



2019-2020 Startup in Residence (STIR) Program: City of San Diego Contracting Approach

Through City Innovates' 2019-2020 Startup in Residence (STIR) program, the City of San Diego, at its discretion, and contingent upon defined funding availability, may elect to enter into a Memorandum of Agreement (MOA) and subsequent competitive (defined) procurement process with one or more selected Startups participating in the 2019-2020 STIR program.

All post-STIR program purchases made by the City of San Diego, including any purchases of civic technology products, services and/or licensing related to City Innovates' Startup in Residence (STIR) program, must comply with the City of San Diego's terms, conditions, and minimum qualifications.

The City of San Diego reserves the right in its sole discretion not to enter into any contract as a result of participation in the 2019-2020 STIR program.

Any MOA resulting from participation in the 2019-2020 STIR program will be made and entered into between the City of San Diego, a municipal corporation (hereinafter "City"), and the startup entity ("Contractor") (the City and Contractor may, from time to time, be referred to herein individually as the "Party" and together as the "Parties").

1. Purpose.

The purpose of this no cost MOA is to set forth the mutual understanding of the Parties with respect to participation in the Startups In Residence (STIR) San Diego civic innovation challenge, as described further in the Statement of Work attached as Exhibit A to this MOA.

2. General Term and Termination.

This MOA shall be effective upon the date last signed and executed by the duly authorized representatives of the Parties and the City Attorney ("Effective Date"). The term of the MOA shall be one year from the Effective Date. This MOA may be terminated prior to the end of the term without cause by either Party at any time, or upon the mutual, written agreement of the Parties at any time, or by the City, with cause, as defined as a material breach by Contractor of any material provision of the MOA.

3. Contractor's Responsibilities and Acknowledgments.

3.1 Contractor will, at no cost to the City, perform for the City the in-scope duties outlined in the Statement of Work ("SOW"), attached hereto as Exhibit A.

3.2 Contractor acknowledges and agrees that it will comply with, and cause its employees to comply with, the City's Administrative Regulation 90.64, Protection of Sensitive Information and Data.

4. The City's Responsibilities.

4.1 The City of San Diego's Chief Information Security Officer at the Department of Information Technology ("CISO"), or such other person designated by the City's Director of Information Technology, will have the authority to make project decisions and, to the extent legally permissible, to represent the City of San Diego in all matters related to this MOA as they may pertain to access and/or use of data collection of City based information technology resources. The City's CISO, or such other person designated by the City's Director of Information Technology, will provide a single point of contact for any review, approval, change, or decision request.

4.2 The City will also perform such responsibilities, if any, described in Exhibit A to this MOA.

5. Confidentiality Obligations.

[ADD AS NECESSARY]

6. Scope.

The scope of this MOA is described in the attached Exhibit A. Except as otherwise described in the attached Exhibit A, the scope of this MOA does not cover any development work, licensing, distribution, support, sales, or maintenance. Should the Parties decide to pursue such matter that is outside the scope of this MOA, the Parties may elect to enter into a development, license, distribution, or other appropriate written agreement(s), subject to the City's procurement rules and regulations and applicable laws.

7. Publicity.

The Parties hereby agree that no press release or other public announcements regarding this MOA or any agreements contemplated thereby shall be made without prior review and written agreement signed by a duly authorized representative of the other Party, and that this MOA is subject to the requirements of Council Policy 000-41 regarding Product Endorsement.

8. Limitation of Liability.

EXCEPT AS OTHERWISE PROVIDED FOR HEREIN, UNDER NO CIRCUMSTANCES AND UNDER NO THEORY OF LIABILITY WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHICH INCLUDE BUT ARE NOT LIMITED TO: COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, LOST PROFITS, LOSS OF BUSINESS ADVANTAGE, LOSS OF

GOOD WILL, LOSS OF REVENUE, LOST SAVINGS, BUSINESS INTERRUPTION, DELAYS IN DELIVERY OR INABILITY TO USE ANY PRODUCTS OR SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Governing Law.

This MOA shall be controlled by and construed under the laws of the State of California and the United States without giving effect to any conflicts of laws principles that would result in the application of the laws of a different jurisdiction, and the state courts of the State of California for the County of San Diego or the United States District Court for the Southern District of California shall have exclusive jurisdiction over any claim arising under this MOA. Notwithstanding the foregoing, either Party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such Party's intellectual property or proprietary rights.

10. Notice.

All notices, demands or other communications required by this MOA shall be made in writing and shall be delivered personally, or sent by certified mail, return receipt requested, postage pre-paid. Every notice shall be addressed to the party to whom they are directed at the following addresses, or at such other addresses as may be designated by notice from such party:

To City:

Jacques Chirazi, Business Development Officer
City of San Diego Economic Development Department
Civic Center Plaza
1200 3rd Avenue, suite 1400 San Diego, CA 92101
Phone: (619) 236-6326
email: jchirazi@sandiego.gov

To Contractor:

Any notice, demand or other communication made solely by mail in the manner prescribed in this paragraph shall be deemed to have been given and to be effective upon delivery.

11. Post MOA Contract Opportunity.

The Parties reserve the right to enter into a separate, exclusive contract to provide additional services and/or to purchase/lease any product technology resulting from the completion of the Startups In Residence (STIR) San Diego civic innovation challenge process. Such subsequent contract between the Parties may be executed via a competitive (defined) procurement pathway, determined acceptable by the City of San Diego.

Per approval of a subsequent exclusive contractual process, Contractor shall not begin any work until it has: (a) obtained, and upon the City's request provided to the City, insurance certificates and endorsements as may be required by the City's Purchasing & Contracting Department, Risk Management Department, Human Resources Department and/or Information Technology Department.

12. General Provisions.

12.1 Amendments. Either party may request changes to this MOA. Any changes, modifications, revisions or amendments to this MOA which are mutually agreed upon by and between the Parties to this MOA shall be incorporated by written instrument and will become effective when executed and signed by all Parties and the San Diego City Attorney.

12.2 Non-Discrimination. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors, if any, comply with this program. Nothing in this section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

12.3 ADA Certification. Contractor hereby certifies that it agrees to comply with the City's Americans with Disabilities Act compliance requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this MOA by this reference.