E. **RELEASE**

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

F. **INDEMNIFICATION**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY INCLUDING ANY LOSS, DAMAGE, CLAIM, COST, EXPENSE AND LIABILITY, INCLUDING ALL INDIRECT, INCIDENTAL AND CONSEQUENTIAL DAMAGES, WHICH MAY BE INCURRED BY OR ASSERTED AGAINST CITY ARISING OUT OR RELELATED TO CONTRACTOR'S BREACH OF CONTRACT, REGARDLESS OF WHETHER THE DAMAGES ARE ACTUAL, INCIDENTAL,

CONSEQUENTIAL OR PUNITIVE, SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

(1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE, INTENTIONAL ACTS OR OMISSIONS OR BREACH OF CONTRACT;

(2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND

(3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO $500,000 PER OCCURRENCE,EXCEPT FOR DIRECT AND/OR CONSEQUENTIAL DAMAGES RESULTING FORM BREACH OF CONTRACT, WHICH SHALL BE LIMITED TO ALL INDIRECT,

INCIDENTAL AND CONSEQUENTIAL DAMAGES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

SUBCONTRACTOR'S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS REALESE AND INDEMNITY OF THE CITY.

G. **INDEMNIFICATION PROCEDURES**

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

(a) a description of the indemnification event in reasonable detail,

(b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City.

Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (I) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

H. Insurance

Agency shall maintain in effect certain insurance coverage, which is described as follows:

(1) Risks and Limits of Liability. Agency shall maintain the following coverages and limits of liability:

(Coverage)	(Limit of Liability)
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident $500,000 (each accident) Bodily Injury by Disease $500,000 (policy limit) Bodily Injury by Disease $500,000 (each employee)

Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations	Bodily Injury and Property Damage, Combined Limits of $500,000 each Occurrence and $1,000,000 aggregate
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	$1,000,000 combined single limit

Defense costs are excluded from the face amount of the policy.
Aggregate Limits are per 12-month policy period
unless otherwise indicated.

(2) Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Agency from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.

(3) Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.

(4) Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.

(5) Deductibles. Agency shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

(6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Director 30 days' advance written notice. Agency shall give written notice to the Director within five days of the date on which total claims by any party against Agency reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

(7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

(8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

(9) Liability for Premium. Agency shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

(10) Subcontractors. Agency shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the

amount of the subcontract, but in no case less than $500,000 per occurrence. Agency shall provide copies of insurance certificates to the Director.

(11) Proof of Insurance.

(a) On the Effective Date and at any time during the Term of this Agreement, Agency shall furnish the Director with Certificates of Insurance, along with an Affidavit from Agency confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Director, Contractor shall furnish the City with certified copies of Agency's actual insurance policies.

(b) Agency shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Agency does not comply with this requirement, the Director, at his or her sole discretion, may

(1) immediately suspend Agency from any further performance under this Agreement and begin procedures to terminate for default, or

(2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Agency under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(12) Commercial Crime Policy or Fidelity Bond.

The Agency shall furnish City either a Commercial Crime Insurance Policy or Fidelity Bond as follows:

(a) Commercial Crime Policy for ONE HUNDRED THOUSAND AND

NO/100 Dollars ($100,000.00) to the City that shall remain in effect throughout this Agreement. The Policy shall name the City of Houston as a loss payee as its interest may appear and the Agency as the party responsible for payment of any and all deductible amounts. The policy must be approved by the City Attorney. Upon Agency's execution of this Agreement Agency shall deliver the original policy to the Director.

(b) Fidelity Bond covering employee dishonesty for ONE HUNDRED THOUSAND AND NO/Dollars ($100,000.00) to the City that shall remain in effect throughout this Agreement. The bond shall include a “Loss Payable Endorsement” naming the City of Houston as obligee and the Agency as the party responsible for payment of any and all deductible amounts. The bond must be approved by the City Attorney and be issued by a corporate surety. Upon Agency’s execution of this Agreement, Agency shall deliver the original bond to the Director.

(13) Other Insurance. If requested by the Director, Agency shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Agency's operations under this Agreement.