April 13, 2015
Design/Development of Tennessee Premier Sites Program (A.2.)	\$20,000/ per design
Design/Development of marketing campaign for Program (A.3.)	\$6,000/ per campaign
Design/Develop integration plan for previously certified sites into program (A.4.)	\$5,000/ per design
Review of applications (including desktop review) submitted for participation in program (A.6., A.7.) Stage 1 Review Stage 2 Review	\$2,500/ per Stage 1 Review \$3,000/ per Stage 2 Review \$5,500 Total Maximum/ per application
Site visit/review (A.8., A.9.)	\$5,500/ per site visited/reviewed
Coordination of Site Re-Certification Process (A.13., A.14.)	\$2,750/ per site
Site Re-evaluation/ Desktop Review (as needed) (A.10.)	\$2,500/ per re-evaluation
Report detailing findings from applications review at end of certification round (A.12.)	\$3,000/ per report
Report of applicants whose sites are not recertified (A.14.)	\$1,000/ per report

Program Development (including application form development for program implantation) (A.15.)	\$18,000/ one-time cost
Pre-application review (A.16.)	\$500/ per community/application
Introduction/Webinar (A.17.)	\$1,000/ per application
Application and Desktop Review (A.18.)	\$4,500/ per application
Site Visit (A.19.)	\$5,500/ per application
Detailed Findings and Recommendations (A.20.)	\$4,000/ per application

4. The following is added as Contract section E.11.

E.11. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective October 1, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

AUSTIN BUILDING & DESIGN, INC. dba THE AUSTIN COMPANY:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

WILLIAM F. HAGERTY, COMMISSIONER

DATE



Management Determination Request

May 22, 2012

Edison ID: **31378**

A management-level approval determination appears warranted and is requested for the attached document that the procuring agency submitted for approval routing through the Edison system. Review notes are cited below.

As deemed appropriate, please either approve the document within Edison on behalf of the Chief Procurement Officer OR deny the document within the system.

Attachment

Review Notes:

- 1 Please see the Rule and Policy below as it pertains to the approval and release of an RFP Amendment.
 - (a) **The Department of Finance and Administration shall approve all RFPs and any addenda, amendments, and clarifications to RFPs before their public release.** All RFPs that would result in contracts requiring the Comptroller's approval shall also require the approval of the Office of the Comptroller of the Treasury before their public release. Further, any addenda, amendments, and clarifications to RFPs that would result in contracts requiring the Comptroller's approval shall be filed by the procuring agency with the Comptroller of the Treasury contemporaneously with their public release. An RFP or its revisions shall be approved based on the following:
 1. application of the requirements of this rule and Department of Finance and Administration Office of Contracts Review Policy Guidelines;
 2. adequacy of the scope of service description; and
 3. adequacy of the RFP's assurance of:
 - (i) fairness to potential service providers;
 - (ii) clear and open competition;
 - (iii) achievement of procurement objectives; and
 - (iv) protection of the state's interests.

03a-5 **RFP Amendment & Clarification**

Before public release, the contracting agency must obtain OCR approval of each RFP amendment (including the state's written responses to proposer questions and issues which constitute an RFP amendment).

If a proposed amendment involves one or more substantive RFP revisions, OCR will require that approval is also subject to Comptroller staff approval.

Contracting agency staff must send a copy of each RFP amendment to the Comptroller's Office of Management Services at the time of the amendment's public release.

On February 16, 2012 the agency released a "Compilation of Questions, Comments and Responses" that were not approved by OCR/CPO. All proposers and/or prospective proposers should have had access to the same information, because this information was never approved and released by OCR/CPO, the entire RFP process may be flawed.



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 4/13/2012	End Date 4/13/2015	Agency Tracking # 33002-58512	Edison Record ID 31378
Contractor Legal Entity Name Austin Building and Design, Inc. dba The Austin Company			Edison Vendor ID 150960

Service Caption (one line only)
Development of the Tennessee Premier Sites

Subrecipient or Vendor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Vendor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2012	\$1,399,000.00				\$1,399,000.00
TOTAL:	\$1,399,000.00				\$1,399,000.00

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American
 Asian
 Hispanic
 Native American
 Female
 Person w/Disability
 Small Business
 Government
 NOT Minority/Disadvantaged
 Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

<input checked="" type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Justin L. Johnson 4/18/12

OCR USE - FA

FA1238451

Speed Chart (optional)	Account Code (optional)	Contract #
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
AND
AUSTIN BUILDING AND DESIGN, INC. dba THE AUSTIN COMPANY**

This Contract, by and between the State of Tennessee, Department of Economic and Community Development, hereinafter referred to as the "State" and Austin Building and Design, Inc. dba The Austin Company, hereinafter referred to as the "Contractor," is for the provision of development of the Tennessee Premier Sites, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 150960

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall review ECD's preliminary design for the Tennessee Premier Sites Program and, shall as necessary and in consultation with the State, revise criteria, application process, site review process as well as program implementation to create a site certification program in Tennessee.
- A.3. The Contractor shall develop a marketing campaign for the Tennessee Premier Sites Program.
- A.4. The Contractor shall design/develop a plan to incorporate and integrate, as possible, sites previously certified under another program, including the DealReady program, as found at <http://www.dealready.com/about-dealready.php> , into ECD's Tennessee Premier Sites program.
- A.5. The Contractor shall prepare, for State approval, a detailed work plan for each deliverable (A.2.- A.15) that incorporates the development of schedules for the activities of this contract. The work plan shall include the steps for all project work tasks and deliverables including initiation and completion dates, task responsibilities to avoid any disruption of services, requirements or deliverables to the State.

The annual work plan will outline by task and due date each activity to be performed under this contract. The annual work plan must describe all activities related to the development and implementation of each item listed in this scope of services, including each stage of production. It shall provide due dates for each activity and indicate areas of responsibility for the Contractor and the State. The annual work plan will serve as a monitoring document to be used by the State to assure timely completion of tasks as scheduled.

The initial annual work plan shall be due to the State within fifteen (15) days of the execution of this contract. Subsequent annual work plans will be due no later than April 15 of each year.

- A.6. The Contractor shall be responsible for receipt, management and review of applications from communities interested in pursuing site certification. Contractor shall forward a digital version of the application to ECD staff person assigned to this program. The Contractor shall conduct a desktop review of application to verify that the material submitted demonstrates that the site meets program requirements. Contractor shall notify in writing the applicant and the state of deficiencies identified through the desktop review.
- A.7. The Contractor shall notify the State within 30 days of receipt of an application from a community of results of the desktop review and findings. The Contractor shall also provide a progress report to assigned ECD staff every two (2) weeks on applications in the review process, including a discussion of each additional application for which the desktop review has been completed.



- A.8. The Contractor shall conduct a site visit with assigned ECD staff to inspect each site that passed the desktop review.
- A.9. Upon completion of the site visit/review, the Contractor shall conduct an in-person conference with applicant and ECD staff to review the application and accompanying materials. This meeting may be held in coordination with the site visit. Only one (1) meeting per site application is required.
- A.10. The Contractor shall notify applicants in person or via telephone if the determination is made after the site visit/review that the site does not meet program requirements. Contractor shall also provide applicant and the state with written explanation outlining reasons the site did not pass certification test (final approval phase). A subsequent site re-evaluation/desktop review may be scheduled as needed to reevaluate applicant's status.
- A.11. The Contractor shall provide the applicant and the State with a written estimate of length of time (under normal conditions) before construction could begin on sites certified in the program. This estimate shall be provided at no cost to the State.
- A.12. The Contractor shall notify in writing the applicant and the State of the Contractor's decision to certify the site in the program. This notification shall be provided at no cost to the State.
- A.13. At the end of each round of certification, the Contractor shall provide the State with a narrative report detailing reviews of all applications submitted during the specified time frame.
- A.14. The Contractor shall coordinate the recertification process for sites, including receipt, management and conducting of the desktop review for recertification of applications. Contractor shall notify applicants and the State of recertification in writing. Contractor shall also notify in writing applicants that are not recertified of outstanding issues.
- A.15. The Contractor shall provide to the State a list of sites that are re-certified and a narrative report for applicants that are not recertified, outlining reasons for denial of certification.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning April 13, 2012, and ending on April 13, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Three Hundred Ninety-Nine Dollars (\$1,399,000). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.



- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment) April 13, 2012-April 13, 2015
Design/Development of Tennessee Premier Sites Program (A.2.)	\$ 20,000 / per design
Design/Development of marketing campaign for Program (A.3.)	\$ 6,000 / per campaign
Design/Develop integration plan for previously certified sites into program (A.4.)	\$ 5,000 / per design
Review of applications (including desktop review) submitted for participation in program (A.6., A.7.) Stage 1 Review Stage 2 Review Total	\$2,500/ per Stage 1 Review \$3,000/ per Stage 2 Review \$ 5,500 Total Maximum / per application
Site visit/review (A.8., A.9.)	\$5,500 / per site visited/reviewed
Coordination of Site Re-certification Process (A.14., A.15.)	\$ 1,250 / per site
Site Re-evaluation/ Desktop review (as needed) (A.10.)	\$ 2,500 / per re-evaluation
Report detailing findings from applications review at end of certification round (A.13.)	\$ 3,000 / per report
Report of applicants whose sites are not recertified (A.15.)	\$ 1,000 / per report

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

ECD Budget/Fiscal Office



312 Rosa L. Parks Avenue, 9th floor
Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of Economic and Community Development, Business Development Division
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.



- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if



the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon



reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.



- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Brigitte Tubbs-Jones, Attorney/ Contracts Unit Director
Department of Economic and Community Development
312 Rosa L. Parks Avenue, 9th floor, Nashville, TN 37243
Brigitte.tubbs-jones@tn.gov
Telephone # 615-253-2195
FAX # 615-532-5139

The Contractor:

Michelle Comerford, Managing Director
Austin Consulting
6095 Parkland Blvd., Cleveland, Ohio 44124
michelle.comerford@theaustin.com
Telephone # 440-544-2682
FAX # 216-973-8872

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35,



Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or five hundred thousand dollars (\$500,000) per occurrence for employers' liability whichever is greater.
- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than five hundred thousand dollars (\$500,000) per occurrence.
- (4) Professional Malpractice Liability with a limit of not less than five hundred thousand dollars (\$500,000) per claim and one million dollars (\$1,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.



- E.7. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
 - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.
- E.9. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or



local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.10. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-33002-26412 (Attachment 6.2, B.15.) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

IN WITNESS WHEREOF,

AUSTIN BUILDING AND DESIGN DBA THE AUSTIN COMPANY:

04.10.2012

CONTRACTOR SIGNATURE

DATE

Mike Pierce, President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

4/11/2012

WILLIAM F. HAGERTY, COMMISSIONER

DATE



ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Austin Building and Design, Inc. DBA The Austin Company
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

MICHAEL G. PIERCE, PRESIDENT

PRINTED NAME AND TITLE OF SIGNATORY

Oct. 10. 2012

DATE OF ATTESTATION