

CITY OF AUBURN AGREEMENT FOR SERVICES

THIS AGREEMENT made and entered into on this ____ day of _____, 2019, by and between the **City of Auburn**, a municipal corporation of the State of Washington, (the “City”) and **Racing to Equity Consulting Group**, (the “Consultant”).

RECITALS:

1. The City is in need of specialized and qualified racial equity training to provide professional development opportunities and racial equity-to-policy development.
2. The City wants to hire the Consultant to provide these services in connection with the City’s work.
3. The Consultant is qualified and able to provide services in connection with the City’s needs for this work, and is willing and agreeable to provide the services on the terms and conditions in this Agreement.

AGREEMENT:

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Scope of Services

The Consultant agrees to perform in a good and professional manner the tasks described in Exhibit “A.” The Consultant shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement, to have entered into any partnership, joint venture, employment, or other relationship with the City.

2. Additional Services

If additional services with respect to related work are required beyond those specified in the Scope of Work, and not included in the compensation listed in this Agreement, the parties will amend this Agreement before the Consultant performs the additional services.

3. Consultant’s Representations

The Consultant represents and warrants that it has all necessary licenses and certifications to perform the services provided for in this Agreement, and is qualified to perform those services.

4. Acceptable Standards

The Consultant shall be responsible to provide, in connection with the services contemplated in this Agreement, work products and services of a quality and professional standard that meets generally recognized industry standards for similar work products and services.

5. Compensation

As compensation for the Consultant's performance of the services provided for in this Agreement, the City shall pay the Consultant the fees and costs specified on Exhibit "B." The Consultant shall submit to the City an invoice or statement of time spent on tasks included in the scope of work. The City, upon acceptance of the invoice or statement, shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to the Consultant, subject to any conditions or provisions in this Agreement or Amendment. The not-to-exceed amounts for this agreement are \$99,000.00 for 2019; \$180,000.00 for 2020; and \$131,000.00 for 2021.

6. Time for Performance and Term of Agreement

The Consultant shall not begin any work under this Agreement until authorized in writing by the City. The Consultant shall perform the services in accordance with the direction and scheduling provided on Exhibit "A" unless otherwise agreed to in writing by the parties. All work under this Agreement shall be completed by no later than December 31, 2021, and in accordance with the deadlines set forth in the Scope of Services.

7. Ownership and Use of Documents

All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Consultant as part of their performance under this Agreement will be owned by and become the property of the City, and may be used by the City for any purpose beneficial to the City.

8. Records Inspection and Audit

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Agreement.

9. Continuation of Performance

In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Consultant agrees that, notwithstanding such dispute or conflict, the Consultant shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities. Nothing in this section is intended to restrict or otherwise limit the Consultant's rights of termination set forth elsewhere in this Agreement.

10. Notices

Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

City of Auburn

Human Resources Manager

25 West Main Street

Auburn, WA 98001-4998

Phone: 253-931-3040

Fax: 253-288-4305

E-mail: humanresources@auburnwa.gov

Racing to Equity

Chief Equity Officer

10041 California Ave SW

Seattle, WA 98146-1071

Phone: 206-930-6436

Email: bernardo@r2esj.org

11. Notices

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above.

Either party may change his, her or its address by giving notice in writing to the other party.

12. Insurance

The Consultant will procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the Consultant, or the Consultant's agents, representatives, employees, or subcontractors.

The Consultant will obtain insurance of the types described below:

A. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be as least as broad as Insurance Services Office (ISO) form CA 00 01. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

B. Commercial General Liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City will be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26. Commercial General Liability insurance will be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

C. Professional Liability insurance appropriate to the Consultant's profession. Professional Liability insurance will be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

D. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

The Consultant's insurance coverage will be primary insurance. Any insurance, self-insurance, or insurance pool coverage maintained by the City will be excess of the Consultant's insurance and will not contribute to it.

The Consultant will provide the City and all Additional Insureds for this work with written notice of any policy cancellation within five business days of their receipt of such notice.

Insurance is to be placed with an authorized insurer in Washington State. The insurer must have a current A.M. Best rating of not less than A:VII.

Consultant will furnish the City with certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. The City reserves the right to require that complete, certified copies of all required insurance policies be submitted to the City at any time. The City will pay no progress payments until the Consultant has fully complied with this section.

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

13. Indemnification/Hold Harmless

The Consultant will defend, indemnify and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

If a court of competent jurisdiction determines that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

14. Assignment

Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

15. Nondiscrimination

The Consultant may not discriminate regarding any services or activities to which this Agreement may apply directly or through contractual, hiring, or other arrangements on the grounds of race,

color, creed, religion, national origin, sex, age, or where there is the presence of any sensory, mental or physical handicap.

16. Amendment, Modification or Waiver

No amendment, modification, or waiver of any condition, provision, or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification, or waiver. Any waiver by any party of any default of the other party shall not affect or impair any right arising from any subsequent default.

17. Non-Availability of Funds

Every obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the performance of that obligation. If funds are not allocated and available for the continuance of this Agreement, then this Agreement may be terminated by either party at the end of the period for which funds are available. No liability will accrue to either party if this provision is exercised, and the City will not be obligated or liable for any future payments or damages as a result of termination under this Section.

18. Termination for Cause

Either party may terminate this Agreement at any time while the Agreement is in effect upon thirty (30) days' prior written notice to the other party, if such other party breaches any material term or condition of this Agreement and fails to cure such breach within the thirty (30) day cure period. In the event of termination, the City shall only be obligated to pay Consultant for services actually rendered up to the date of termination.

19. Termination for Convenience

Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated by either party for convenience by delivery of a Notice of Termination with the effective date. In the event of termination pursuant to this Section 19, the City shall only be obligated to pay Consultant for services actually rendered up to the date of termination.

20. Parties in Interest

This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

21. Costs to Prevailing Party

In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.

22. Applicable Law

This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be

in King County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Consultant of the services.

23. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

24. Severable Provisions

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

25. Entire Agreement

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

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26. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

CITY OF AUBURN

**RACING TO EQUITY
CONSULTING GROUP**

Nancy Backus, Mayor

Signature

Name: _____

Title: _____

Federal Tax ID No: _____

Approved as to form:

Steve Gross, City Attorney

Exhibit A
Scope of Services

Racing To Equity will provide the following services:

- Development of Auburn’s racial equity policies and equity tools
- Racial Equity Adaptive Leadership (REAL) Training for management teams, as well as employees
- Strategic racial equity executive advising for Mayor, Directors, and leadership teams
- Research, analysis, and metric development for Auburn’s program
- Development of City’s “Racial Equity Team” including training and strategic advising during the first two years of the team’s creation
- Facilitating Auburn’s “Racial Affinity Caucusing” groups
- Strategic advising for City leaders on community engagement measures
- “Train-the-trainer” program development to support internal sustainability of the equity and implicit bias program

Exhibit B
Payment for Work

As compensation for the Consultant's performance of the services provided for in this Agreement, the City shall pay the Consultant the following:

- Compensation for 2019 is not-to-exceed \$99,000.00
- Compensation for 2020 is not-to-exceed \$180,000.00
- Compensation for 2021 is not-to-exceed \$131,000.00

The Consultant will submit to the City an invoice or statement of time spent on tasks included in the scope of services within thirty (30) days, and the City upon acceptance of the invoice or statement will process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and will remit payment to the Consultant, subject to any conditions or provisions in this Agreement.