



Department of Economic and Community Development

Randy Boyd,
Commissioner

Bill Haslam
Governor

To: Ms. Leni Chick, Contract and Audit Coordinator, Fiscal Review Committee
From: Department of Economic and Community Development
Date: February 21, 2017
Re: Request for approval of contract with the Austin Building and Design DBA The Austin Company

Please consider the enclosed request for a sole source contract with The Austin Company.

ECD has worked with the Austin Company over the last five years to develop the Select Tennessee program. Through this collaboration, ECD has certified 44 sites that have landed eight companies to date, creating 3,603 jobs and obtaining \$987.9 million in private investment.

ECD has a current contract with The Austin Company, which ends April 13, 2017. ECD procured the current contract through an RFP. The Austin Company was selected because it was the lowest bidder and its bid came under ECD's anticipated cost by approximately \$600,000.

The Austin Company has the expertise, software, and experience necessary to continue the momentum of the Select Tennessee program. If another contractor were hired, ECD would likely need to develop a new program, including a new application, new requirements for certification and recertification, and a new file management system. Additionally, ECD believes it is advantageous to use the same contractor to provide consistency to the communities undergoing recertification. This sole source contract continues the same scope as the current, expiring contract: site certification and recertification, site inspection, general consulting services, and administration of the Property Evaluation Program. This contract also updates the costs, which have not changed since the execution of the current, expiring contract. ECD anticipates increased participation in the Select Tennessee programs because of additional support for the programs through the Rural Economic Opportunity Act, the creation of the Site Development Grant program, and planned expansion of the Property Evaluation Program.

If you have any further questions, please contact Garrett E. Guillory at 615.532.6346 or Garrett.E.Guillory@tn.gov.

Attachments:

- Supplemental Documentation Required for Fiscal Review Committee (including amounts invoiced and paid under this contract)
- Sole Source Contract – draft (awaiting CPO approval)
- Proposed Summary Sheet & Contract—Draft

Supplemental Documentation Required for Fiscal Review Committee

Instructions:

1. No contract or contract amendment will be placed on the Committee's agenda for consideration until this form has been fully completed and all back-up documentation has been submitted.
2. Please complete each section as it applies to contracts or amendments that are being submitted. Sections denoted with an asterisk (*) are considered mandatory. This information should provide for background information on previous actions, if applicable, that have taken place on the contract document and associated amendments.
3. Add rows as necessary.
4. Submit this document, any attachments, your summary letter, and contract documentation for review by the Fiscal Review Committee.
5. **Contact Name:** Enter first and last name of person to contact with questions about this document or any of the submitted information.
6. **Contact Number:** Enter the telephone number (including extension) of the contact person listed.
7. **Presenter's Name(s):** Enter the name of each person who will be presenting this request to the Committee.
8. **Edison Contract Number:** Enter the contract number issued by the Edison system for this document.
9. **RFS Number:** Enter the Edison system issued RFS number for this document.
10. **Original Contract Begin Date:** Enter the beginning date of the original contract or the proposed effective date for new contracts.
11. **Current End Date:** Enter the end date that is currently reflected in Section B.1. of this contract (prior to amendment request if applicable) or the proposed end date for new contracts.
12. **Current Requested Amendment Number:** Enter the amendment number (*if applicable*) that is currently being requested.
13. **Proposed Amendment Effective Date:** Enter the proposed effective date for the requested amendment (*if applicable*).
14. **Department Submitting:** Enter the title of the agency/department submitting this request.
15. **Division:** Enter the title of the division within the agency/department submitting this request.
16. **Date Submitted:** Enter the date the request was sent to Fiscal Review Committee staff.

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17. **Submitted Within Sixty (60) days:** Enter yes or no in this blank if request was submitted within 60 days of the proposed effective date.
18. ***If not, explain:*** Provide detailed rationale as to why the deadline for submission was not met. ***Please Note:*** Late submissions will be rolled for one meeting and placed at the end of the agenda.
19. **Contract Vendor Name:** Enter the officially registered vendor name.
20. **Current or Proposed Maximum Liability:** Enter the dollar amount that is reflected on the most current fully executed contract summary sheet and in Section C. 1 or the proposed maximum liability for new contracts.
21. ***For commodities contracts, Estimated Total Spend:*** Enter the estimated total expenditures for the contract if the contract does not have a “maximum liability.”
22. **Current Contract Allocation by Fiscal Year:** Enter the amounts reflected on the contract summary sheet and the corresponding FY. If no contract summary sheet, enter the estimated spend per fiscal year. ****NOTE:** Total of all these columns must add up to maximum liability or estimated total spend as reported in Section 20 or 21 of this document.
23. **Current Total Expenditures by Fiscal Year:** By using Edison enter the amounts that have been expended from this contract by fiscal year breakdown. Not applicable (NA) for new contracts.
24. **Explanation of surplus funds:** If the allocation exceeded the expenditure in any fiscal year, enter the explanation of each surplus funding year.
25. **Explanation of carry forward:** If agency/department has carried forward the surplus funds, enter the authority (and provide copy with this document) of the carry forward provision.
26. **Explanation of overspending contract allocation:** If agency/department has overspent the contract allocation, enter the reasons for excess expenditures and how the funding was attained.
27. **Contract Funding Source/Amount:** Enter the dollar figure in the appropriate category to reflect the source of contract funding.
28. ***If Other, please define:*** If a dollar amount is placed in the “other” category, please define the source represented.
29. ***If Interdepartmental, please define:*** If a dollar amount is placed in the “interdepartmental” category, please define all sources represented.

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30. **Dates of All Previous Amendments or Revisions:** Enter all dates of prior amendment and revision (*including Contract Summary Sheet revisions*) in this section.
31. **Brief Description of Actions in Previous Amendment or Revision:** Enter a brief summary of prior amendments or revisions next to the appropriate effective date of the amendment (e.g. increased maximum liability, added scope items, revised contract summary sheet to reflect funding change, etc.).
32. **Method of Original Award:** Enter the procurement method of original award if requesting amendment (e.g. RFP, Special Request).
33. **Projected Cost Prior to Award and Cost Determination Used:** Enter the total cost projected by the department prior to award and explain how the agency arrived at the estimate of expected costs.
34. **For ALL new sole-source contracts, list the number of potential vendors that could provide the service or goods being procured and why those other options were not considered:** List the number of potential vendors that could provide this good or service; efforts to identify reasonable, competitive procurement alternatives; and how the Department determined a sole-source contract was in the best interest of the State.

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*Contact Name:	Garrett E. Guillory	*Contact Phone:	615.532.6346		
*Presenter's name(s):	Brooxie Carlton, Deputy Assistant Commissioner, Rural Development				
Edison Contract Number: <i>(if applicable)</i>	31378	RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	7/1/2017	*Current or Proposed End Date:	6/30/2018 (initial 1 year contract period with 4, 1 year options to renew.)		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Economic and Community Development				
*Division:	Rural Development				
*Date Submitted:	February 21, 2017				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Austin Building and Design, Inc. DBA The Austin Company				
*Current or Proposed Maximum Liability:	\$500,000.00				
*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:18	FY:	FY:	FY:	FY	FY
\$500,000	\$	\$	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:13	FY:14	FY:15	FY:16(thus far)	FY:17	FY
\$446,000	\$127,500	\$152,000	\$261,230	\$226,855	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			The Contractor performs consulting services for ECD on an as-needed basis. The amount of work the Contractor performs, and when that work is performed, is dependent entirely upon applications received by ECD under the Select Tennessee and other rural development programs. ECD's yearly allocations have attempted to estimate the volume of applications and work that might be needed during a particular year,		

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	but ECD may not receive the number of applications it forecasted in any given year. Payments are made based on milestones met.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	The budget under this contract is one unified budget (not separate budgets for separate fiscal years). Any unused funds in this contract are carried forward from year to year under ECD's general carryforward authority during the yearly budget reconciliation process.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
*Contract Funding Source/Amount:			
State:	\$500,000.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If "other" please define:			
If "interdepartmental" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Amendment 1 – October 2014	Revised scope of services and payment methodology to include additional activities under Select Tennessee program (re-certifications); extended end date of contract through April 13, 2017; no change in maximum liability.		
Amendment 2 – February 2016	Added ancillary services and corresponding payment methodology without amending the maximum liability.		
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?		The current contract, which ends April 13, 2017 was procured via RFP 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	

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	<p>expected cost at \$1.4 million for the three-year contract.</p>
<p>*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.</p>	<p>The current contract was procured via RFP in 2012. Three proposers bid on this contract. The winning bidder, Austin Building & Design was the lowest bidder.</p> <p>The Contractor has worked with ECD over the last 5 years to develop the Select Tennessee program. The Contractor has the expertise, software, and experience needed to continue the momentum of the program. If another contractor were hired, ECD would likely need to develop a new program, including a new application, new requirements for certification and recertification, and a new file management system. Additionally, using the same Contractor will provide consistency to the communities going through the recertification process.</p> <p>ECD has certified 44 sites that have landed 8 companies to date, created 3,603 jobs, and received \$978.9 million in private investment. This contract continues the same scope of the current, expiring contract: site certification and recertification, site inspection, general consulting services, and administration of the Property Evaluation Program. This contract also updates the costs, which have not changed since the execution of the current, expiring contract.</p>

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

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

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER	DATE
COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	
1. Contracting Agency	Economic and Community Development
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Garrett E. Guillory 615.532.6346, Garrett.E.Guillory@tn.gov
4. Brief Goods or Services Caption	Management of ECD's Select Tennessee Certified Sites program.
5. Description of the Goods or Services to be Acquired	Management of ECD's Select Tennessee Certified Sites Program and Property Evaluation Program.
6. Proposed Contractor	Austin Building and Design, Inc. DBA The Austin Company
7. Name & Address of the Contractor's principal owner(s) <i>– NOT required for a TN state education institution</i>	Kajima USA 3475 Piedmont Rd Ne, Ste 1600 Atlanta, Georgia 30305
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months (initial 1 year contract with 4, 1 year options to renew)

Request Tracking #	
9. Office for Information Resources Pre-Approval Endorsement Request – <i>information technology (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – <i>health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – <i>state employee training</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 500,000.00
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$500,000
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	ECD has worked with the Contractor over the last five years and understands the costs associated with running the program.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	The Contractor won the RFP for the current contract with a bid that was approximately \$600,000 less than ECD's anticipated costs.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	ECD has a previously established relationship with the Contractor. Prior to this request, ECD has a contract with the Contractor, which expires in April 2017.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	Select Tennessee site certification program was created and is administered by the Austin Company. In order for ECD to use this program, ECD needs a site certification firm.
19. Proposed contract impact on current State operations	Approval of this request will allow ECD to continue to run the Select Tennessee program efficiently and consistently.

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20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	<p>ECD has worked with the Contractor over the last five years to develop the Select Tennessee program. Through this collaboration, ECD has certified 44 sites that have landed eight companies to date, which have created 3,603 jobs and obtained \$987.9 million in private investment.</p> <p>The Contractor has the expertise, software, and experience necessary to continue the momentum of the Select Tennessee program. If another contractor were hired, ECD would likely need to develop a new program, including a new application, new requirements for certification and recertification, and a new file management system. It is advantageous to use the same contractor to provide consistency to the communities undergoing recertification. This sole source contract continues the same scope as the current, expiring contract: site certification and recertification, site inspection, general consulting services, and administration of the Property Evaluation Program.</p>
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	Select Tennessee site certification program was created and is administered by the Austin Company. In order for ECD to use this program, ECD needs a site certification firm.
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	ECD has a current contract with the Contractor, which the parties entered into in 2012. The Contractor is an experienced site selection consultant and has been in business for over 135 years.

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<p>27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</p>	<p><input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: RFP Name/Address: Austin Building and Design, Inc. DBA The Austin Company 6095 Parkland Blvd Cleveland, Ohio 44124</p>
<p>28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</p>	<p>ECD conducted an RFP in 2012. This Contractor won the RFP.</p> <p>If another contractor were hired, ECD would likely need to develop a new program, including a new application, new requirements for certification and recertification, and a new file management system. It is advantageous to use the same contractor to provide consistency to the communities undergoing recertification.</p>
<p>Signature Required for all Special Contract Requests</p>	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p>	
<p>Signature: _____</p>	<p>Date: _____</p>



CONTRACT

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

Begin Date July 1, 2017	End Date June 30, 2018	Agency Tracking # 33007-28517	Edison Record ID		
Contractor Legal Entity Name Austin Building and Design, Inc. DBA The Austin Company			Edison Vendor ID 150960		
Goods or Services Caption (one line only) Administration of the Tennessee Premier Sites					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
18	\$500,000.00				\$500,000.00
TOTAL:	\$500,000.00				\$500,000.00
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection		Describe the competitive selection process used			
<input checked="" type="checkbox"/> Other		Sole Source			
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.					
Speed Chart (optional)		Account Code (optional)			

**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 ("State") and Austin Building and Design, Inc. dba The Austin Company ("Contractor"), is for the provision of development of the Tennessee Premier Sites, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 150960

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall be responsible for receipt, management, and review of applications from communities interested in pursuing site certification. The Contractor shall ensure that the State staff contact has access to a digital version of the application and relevant files through the Basecamp software. The Contractor shall conduct a desktop review of each application to verify that the material submitted demonstrates that the site meets program requirements. The Contractor shall conduct a phone conference to review the application and deficiencies with the State staff person and applicant.
- A.4. The Contractor shall conduct a site visit with assigned State staff to inspect each site that passed the desktop review.
- A.5. Upon completion of the site visit and desktop review, the Contractor shall conduct an in-person conference with applicant and State staff to review the application and accompanying materials. This meeting may be held in coordination with the site visit. Only one (1) in-person meeting per site application is required.
- A.6. The Contractor shall notify applicants in person or via telephone if the determination is made after the site visit and desktop review that the site does not meet program requirements. The Contractor shall also provide applicant and the State with a written explanation outlining reasons the site did not pass certification test (final approval phase) through the Basecamp software. A subsequent site re-evaluation/desktop review may be scheduled as needed to reevaluate applicant's status.
- A.7. The Contractor shall notify in writing the applicant and the State of the Contractor's decision to certify the site in the program.
- A.8. 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.9. The Contractor shall coordinate the recertification process for sites, including receipt, management, and conducting of the desktop review for recertification of applications. The Contractor shall notify applicants and the State of recertification in writing. The Contractor shall also notify applicants that are not recertified of outstanding issues in writing.
- A.10. The Contractor shall provide to the State a list of sites that are recertified and a narrative report for applicants that are not recertified, outlining reasons for denial of certification.

- A.11. The Contractor shall in consultation with the State and at the request of the State prepare program materials specific to and necessary for the implementation of the industrial property evaluation program. 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.12. 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.13. 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.14. The Contractor shall be responsible for receipt, management, and review of applications from communities submitting properties (up to eight (8) sites or buildings total) for evaluation. 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.15. Based on the findings of the desktop review and in consultation with the State, the Contractor shall conduct a site visit with assigned State staff to evaluate the merit of the most promising properties (up to five (5) sites or buildings total) identified in the application. This shall be a 1-1.5 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.16. 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 short and long-term potential for investment of each property.
- A.17. The Contractor shall provide general consulting services as requested by the State for programs under the Rural Development division.
- A.18. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.19. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

B.1. This Contract shall be effective for the period beginning on July 1, 2017 (“Effective Date”) and ending on June 30, 2018, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to four (4) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Thousand Dollars and No/100 (\$500,000.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Review of applications (including desktop review) submitted for participation program (A.2.):	\$8,500 Total Maximum/per application based on amounts below:
• Basecamp Set-up	\$500/Basecamp Set-up
• Step 1 Review	\$3,000/ per Step 1 Review
• Step 2 Review	\$4,000/ per Step 2 Review
• Final Certification Letter	\$1,000/ per Final Certification Letter

Site visit/review (A.4., A.5.)	\$6,000/ per site visited/reviewed
Coordination of site recertification review process (A.9., A.10.)	\$3,000/ per site
Site re-evaluation/desktop review (as needed) (A.6.)	\$2,500/ re-evaluation
Report detailing findings from applications review at end of certification round (A.8.)	\$3,000/ per report
Report of applicants whose sites are not recertified (A.10.)	\$1,000/ per report
Pre-application review (A.12.)	\$500/ per community/application
Introduction/webinar (A.13.)	\$1,000/ per application
Application and desktop review (A.14.)	\$4,500/ per application
Site visit (A.15.)	\$5,500/ per application
Detailed findings and recommendations (A.16.)	\$5,000/ per application
General consulting services – community site visits/field investigation or other activities requiring travel (A.17.)	\$220/hour – senior professional \$190/hour – senior location consultants \$170/hour – location consultant \$140/hour – location analyst
General consulting services – all other activities not requiring travel (A.17.)	\$170/hour – senior professional \$140/hour – senior location consultants \$120/hour – location consultant \$90/hour – location analyst

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

ECD.Invoices@tn.gov

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following 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, Rural Development;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;

- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that 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 other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services 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 that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

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 that 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, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Brooxie Carlton, Assistant Commissioner of Rural Development
Department of Economic and Community Development
312 Rosa L. Parks Avenue, 26th Floor
Nashville, Tennessee 37243
Brooxie.Carlton@tn.gov
Telephone # 615.336.2481

The Contractor:

Frank Spano, Managing Director
The Austin Company
6095 Parkland Blvd.
Cleveland, Ohio 44124
Frank.Spano@theaustin.com
Telephone # 440.544.2687, C: 216.346.3699

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. 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 materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract

and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under 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 (6) 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 (6) months has been, an employee of the State of Tennessee.

D.9. 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, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 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 agrees 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 A, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor 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 Term, 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 under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from 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. Contractor's 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 Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended,

PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 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 under Tenn. Code Ann. §§ 8-35-101, *et seq.*, 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 Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. 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 offense 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, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.
- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. 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. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The

Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation. All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy. The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements. The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

a. Professional Liability Insurance

- i. Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
- ii. Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
- iii. If the Contract involves the provision of services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.

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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E. 2. 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, 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. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E.3. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

IN WITNESS WHEREOF,

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

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:

**TED TOWNSEND, CHIEF OPERATING OFFICER/INTERIM
COMMISSIONER**

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION 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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION