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2014-0056

**AGREEMENT FOR
PROFESSIONAL INFORMATION TECHNOLOGY
CYBER SECURITY CONSULTING SERVICES**

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

1. PREAMBLE

1.1 Addresses of the Parties

1. **THIS AGREEMENT FOR PROFESSIONAL INFORMATION TECHNOLOGY CONSULTING SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city, and **VIRTUO GROUP CORPORATION** ("Contractor" or "Virtuo Group"), a Texas corporation.
2. The initial addresses of the Parties, which one Party may change by giving written notice to the other Party, are as follows:

City

City of Houston
P.O. Box 1562
Houston, Texas 77058
Attention: Chief Information Officer or
Designee; or, where appropriate, Director of
Public Works and Engineering Department or
Designee

City of Houston
Director, Houston Airport System or Designee
P.O. Box 60106
Houston, Texas 77205-0106

Contractor

Virtuo Group Corporation
6700 Woodlands Parkway, Suite 230-322
The Woodlands, Texas 77382
Attention: Theresa Blackwell

3. The Parties agree as follows:

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1.3 Parts Incorporated

The above-described sections and exhibits are incorporated into this Agreement.

1.4 Controlling Parts

If a conflict among the sections or exhibits arises, the sections control over the exhibits.

[Signature page follows.]

1.5. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):
WITNESS (if not corporation):

By: _____
Name: _____
Title: _____

VIRTUO GROUP CORPORATION


By: _____
Name: Theresa G. Blackwell
Title: President
Federal Tax ID No.: 200075891

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

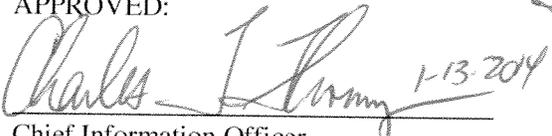


City Secretary



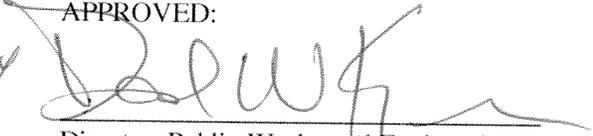
Mayor 

APPROVED:

 1-13-2014

Chief Information Officer
Houston Information Technology Services

APPROVED:



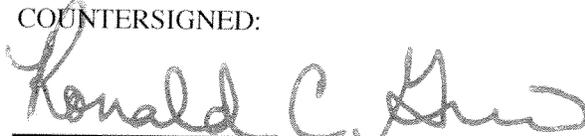
Director, Public Works and Engineering
Department

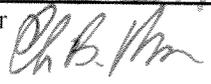
APPROVED:



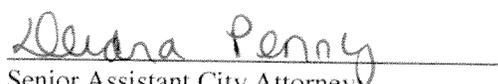
Director, Houston Airport System

COUNTERSIGNED:



City Controller 

APPROVED AS TO FORM:



Senior Assistant City Attorney
L.D. File No.: 0451300042001

Date Countersigned:

1-30-14

2. DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:

1. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
2. "Base Rate(s)" means the maximum, all-inclusive hourly base rates set forth in Exhibit B for each job category of personnel providing services under this Agreement or an LOA.
3. "Business Days" means all days that are not on a Saturday, Sunday, or Recognized Holidays. In the event that any of the deadlines set forth in this Agreement end on a Saturday, Sunday, or Recognized Holidays, the deadline shall automatically be extended to the next business day which is not a Saturday, Sunday, or Recognized Holidays.
4. "City" is defined in the preamble of this Agreement and includes its successors and assigns.
5. "City Attorney" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
6. "City Personnel" means all employees of the City of Houston, but not elected officials.
7. "Chief Information Officer" or "CIO" means the Director of Houston Information Technology Services, or the person he or she designates to perform one or more of the CIO's duties under this Agreement.
8. "Chief Information Security Officer" or "CISO" means the City's Chief Information Security Officer, or the person he or she designates to perform one or more of the CISO's duties under this Agreement.
9. "COH Director" means any one of the following individuals: CIO, PWE Director, HAS Director, or other Director of a City department authorized by the CIO to issue LOAs under this Agreement ("Authorized Director").
10. "COH Directors" means all of the following individuals collectively: CIO, PWE Director, HAS Director, and other Authorized Directors.
11. "Contractor" or "Virtuo Group" is defined in the preamble of this Agreement and includes its successors and assigns.
12. "Countersignature Date" means the date the City Controller countersigns this Agreement. The Countersignature Date is the Effective Date.
13. "Documents" means any materials, items, reports, charts, analyses, maps, letters,

tabulations, exhibits, notes, plans, computer programs, operating manuals, models, photographs, databases, policies, procedures, guides, manuals, specifications, the original tracings of all drawings and plans, inventions, underlying data, and all other work products obtained by, modified by, created by, or prepared by Contractor pursuant to this Agreement, an LOA, or a Statement of Work in connection with this Agreement or an LOA.

14. "HAS Director" means the Director of the Houston Airport System, or any person he or she designates to perform one or more of the HAS Director's duties under this Agreement.
15. "Handling COH Director" means the COH Director who is solely or primarily handling or managing the particular Project or LOA. Unless the CIO otherwise notifies Contractor in writing, the Handling COH Director for each Project or LOA shall be the COH Director who signs the LOA.
16. "FAA" means the Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.
17. "Fixed Lump Sum" means the method of payment based upon Contractor's estimate of allowable costs such as salary, overhead, time, materials, travel expenses, and Reimbursable Expenses, plus a reasonable margin of profit, all expressed as a single lump sum.
18. "HAS" means the Houston Airport System.
19. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.
20. "HITECH" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, codified as Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, as amended from time to time.
21. "HITS" means the City's department of Houston Information Technology Services.
22. "HL7" means the Health Level Seven International organization, which develops approved and accredited standards and frameworks relating to the exchange, integration, sharing, and retrieval of electronic health information.
23. "Include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation."
24. "Laws" means, collectively, laws, statutes, ordinances, rules, regulations and other types of local, state, national and foreign government authority (including without limitation the laws and regulations or standards governing the goods or services provided under this Agreement, including applicable Laws relating to data privacy, data protection, PCI

Security Standards, HIPAA, HITECH, HL7, Red Flag Rules and Guidelines, Texas Public Information Act, false advertising, Federal Information Security Management Act of 2002 (FISMA) codified at 44 U.S.C. Section 3541 et seq.; and as any such Laws as they may be amended or revised from time to time.

25. "Letter of Authorization" or "LOA" means the fully executed document a COH Director sends to Contractor authorizing certain services to be performed in accordance with this Agreement. Unless otherwise specified in this Agreement, all references to LOA in this Agreement shall mean an LOA issued in accordance with and pursuant to this Agreement.
26. "Parties" means all the entities set out in the Preamble who are bound by this Agreement.
27. "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, but Person does not include the City.
28. "Project" means the services to be performed as authorized by individual Letters of Authorization in accordance with this Agreement. The work described in each Letter of Authorization is an individual Project.
29. "PWE" means the City of Houston Public Works and Engineering Department.
30. "PWE Director" means the Director of the Houston Public Works and Engineering Department, or any person he or she designates to perform one or more of the PWE Director's duties under this Agreement.
31. "Not to Exceed" or "NTE" means the maximum amount for which Contractor has agreed to provide Services in connection with a Project or LOA.
32. "Recognized Holidays" means City of Houston Official holidays (which holidays are determined each year by City Council) and holidays that Virtuo Group recognizes and so designates in a writing provided to the COH Directors. As of the Countersignature Date, Virtuo Group recognizes all of the following holidays: New Year's Day, Birthday of Martin Luther King, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, day following Thanksgiving, Christmas Day, and the day following Christmas.
33. "Red Flag Rules and Guidelines" means the rules and guidelines on identity theft implementing sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003, codified at 16 C.F.R. Section 681.1 and in C.F.R.'s Appendix A to Part 681, as amended from time to time.
34. "Reimbursable Expenses" means (i) identifiable communication expenses including ordinary and reasonable costs of copying and printing (other than for Contractor's

internal use) postage, message and delivery services other than for general correspondence, long-distance telephone charges incurred by Contractor in the course of its performance under this Agreement or an LOA; (ii) upon prior written approval of the Director, the ordinary and reasonable costs of travel to and from the City of Houston by Contractor's employees or subcontractors, not to exceed the amount established under the City's then-current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the Project, and reservations are made as far in advance as feasible; and (iii) sales tax related to Contractor's services under this Agreement which it is legally required to pay.

35. "Subcontract Cost" means the ordinary and reasonable cost of subcontracts made by the Contractor and approved in writing and in advance by the Handling COH Director (except in exigent circumstances when approval may be verbal, and later approved in writing) for services, including IT staff augmentation, rendered under this Agreement; except that Subcontract Costs excludes the Base Rates set forth in Exhibit B. Ordinary and reasonable costs of subcontracts shall not exceed 10% of the actual cost of the subcontract. Ordinary and reasonable costs of subcontracts shall include all of the following: general and administrative costs of Contractor associated with such subcontracts, Contractor's overhead costs, and any profit for Contractor.
36. "Subject Matter Expertise" or "SMEs" means senior level subject matter experts with expertise in the subject matter about which they are asked to or are providing services under this Agreement or an LOA.
37. "Staffing Schedule" means Contractor's organizational structure, Subject Matter Experts, and staffing assignments for key positions in accordance with this Agreement and for the Projects as shown in Exhibit B.
38. "Texas Public Information Act" or "Open Records Act" or "TPIA" are used interchangeably and mean the Texas law that gives the public the right to request access to government information, codified at Chapter 552 of the Texas Administrative Code as amended from time to time.
39. "TSA" means the Transportation Security Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.
40. "Time and Materials Based" means the method of payment based upon the Base Rates set forth in Exhibit B, which rates are multiplied by the hours worked on the particular Project by each employee in each labor category set forth in Exhibit B plus Reimbursable Expenses.
41. "Works" shall have the meaning defined in section 3.5.

42. "Writing" or "written" shall mean a written communication from one party to the other, including an electronic communication or e-mail, provided that the Handling COH Director has agreed in writing to accept notices via a specific mode of electronic communication or e-mail.

3. DUTIES OF CONTRACTOR

3.1 Scope of Services

1. Services in General

For and in consideration of the payment specified in this Agreement, Contractor shall provide all labor, material and supervision necessary to perform the consulting services as set out in this Agreement, the attached Scope of Services, and as specifically described in individual LOAs. Contractor shall also provide IT staff augmentation services as set out in the attached Scope of Services, and the City may elect to employ staff that Contractor has provided on a Project in accordance with the City's employment policies and procedures and subject to Contractor's "Try and Hire" Program, as set out in Exhibit B-1. Time is of the essence in the performance of this Agreement and the individual LOAs.

2. Services in Particular

1. Contractor shall perform the following services (collectively "Services"):
 1. Provide services in the following task areas as detailed in Exhibit A, Scope of Services and individual LOAs: Risk Assessment and Technology Planning, Security Policy and Handbook Development, Tool Evaluation Selection and Implementation Support, Ongoing Service Monitoring and Support of Security Initiatives, Program/Project Management services, IT Staff Augmentation, and related information technology cyber security professional services;
 2. Coordinate its performance with the CIO, CISO, Handling COH Director, City consultants, and all governmental entities having jurisdiction over the Project;
 3. Upon the Handling COH Director's request, make and submit periodic written reports, meeting notes, and recommendations to the Handling COH Director with respect to conditions, transactions, situations or circumstances encountered by the Contractor relating to its Services under this Agreement;
 4. If requested by the Handling COH Director, attend meetings with representatives from various City departments; other Persons acting on

behalf of or on the direction of the City or the Handling COH Director; local, state and federal agencies; and contractors.

5. If requested by the Handling COH Director, provide a copy of Documents and Works prepared by it or made available to it under this Agreement;
6. Verify the professional quality, technical accuracy and coordination of all Documents, Works, and services;
7. Correct or revise all errors and deficiencies in Documents, Works, and Services as directed by the Handling COH Director. No compensation will be paid for corrections or revisions resulting from errors or omissions made by Contractor.
8. Provide other services requested, in writing, by the Handling COH Director to the extent the services are agreed upon by Contractor, for which funds are available, and the requested services are consistent with this Agreement or any LOA.

3. Letters of Authorization

1. Subject to the terms and conditions of this Agreement, a Handling COH Director may execute or renew an LOA between the Handling COH Director and Contractor, provided that the LOA is signed by the CIO. In response to an LOA issued by any COH Director, Contractor shall perform IT cyber security professional services in accordance with this Agreement and each LOA.
2. In the event that the Handling COH Director seeks to obtain Services from Contractor, the Handling COH Director must request a proposal from Contractor for such Services. Contractor's proposal for all Fixed Lump Sum Projects shall include Contractor's lump sum price quote and Contractor's estimated breakdown of the component expenses. The estimate accompanying the Fixed Lump Sum proposal must detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; Reimbursable Costs; and Contractor's anticipated profit.

Contractor shall negotiate the LOA in good faith. After negotiations with Contractor have been completed for the requested Services, the agreed upon proposal and extent of each assigned Project shall be defined in an LOA in accordance with this Agreement. The method of payment permitted under each LOA shall be subject to the Parties mutual agreement and shall be one of the following payment methods: (a) Time and Materials Based, or (b) a Fixed Lump Sum with a Not To Exceed amount, which Fixed Lump Sum includes all time, materials, Reimbursable Expenses, and travel expenses.

All Time and Materials Based Projects shall include a Not To Exceed Amount,

which NTE shall not be exceeded unless the Handling COH Director otherwise agrees in writing, which approval shall be subject to appropriations by City Council.

3. Contractor shall perform diligently all assigned Project tasks and deliverables and meet the Project delivery schedules and milestones established in each LOA. Contractor shall not begin work until it receives an LOA signed by Contractor, the CIO, and the Handling COH Director. Contractor shall commence services on the date specified in the fully executed LOA. If Contractor does not have the resources available to perform the Services within the timeline requested by the Handling COH Director, Contractor shall promptly inform the Handling COH Director, so additional sub-contracting resources can be allocated if possible.
4. LOAs must set forth the following:
 1. Agreement number and Contractor's name, address, and telephone number;
 2. LOA number and date;
 3. A Scope of Services specifically identifying the services to be performed;
 4. Time of performance (e.g. the LOA term, the LOA expiration date, or period of performance for the individual LOA or each Project contemplated under the LOA);
 5. Place of performance;
 6. Identity of Contractor's key personnel assigned to each LOA and subcontractors who will perform services (after having secured the Handling COH Director's written approval of such subcontractor(s));
 7. A breakout to include identification, by line item, of the required position classifications set forth in Exhibit B to perform the services, the estimated hours, and the hourly Base Rates as set forth in Exhibit B and as defined in this Agreement, if an hourly based agreement;
 8. Key City Personnel, such as the Project Manager for the LOA;
 9. Identification of the estimated amount of services to be performed by M/WBE participant(s). This M/WBE identification should include: M/WBE participant(s) to whom the activities for specified work plan and/or associated activities will be delegated, along with the stated percentage of such M/WBE services in relation to the total amount proposed under such LOA. (Contractor will make reasonable efforts to

adhere to the levels set forth in this Agreement to the extent M/WBE participants are available for the services or activities associated with the LOA or each Project contemplated in the LOA.);

10. Method of payment, either a Fixed Lump Sum or Time and Materials Based, both of which shall include a total Not to Exceed amount;
 11. Balance of funds remaining in the Agreement by line item for each of the following departments: PWE, HAS, and HITS;
 12. A breakout of all Reimbursable Expenses, by line item, to include the estimated quantity of the item required, the unit cost, and a Not to Exceed dollar amount;
 13. Subcontract Costs that shall include all “ordinary and reasonable costs,” and Contractor’s proposed general and administrative costs for subcontracting services under the LOA. Contractor shall submit all of the documentation required by this paragraph to the Handling COH Director for his review prior to the final execution of the LOA. Failing written approval by the Handling COH Director, Contractor shall timely resubmit such proposed Subcontract Costs to the Handling COH Director for his written approval.
 14. Frequency of payment and proposed payment schedule, such as monthly or upon completion of a deliverable, Milestone, or the entire Project;
 15. Submittal requirements, including schedules and deliverables, (i.e., reports, analyses statements, etc.);
 16. Provisions addressing the Handling COH Director’s processes and criteria for accepting and rejecting individual deliverables and milestones; hold backs, if any; and final acceptance of deliverables and invoiced services; and
 17. Any other information necessary to identify and perform the services or as may otherwise be required by the Handling COH Director.
5. Upon written request by Contractor, the Handling COH Director, in his sole discretion, may grant extensions of time for completion of services, a Project, or items required under a Project or LOA, such as an extension for delays caused by the City or other agencies or Persons with whom the work must be coordinated and for other reasonable causes over which Contractor has no control. The Handling COH Director’s approval of the extension of time must be in writing. Each LOA continues in effect until all requirements have been met and a written acceptance of the services performed has been made by the Handling COH Director or until Contractor receives written notification from the Handling COH

Director to discontinue services.

6. In the event of a conflict between this Agreement and an LOA, this Agreement shall control.

3.2 Contractor's Personnel

1. Contractor shall make citizen and City Personnel satisfaction a priority in providing services under this Agreement. Contractor shall train its employees and personnel to be customer service-oriented and to positively and politely interact with citizens and City Personnel when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Handling COH Director's opinion, Contractor is not interacting in a positive and polite manner with citizens or City Personnel, he or she shall direct Contractor to take all remedial steps to conform to these standards.
2. Contractor shall replace any of its personnel or subcontractors assigned to a Project whose work product is deemed unsatisfactory by the Handling COH Director.

3.3 Coordinate Performance

Contractor shall coordinate its performance with the Handling COH Director and other Persons that the Handling COH Director designates. Contractor shall promptly inform the Handling COH Director and other Person(s) of all significant events relating to the performance of this Agreement.

3.4 Payment of Subcontractors

Contractor shall make timely payments to all persons and entities that Contractor has hired to supply labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

3.5 Use of Work Products

1. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement or under or in connection with any LOA (collectively "Works").
2. The Authors shall not claim or exercise any Proprietary Rights related to the Works unless agreed and specified in the LOA under which the Works are developed. If requested by the Handling COH Director or the City Attorney, Contractor shall place a conspicuous notation on any Works, which states that the City owns the Proprietary

Rights.

3. Contractor shall execute all documents required by the Handling COH Director or City Attorney to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, subject to the availability of funds. On termination or expiration of this Agreement, or if requested by the Handling COH Director or the City Attorney, Contractor shall deliver all Works to the requesting Handling COH Director or the City Attorney. Contractor shall obtain written agreements from the Authors that bind the Authors to the terms in this Section 3.5.
4. All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, shall be deemed to be "works made for hire" under 17 U.S.C. §§101 and 201, as amended from time to time. Contractor acknowledges and agrees that all Information, Documents, and Works performed under or pursuant to an LOA in connection with this Agreement shall be deemed "works made for hire."
5. Contractor may retain copies of the Works for its archives. Contractor shall not otherwise use, sell, license, distribute, reproduce, publish, or market the Works without the express written permission of the City. If such permission is agreed to by the Handling COH Director, such express written permission shall be given by the City in a separate agreement between the City and Contractor.

3.6 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 TO PERSONS OR PROPERTY IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE, AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

3.7 INDEMNIFICATION

1. **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 SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- 1. CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS' DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
 - 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.**
- 2. 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. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**
- 3.8 RELEASE AND INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT**
- 1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**
 - 2. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.**

3. **WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

3.9 SUBCONTRACTOR'S INDEMNIFICATION

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 RELEASE AND INDEMNITY TO THE CITY.

3.10 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:
 1. a description of the indemnification event in reasonable detail, and
 2. the basis on which indemnification may be due, and
 3. the anticipated amount of the indemnified loss.

This notice does not stop 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.
 1. 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. Contractor shall notify the City of any and all offers 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.

2. 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 (1) 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, (2) would require the City to pay amounts that Contractor does not fund in full, or (3) 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.

3.11 LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR AT LAW, OR A BREACH OF CONFIDENTIALITY, NO PARTY NOR ITS AFFILIATES SHALL BE LIABLE HEREUNDER TO ANY OTHER (OR ITS AFFILIATES) FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, STATUTORY, SPECIAL OR TREBLED OR ENHANCED DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, OR LOST BUSINESS, WHETHER SUCH DAMAGES ARE CLAIMED FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHER THEORY, AND REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNLESS APPLICABLE LAW FORBIDS A WAIVER OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING CONTAINED IN THE FOREGOING TO THE CONTRARY, THIS SECTION SHALL NOT OTHERWISE LIMIT OR PRECLUDE ANY ONE OR MORE OF THE FOLLOWING: (A) EQUITABLE RELIEF, WHERE APPLICABLE; AND (B) REMEDIES, EXPENSES, DAMAGES, ATTORNEYS FEES, OR OTHER COSTS INCURRED BY THE CITY IN OBTAINING OR PROCURING A SUBSTITUTE OR REPLACEMENT CONTRACTOR AND THE CORRESPONDING GOODS AND SERVICES (COLLECTIVELY "COVER") IN THE EVENT CONTRACTOR BREACHES ITS CONTRACTUAL OBLIGATIONS OR FAILS TO PERFORM THE SERVICES REQUIRED UNDER A SIGNED LOA.

3.12 Insurance

Contractor shall provide and maintain certain insurance in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

1. Risks and Limits of Liability

Contractor shall maintain the following coverage and limits of liability:

| <u>Coverage</u> | <u>Limit of Liability</u> |
|-----------------------|---|
| Workers' Compensation | Statutory for Workers' Compensation |
| Employer's Liability | <ul style="list-style-type: none">• 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 Contractual Liability, Bodily and Personal Injury, Property Damage, Products and Completed Operations Coverage, and Coverage for Contractual and Employee Acts

Combined single limit of \$1,000,000 (each occurrence), aggregate of \$1,000,000

Automobile Liability (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)

\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos

Professional Liability

\$1,000,000 per occurrence;
\$2,000,000 aggregate

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

If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended discovery or extended reporting period coverage for a period of two years after substantial completion of the Project or a project liability policy for the Project covered by this Agreement with a duration of two years after all services were completed under this Agreement.

2. Form of Policies. The Director may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Contractor 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 shall (1) have a Certificate of Authority to transact insurance business in Texas or (2) 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 of *Best's Key Rating Guide*.
4. Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability must name the City (and its officers, agents and employees) as Additional Insureds on the original policy and all renewals or

replacements during the term of this Agreement.

5. Deductibles. Contractor shall be responsible for and bear 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. CONTRACTOR SHALL GIVE 30 DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS POLICIES WILL BE CANCELED, MATERIALLY CHANGED, OR NOT RENEWED. Within the 30-day period Contractor shall provide other suitable policies in lieu of those about to be cancelled, materially changed or not renewed so as to maintain in effect the required coverage. Contractor shall give written notice to the Director within five (5) days of the date upon which total claims by any party against Contractor 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. If Contractor does not comply with this requirement, the CIO, in consultation with the HAS Director, and PWE Director may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
7. Subrogation. Each policy, except Professional Liability, 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 and Professional Liability, 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. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
10. Subcontractors. Contractor shall require all subcontractors whose subcontracts exceed \$100,000 to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount shall be commensurate with the amount of the subcontract, but in no case shall it be less than \$500,000 per occurrence. Contractor shall provide copies of such insurance certificates to the CIO.
11. Delivery of Policies. At the time this Agreement is signed and as long as this Agreement continues, Contractor must furnish to the CIO certificates of insurance, including any necessary endorsements or requested affidavit from Contractor confirming that the Certificates accurately reflect the insurance coverage and meet the requirements of this Section 3.12 of the Agreement. These certificates must bear the Contractor's name in which it is insured. Upon request by the CIO, Contractor shall timely provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Contractor shall provide updated certificates of insurance

to the CIO upon request. Contractor shall, upon the CIO's request, deliver an assurance letter from Contractor's insurer stating that the insurer intends to issue Contractor a new policy that meets the terms of this Article.

12. Contractor shall, continuously and without interruption, maintain in force the required insurance coverage specified in this Section. If Contractor does not comply with this requirement, the CIO, at his or her sole discretion, may: (1) immediately suspend Contractor 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 Contractor under this Agreement.
13. The City shall never waive nor be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.
14. Other Insurance. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

3.13 Warranties

Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement. Upon the CIO's or Handling COH Director's request, Contractor will re-perform, at no charge to the City, any services which fail to reasonably conform to the warranty contained in this section or any LOA, provided that the CIO or Handling COH Director notifies Contractor in writing, of the non-conformance within thirty days after either Contractor's completion of the service required under the LOA or the City's discovery of the non-conformance, whichever is later.

3.14 Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation to perform work under this Agreement. Contractor shall immediately notify the CIO and Handling COH Director of any suspension, revocation, or other detrimental action against Contractor's license(s) and the license(s) of any of Contractor's employees, contractors, subcontractors, personnel, or agents performing services under this Agreement.

3.15 Compliance with Laws

Contractor shall comply with all applicable rules, regulations, standards, directives, state and federal Laws and regulations and the City Charter and Code of Ordinances. Such Laws, regulations, rules, and regulations may include, to the extent applicable, the grant requirements and flow down terms of the Urban Area Security Initiative (UASI) grant program and other federal, state, and local grant programs or funding sources.

3.16 Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit D.

3.17 Minority and Women Business Enterprises

1. It is the City's policy to ensure that Minority and Women Business Enterprises ("M/WBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide percentage goals for contracting with M/WBEs, are incorporated into this Agreement.
2. Contractor shall make good faith efforts to award subcontracts in at least **24%** of the value of each issued Letter of Authorization to M/WBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing:
 1. subcontracts and supply agreements with Minority Business Enterprises,
 2. subcontracts and supply agreements with Women's Business Enterprises, and
 3. specific efforts to identify and award subcontracts and supply agreements to M/WBEs. Contractor shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity ("OBO") Director in the form and at the times he or she prescribes.

3.18 Drug Abuse Detection and Deterrence

1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
2. Before the City signs this Agreement, Contractor shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):
 1. a copy of its drug-free workplace policy,
 2. the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit E, together with a written designation of all safety impact positions and,
 3. if applicable (e.g. no safety impact positions), the Certification of No Safety

Impact Positions, substantially in the form set forth in Exhibit G.

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than 6 months), a Drug Policy Compliance Declaration in a form substantially similar to Exhibit E. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the Countersignature.

3. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
4. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.19 Airport Security

Contractor shall comply with all HAS, TSA, FAA and any other governmental agency security Laws, directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Contractor's non-compliance with the provisions of 49 C.F.R §§ 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with Laws or regulations applicable to Contractor's operations. Within 10 days of notification in writing, Contractor shall reimburse the City for any fine or penalty assessed against the City because of Contractor's non-compliance with 49 C.F.R. §§ 1540 and 1542 or other applicable Laws or regulations.

3.20 Environmental Regulations

Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental Laws, rules, or regulations. Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

3.21 Confidentiality

Contractor, its agents, employees, contractors and subcontractors shall hold all City information, data, Works, and Documents (collectively, "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, personnel, and subcontractors shall not disclose, disseminate, or use the Information unless the Handling COH Director, in consultation with the other COH Directors, authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, personnel, and subcontractors that bind them to the terms of this Section. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any

reason.

3.22 Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order No. 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

4. DUTIES OF THE CITY

4.1 Payment Terms

The City shall pay fees to Contractor as specified herein for all services rendered by Contractor in accordance with the terms and conditions of this Agreement. Such payment shall only be made from Allocated Funds, as provided below.

4.2 Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The CISO will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

4.3 Method of Payment

1. Contractor shall perform services only in response to an LOA signed by Contractor, the CIO, and the Handling COH Director. The method of payment will be specified in each LOA and may be either (a) Time and Materials Based or (b) a Fixed Lump Sum with a Not To Exceed amount.
2. The amount of partial payment due for services performed during the period covered by the invoice may be either: (a) a percentage of the Fixed Lump Sum fee equal to the percentage of services performed on each LOA or (b) milestone or deliverables based payment amounts as set forth in a payment schedule attached to or incorporated in the individual LOA. Prior to Contractor commencing any work, performing any services, or incurring any Reimbursable Expenses under any LOA, the Handling COH Director and Contractor shall mutually agree, in writing, upon a payment method, partial payment amounts, if any, and a payment schedule.
3. **Fixed Lump Sum Services**
The City shall make partial payment of the Fixed Lump Sum fees for lump sum services on the basis of monthly invoices submitted by Contractor and approved by the Handling COH Director. The invoices based on Fixed Lump Sum fees for lump sum services must include all of the following:

1. The Purchase Order and Purchase Requisition number for the applicable City department to whom the invoice is submitted;
 2. The percentage of the total services completed for each LOA in the preceding month;
 3. A summary of the services performed, deliverables provided, and milestones reached for each LOA during the period covered by the invoice;
 4. The amount due for the services;
 5. The amount of any applicable credits; and
 6. Any other information or supporting documentation required by Handling COH Director.
4. Time and Materials Based Services
- In invoices for Time and Materials Based services, Contractor shall compute the charge for Contractor's services for each employee or personnel who performs services by multiplying the number of hours each employee performs services by the hourly Billing Rate applicable to that personnel's or employee's job category. The invoices for Time and Materials Based services must include all of the following:
1. The Purchase Order and Purchase Requisition number for the applicable City department to whom the invoice is submitted;
 2. A detailed description of the work performed;
 3. The Billing Rate and number of hours worked, delineated by labor category, for each of Contractor's employees or personnel who worked on each LOA during the invoice period. The supporting documentation must include each personnel's or employee's name, labor category, Billing Rate, and hours expended. At the Handling COH Director's sole discretion, supporting documentation may also include copies of original detailed timecards and hourly reports that Contractor certifies are true and accurate copies.;
 4. Itemized Reimbursable Expenses with receipts and the supporting documentation required by this Agreement, an LOA, or as requested by the Handling COH Director.;
 5. Subcontract Cost, including a copy of the subcontractor's actual invoice and supporting documentation for subcontractor's itemized Reimbursable Expenses.
 6. The amount due for the services;
 7. The amount of any applicable credits; and
 8. Any other information or supporting documentation required by Handling COH Director.
5. Reimbursable Expenses
- It shall be Contractor's responsibility to inform itself of the City's then-current travel reimbursement policies. The City shall pay Contractor for Reimbursable Expenses for Time and Materials Based services or as otherwise agreed by the Handling COH Director, in writing and subject to appropriations. In order to be reimbursed for such Reimbursable Expenses, Contractor shall invoice the City on a monthly basis, with supporting documentation of the actual costs for any Reimbursable Expenses it has incurred. To the extent the Reimbursable Expense involves a travel expense report,

Contractor's shall submit supporting documentation that itemizes each actual expenditure and digital copies of receipts for each expenditure. Reimbursement for all Reimbursable Expenses shall be paid in accordance with the LOA under which Contractor was performing when it incurred the Reimbursable Expenses. Reimbursable Expenses shall not exceed the amount set forth in the LOA unless the Handling COH Director otherwise agrees in writing and subject to appropriations by City Council.

6. After Contractor has successfully completed, to the Handling COH Director's satisfaction, the performance of all required services for an LOA, the City shall pay Contractor the total amount owed for the Project less any amounts paid under the monthly invoices.
7. On a monthly basis, Contractor shall send all invoices for each Project to the respective Handling COH Director at the address listed in Section 1.1. All invoices must be approved by the Handling COH Director for the Project to which the invoice relates. The invoices will be paid by check in accordance with Texas Government Code Section 2251.021. The checks will be payable to Contractor. Payments will be mailed to the address listed in Section 1.1. The City will not unreasonably delay or withhold payment or approval of any invoice. The Handling COH Director shall approve or disapprove Contractor's invoices within 30 days after receiving them and the required supporting documentation, if any. Neither partial payments made nor approval of invoices or services by the Handling COH Director constitute final acceptance or approval of Contractor's services to which the partial payment or approval relates. The payments do not relieve Contractor of any of its obligations under this Agreement.
8. With each monthly invoice and for each active LOA, Contractor shall submit a monthly status report to the Handling COH Director, including but not limited to, a narrative of the services performed in the preceding month, and a list of the planned activities for the following month.

4.4 Limit of Appropriation

1. The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated **\$646,000.00** under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:
 1. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____.

2. The Original Allocation plus all supplemental allocations are the "Allocated Funds." The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.5 Changes

1. At any time during the Agreement Term, the CIO may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
2. The CIO will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]
FROM: City of Houston, Texas (the "City")
DATE: [Date of Notice]
SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of CIO]

3. The CIO may issue more than one Change Order, subject to the following limitations:
 1. Council expressly authorizes the CIO to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.
 2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 3. The Total of all Change Orders issued under this Section may not increase the Original Agreement amount by more than 25%.
4. Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work or services within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work or services within a reasonable time. If the work or services described in any Change Order causes an unavoidable delay in any other work or services Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work or services. The CIO's decision regarding a time extension is final.
5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
6. Change Orders, amendments, modifications, and renewals to LOAs are subject to the Allocated Funds provisions of this Agreement.
7. The respective Handling COH Directors are permitted to amend or modify LOAs in the same manner as the LOAs are issued and in accordance with the terms and conditions of the LOA provided that the CIO signs the amended LOA.

4.6 Access to Site

Contractor shall perform services under this Agreement and any LOA at various sites or via telecommuting or teleworking services in accordance with this Agreement and as directed by the Handling COH Director. The sites and place of performance under this Agreement and any LOA may include City facilities designated by the Handling COH Director, Bush Intercontinental Airport (IAH), Hobby Airport (HOB), and Contractor's facilities and offices as designated by Contractor. Unless otherwise instructed by the Handling COH Director, airport authorities, or authorized City Personnel, Contractor is permitted to enter and leave the premises and place of performance at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services

together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees or personnel as a result of its use of the common areas.

4.7 Access to Data

The Handling COH Director shall, to the extent permitted by law and in accordance with the City's security policies and procedures, provide access to all data, computer systems, IT environments, and drawings in the possession of the City and allow the Contractor to make copies of documents in the possession or control of the City, or available to the City, that are requested by Contractor and are reasonably necessary for Contractor to perform under this Agreement or any LOA. The City does not, however, represent that all existing conditions are fully documented, nor does the City obligate itself to develop new documentation for Contractor's use.

5. TERM AND TERMINATION

5.1 Agreement Term

This Agreement is effective on the Countersignature Date and remains in effect for three years from the Countersignature Date ("Initial Term"), unless sooner terminated under the terms of this Agreement. The Handling COH Director may issue an LOA, signed by the CIO, at any time during the Initial Term of this Agreement or subsequent renewals or extensions to it. Each LOA may be issued for a period set forth therein which shall not exceed one (1) year, plus a renewal period of no more than one year. After expiration or termination of this Agreement, no additional LOAs may be issued; however, for any LOA issued prior to the expiration or termination of this Agreement, Contractor shall complete the work or services thereunder and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the LOA to continue until its own expiration or termination, unless Contractor is otherwise notified in writing by the Handling COH Director.

5.2 Renewals

Upon the expiration of the Initial Term and so long as the City makes sufficient supplemental allocations, this Agreement may be extended at the sole option of the CIO for up to two additional one-year periods immediately succeeding the Initial Term, upon the same terms and conditions. The option periods may be exercised upon delivery of a written notice from the CIO to the Contractor on or before thirty days prior to the expiration of the Initial Term or the first option period, as applicable.

5.3 Time Extensions

If the Handling COH Director or his designee requests an extension of time to complete Contractor's performance, then the Handling COH Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages

for delay(s) regardless of the cause of the delay(s).

5.4 Termination for Convenience by the City

1. The CIO and City Purchasing Agent, in consultation with the other COH Directors, may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.
2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in this Agreement unless the fees exceed the Allocated Funds remaining under this Agreement.
3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.5 Termination for Cause by the City

1. If Contractor defaults under this Agreement, the CIO and City Purchasing Agent, in consultation with the other COH Directors, may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:
 1. Contractor fails to perform any of its material duties under this Agreement;
 2. Contractor becomes insolvent;
 3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
 4. a receiver or trustee is appointed for Contractor.
2. If a default occurs, the CIO may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The CIO, at his or her sole option, may extend the termination date to a later date. If the CIO allows Contractor to cure the default and Contractor does so to the CIO's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the

termination date, then the CIO may terminate this Agreement on the termination date, at no further obligation to the City.

3. To effect final termination, the CIO must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.6 Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement only if the City defaults on payment by failing to pay to Contractor any undisputed amounts more than sixty (60) days after receiving Contractor's invoice. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the CIO, HAS Director, PWE Director, and City Attorney, describing the default and the proposed termination date. The date must be at least 30 days after the CIO receives the notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

6. MISCELLANEOUS PROVISIONS

6.1 Relationship of the Parties

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

6.2 Force Majeure

1. Timely performance by both Parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. "Force Majeure" means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts or threats of terrorists acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation; interest rates; economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive, or impractical. Force Majeure does not entitle Contractor to extra payment.
2. This relief is not applicable unless the affected Party does the following:

1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
2. provides the other Party with prompt written notice of the cause and its anticipated effect.
3. The CIO will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the CIO is final.
4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
5. If the Force Majeure continues for more than 30 days from the date performance is affected, the CIO, in consultation with the other COH Directors, may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.
6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3 Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

6.4 Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

6.5 Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. Each COH Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.6 Applicable Laws

This Agreement is subject to the Laws of the State of Texas, the City Charter and Ordinances, the Laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. This Agreement shall be governed, construed, and enforced according to the Laws of the State of Texas, without regard to choice or conflict of law principles.

Subject to the Parties' obligation to submit to the dispute resolution process or mediation as described in this Agreement, Contractor, and any of Contractor's employees, agents, officers, directors, contractors, or subcontractors performing any part of this Agreement shall submit any and all litigation and legal proceedings between any of them and the City to the exclusive jurisdiction of the state or federal courts in the State of Texas and waive any objections or right as to forum non conveniens, lack of personal jurisdiction, or similar grounds.

Venue for any litigation relating to this Agreement is Harris County, Texas.

6.7 Notices

All notices to either Party to the Agreement must be in writing and must be delivered either in person, by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section 1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

6.8 Captions

Captions contained in this Agreement are for reference only, and therefore have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.9 Non-Waiver

1. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
2. An approval by any COH Director or by any other employee or agent of the City of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The COH Directors are not authorized to vary the terms of this Agreement.

6.10 Inspections and Audits

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Upon the request of the CIO or the Handling COH Director, Contractor shall also make available to the City or its representatives all required federal, state, and local reports, records, payroll deductions, and payments in connection with social security and worker's compensation insurance; all federal, state, and local payroll and withholding taxes; and all other charges and taxes attributable to the performance of this Agreement and the employment of Contractor's personnel or employees assigned to perform work hereunder. Contractor shall keep its books and records available for the purposes described in this Section for at least 4 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.11 Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12 Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

6.13 Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including, but not limited to, the indemnity provisions and extended coverage for professional liability.

6.14 Publicity

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the CIO.

6.15 Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

6.16 Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets as set

out in the following section. This Agreement does not create any personal liability on the part of any employee, officer, or agent of the City.

6.17 Business Structure and Assignments

1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.
2. Contractor shall not delegate any portion of its performance under this Agreement without the prior written consent of both the CIO and Handling COH Director.

6.18 Non-Discrimination

Contractor agrees that it shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 C.F.R. Part 21 and 49 C.F.R. Part 21, Appendix C (a)(1). This provision is inclusive of any amendments which may be made to such regulations.

6.19 Acceptance and Approvals

Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of Contractor, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents or Works prepared or services performed pursuant to the terms and conditions of this Agreement or any LOA, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents or Works prepared or services performed by Contractor, its employees, agents, subcontractors, personnel, or suppliers pursuant to this Agreement.

6.20 No Quantity Guarantees and Non-Exclusivity

1. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement or any LOA. The City may procure and execute contracts with other consulting firms for the same, similar or additional services as those set forth in this Agreement or any LOA.
2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement or any LOA; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive

from or through this Agreement or any LOA.

6.21 Dispute Resolution

1. The Parties will use their reasonable best efforts to expeditiously and amicably resolve disputes arising in the normal course of business at the lowest organizational level of staff with appropriate authority to resolve such disputes between the City, Contractor, and other persons or vendors acting at the instruction of or on behalf the City on matters in connection with this Agreement or any LOA (“City’s Other Cyber Service Providers”).
2. Before initiating any litigation or seeking any remedies available at law, except in an emergency, Contractor shall submit eligible disputes to the CIO and the Handling COH Director or the Parties shall mediate, in good faith, any controversy eligible for mediation, as described below. The Parties shall initiate the dispute resolution procedure by providing written notice to the COH Directors and City Attorney for claims eligible for the CIO and Handling COH Director’s review as described below, or by providing written notice to the other Party, COH Directors, and the City’s Other Cyber Service Providers, if applicable, of a desire to mediate a dispute eligible for mediation (“Mediation Request”). In the event of a dispute between the Contractor, the City’s Other Cyber Service Providers, or the City regarding the day-to-day administration of this Agreement, performance of this Agreement, or any LOA, the Parties shall use the following dispute resolution procedures:

2.1.1 Disputes between the Contractor and City’s Other Cyber Service Providers

Except as may otherwise be provided by law, a dispute between Contractor and the City’s Other Cyber Service Providers shall be submitted to the CIO and Handling COH Director, provided that the dispute:

- (a) does not involve a question of law;
- (b) arises during the performance of this Agreement or any subsequent renewals; and
- (c) is not resolved between the Contractor and the City’s Other Cyber Service Provider in the ordinary course of business.

2.1.2 For any such disputes, Contractor shall notify the CIO and Handling COH Director, in writing, of the dispute and specify the disputed issues and the applicable contractual or LOA provisions, if any. The CIO and Handling COH Director shall use their reasonable best efforts to resolve the dispute between the Contractor and the City’s Other Cyber Service Provider within ten (10) days of submission of the dispute. The CIO and Handling COH Director shall put their decision (the “Dispute Resolution Decision”) in writing and mail or otherwise furnish it to the Contractor.

2.1.3 Contractor may abide by the Dispute Resolution Decision or appeal the decision to a mediator in accordance with the procedures described in this Section 6.21, Dispute Resolution. If Contractor desires to appeal the Dispute Resolution Decision, Contractor must submit a written notice of intent to appeal to the CIO

and Handling Director and the City's Other Cyber Service Provider within seven (7) Business Days following receipt of the Dispute Resolution Decision. If Contractor does not appeal or provide timely notice to the CIO and Handling COH Director of its intent to appeal, the Dispute Resolution decision is final and Contractor shall comply with it. Contractor's compliance with the non-appealed Dispute Resolution Decision is a material duty under this Agreement.

3. Disputes between the Contractor and the City

Except as may otherwise be provided by law, the Parties shall submit an unresolved dispute to a mediator in accordance with Section 6.21, Dispute Resolution, provided that the dispute:

- (a) is between the City and the Contractor,
- (b) involves the Contractor's performance of any part of this Agreement or any LOA,
- (c) does not involve any a question of law,
- (d) arises during the performance of this Agreement or any subsequent renewals, and
- (e) was not resolved by informal discussion between the Parties.

The aggrieved Party shall submit a written Mediation Request in accordance with this subsection to all of the COH Directors and the City Attorney and the Mediation Request shall describe the alleged claim or controversy, summarize the factual basis for the claim or controversy, and specify the applicable contractual or LOA provisions, if any.

4. Mediation

For purposes of this subsection, "Mediation Parties" as it relates to mediation and mediation procedures described in this Section 6.21, Dispute Resolution, shall mean the City, Contractor, and the City's Other Cyber Service Provider to the extent the dispute involves an appeal to a mediator in accordance with subsection 2.1.1.

- 4.1.1 The Mediation Parties shall submit disputes eligible to be submitted to mediation in accordance with this Section 6.21, to a neutral, third party mediator chosen by mutual consent of the Mediation Parties.
- 4.1.2 If within thirty (30) days of receipt of a request to mediate, all of the Mediation Parties cannot mutually agree on a mediator, the City Attorney, in consultation with the CIO, shall choose an experienced, neutral, third party mediator, who shall be knowledgeable about the services required under the Mediation Parties' respective contracts or LOAs with the City or the matters to be submitted to the mediator.
- 4.1.3 Mediation shall occur within thirty (30) days of choosing a mediator, unless all of the Mediation Parties otherwise agree to a later date.
- 4.1.4 IF A MEDIATION PARTY RECEIVING A MEDIATION REQUEST REFUSES TO MEDIATE, PARTICIPATE IN SELECTING A MEDIATOR, TO ATTEND MEDIATION, OR FAILS TO ATTEND THE MEDIATION, THIS ALTERNATIVE DISPUTE PROVISION WILL BE DEEMED TO HAVE BEEN FULFILLED BY THE AGGRIEVED PARTY AND THE AGGRIEVED PARTY IS PERMITTED TO PURSUE ANY OTHER REMEDIES IT MAY HAVE.

- 4.1.5 Mediation shall occur in Houston, Texas, and each Mediation Party shall bear its own costs incurred in connection with the mediation, including its own travel expenses. The Mediation Parties shall equally share the costs of the mediator's fees.
- 4.1.6 The resolution of any dispute disposed of by agreement between the Mediation Parties during mediation will be reduced to writing within ten (10) days of resolution ("Mediated Resolution") by the mediator or the City Attorney. Compliance with the Mediated Resolution will be a material duty under this Agreement, to the extent allowed by law.

6.22 Signatory's Warranty

Each Party warrants to the other party that he or she is fully authorized and competent to enter into this Agreement, in the capacity indicated by his or her signature and agrees to be bound by this Agreement.

6.23 Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future consistent with this Agreement. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

6.24 CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR (IF ANY) UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

**EXHIBIT A
SCOPE OF SERVICES**

1. OVERVIEW – SCOPE OF SERVICES

The City seeks the services of an information technology (IT) professional services firm to assist the City in accomplishing current and future technology initiatives related to cyber security, specifically in the following areas (collectively “Task Areas”):

- 1. Risk Assessment and Technology Planning Services**
- 2. Security Policy and Handbook Development**
- 3. Tool Evaluation Selection and Implementation Support**
- 4. Ongoing Security Monitoring and Support of Security Initiatives**
- 5. Program/Project Management**
- 6. IT Staff Augmentation Services**

Virtuo Group shall provide services in these Task Areas across City departments including the Houston Airport System (HAS), Public Works and Engineering (PWE), and Houston Information Technology Services (HITS) as specified in LOAs developed and approved by the Handling COH Director. Individual LOAs shall include specific definitions of the scope of work, deliverables, constraints, skills and timelines and an NTE price in alignment with the stated hourly Bill Rates for the specific Task Area. Virtuo Group shall ensure that the Program Team (as specified in Exhibit C) for each LOA has SMEs with the knowledge and capabilities to perform the Task Areas stated in this Scope of Services.

The Task Areas are further defined, along with proposed deliverables for each, in the sections below:

Task 1 - Risk Assessment And Technology Planning Services

Task 1 – Further Defined

The assigned Virtuo Group technical Project Team shall assist the City in the identification, establishment of timelines, implementation, processes and procedures, mitigation and documentation of security risks. Activities proposed under this task include:

- A. Implement the National Institute of Science and Technology (NIST) Six-Step Risk Management Framework (RMF) in alignment with other security Laws, methodologies, and policies that the City is required to adhere to including state or federal regulatory standards and Laws, including Homeland Security cyber-security Laws and initiatives.
- B. Develop and implement a continuous monitoring strategy according to NIST guidelines for maintaining security of information systems. All scans and monitoring should be passive unless specifically approved by in advance by the Handling COH Director.
- C. Develop and maintain automated information system security plans using Rsam’s governance, risk, and compliance (GRC) management software, solutions, or other tools that document the implementation of security controls.

- D. Develop the strategy and workflow process to conduct Security Assessments, Implement Technology Planning Services, and Maintain System Authorizations.
- E. Using the City's Enterprise Security Roadmap (ESR), provide an analysis to incorporate technology initiatives for the next five years (e.g. through and including 2019) based on sound engineering practices for applying security controls within the various City departmental architectures.
- F. Work with City to assess and review technology project priorities ensuring security engineering is considered.

Task 1 – Deliverables

The assigned Virtuo Group technical Project Team shall assist the City in the completion of the following deliverables memorialized in written Documents, reports, studies, guidelines, test results, or plans associated with the risk assessment and technology planning services:

- A. Subject Matter Expertise (SME) consultative services related to the design, knowledge transfer, and maintenance of the Rsam GRC solutions or other tools and implementation of the Risk Management Framework (RMF).
- B. SME consultative services, in support and knowledge transfer of the continuous monitoring strategy and risk assessment process.
- C. IT system security plans across City departments and identification of opportunities to consolidate IT system security plans across City departments.
- D. Risk Assessments for identified City departments and appropriate security controls.
- E. Assist in the outline and development of the risk mitigation plan.

Task 2 - Security Policy And Handbook Development

Task 2 – Further Defined

The assigned Virtuo Group technical Project Team shall assist the City in the review, development and/or maintenance of IT security policies. Activities proposed under this task include:

- A. Review current City procedures/handbooks pertaining to the policies for areas of standardization and improvement.
- B. Generate identified policies and procedures within the Rsam policy Management module.
- C. Deliver a transition plan for the City to assume full responsibility for managing the policy lifecycle.
- D. Map and link policies to controls, City, state or federal regulatory standards.
- E. Manage policy exceptions.

Task 2 – Deliverables

The assigned Virtuo Group technical Project Team shall assist the City in the completion of the following deliverables memorialized in written Documents, reports, studies, guidelines, test results, or plans associated with the security policy and handbook development:

- A. Approved policies identified and incorporated into the full management and control scope of the Rsam policy management framework or a similar framework.
- B. Review, update and create City policy templates that will be further refined within each City department based on various business drivers.

C. Review, update, create and incorporate in Rsam or similar solutions the following policies and procedures:

1. Access Control Policy and Procedures
2. Security Awareness and Training Policy and Procedures
3. Audit and Accountability Policy and Procedures
4. Security Assessment and Authorization Policies and Procedures
5. Configuration Management Policy and Procedures
6. Contingency Planning Policy and Procedures
7. Identification and Authentication Policy and Procedures (with special emphasis on a and b below)
 - a. Identification and Authentication (Organizational Users)
 - b. Identification and Authentication (Non-Organizational Users)
8. Incident Response Policy and Procedures
9. System Maintenance Policy and Procedures
10. Media Protection Policy and Procedures
11. Physical and Environmental Protection Policy and Procedures
12. Security Planning Policy and Procedures
13. Personnel Security Policy and Procedures
14. Risk Assessment Policy and Procedures
15. System and Services Acquisition Policy and Procedures
16. System and Communications Protection Policy and Procedures
17. System and Information Integrity Policy and Procedures
18. Privacy Data Protection Policy and Procedures

Task 3 – Tool Evaluation Selection And Implementation Support

Task 3 – Further Defined

The assigned Virtuo Group technical Project Team shall assist the City in the evaluation, selection and implementation of tools identified or in place to support the City's Enterprise Cyber Security Roadmap. Such evaluations, selections, and implementation plans will include close participation by the various City departments to ensure that all department-specific requirements, constraints, and risks are understood and included in the tools evaluation/selection criteria. Activities proposed under this task include:

- A. SME consultative services related to evaluation, selection and implementation of tools identified or in place to support the Cyber security roadmap;
- B. Other related activities as determined by the CISO or Handling COH Director.

Task 3 – Deliverables

The assigned Virtuo Group technical Project Team shall assist the City in the completion of the following deliverables memorialized in written Documents, reports, studies, guidelines, test results, or plans associated with the tool evaluation selection and implementation support services:

- A. SME consultative services related to the evaluation, selection and implementation tools.

- B. Creation of feasibility studies associated with tools mapped to goals and capabilities of City departments.
- C. Develop and coordinate design guidelines and standards as required to be used by individual system design consultants and engineers for use in the design of all the associated technology projects.

Task 4 – Ongoing Security Monitoring and Support of Security Initiatives

Task 4 – Further Defined

The assigned Virtuo Group technical Project Team shall assist the City in the ongoing security monitoring and initiative support where the various, individual City departments have established the need for these ongoing services. Activities proposed under this task include:

- A. Review the Information Security Program Plan and make recommendations for improvement, if required, in regards to the Plan of Action and Milestones Process, the Critical Infrastructure Plan, the Risk Management Strategy, the Security Authorization Process, the Mission/Business Process Definition, the Insider Threat Program, the Information Security Workforce, the Testing, Training and Monitoring program, the Contacts with Security Groups and Associations, and the Threat Awareness Program.
- B. Continuously track advance persistent threats to information systems that may affect security controls and reassess control effectiveness.
- C. Analyze the current security toolset against the criteria for providing vulnerability and patch management, asset management, configuration management, event and incident management, network management, malware detection and remedy, and software assurance.
- D. Analyze security tools' effectiveness for appropriate reporting and their capability to implement Security Content Automation Protocol (SCAP).
- E. Develop Plan of Actions and Milestones (POA&M) for implementing security controls that support and do not hinder the City's and individual department's business objectives and missions.
- F. Analyze the rate of change of the computing environment considering terms of moves, adds, changes, updates, and releases of software, hardware, and firmware and how it affects the implementation of security controls.
- G. Develops plans to conduct and assess periodic penetration testing and red team exercises to ensure that deployed security controls are providing adequate security against threats and vulnerabilities.
- H. Identify information systems that process and store privacy data and sensitive information such as HIPAA and PCI, and develop a strategy to deploy the NIST privacy controls where appropriate.
- I. Analyze the complexity for deployment of security framework/tools/processes to the City's functional departments at various locations.

Task 4 – Deliverables

The assigned Virtuo Group technical Project Team shall assist the City in the completion of the following deliverables memorialized in written Documents, reports, studies, guidelines, test results, or plans associated with the ongoing security monitoring and support of security

initiatives:

- A. Identify the continuous monitoring requirements of information systems that take into account all City department requirements as stated in previous sections of this Exhibit.
- B. Run penetration scan tools in department approved methods and specific targeted areas that guarantee no business operations impacts and with required department IT involvement and provide an analysis of the results.
- C. Run vulnerability scan tools in department approved methods and specific targeted areas that guarantee no business operations impacts and with required department IT involvement and provide analysis of the results.
- D. Run asset and patch management tools in department approved methods and specific targeted areas that guarantee no business operations impacts and with required department IT involvement and provide an analysis of results.
- E. Write plans of actions to mitigate security deficiencies and maintain the corresponding milestones to their completion.
- F. Monitor and work with City departments to update the system authorization boundary.
- G. Develop security authorization documentation with City departments for assigned systems.
- H. Implement gap analysis and knowledge transfer for department's self-sufficient operation in assessing, monitoring, and management of environment.

Task 5 – Program/Project Management

Task 5 – Further Defined

The assigned Virtuo Group technical Project Team shall assist the City in the overall coordination and timely completion, from a project management perspective, of information technology initiatives consistent with the goals and vision of the IT Enterprise Security Roadmap (ESR). Activities proposed under this task include:

- A. Develop technology program requirements and define/prepare individual technology project definition documents, detailed requirements and project scopes of work.
- B. Develop and coordinate design guidelines and standards as required to be used by individual system design consultants and engineers for use in the design of all the associated technology projects.
- C. Develop standardized status/progress reporting procedures and templates that all technology consultants shall utilize and be required to complete/provide to City management.
- D. Provide, as requested, IT Installation/Implementation Project Management Office (PMO) Services (Infrastructure and/or Applications) services for technology components.
- E. Provide general quality assurance/quality control (QA/QC).
- F. Conduct regular reviews of project priorities and recommend project schedule changes to be reviewed and approved by City.
- G. Provide other PMO services as requested by the CIO.

Task 5 – Deliverables

The assigned Virtuo Group technical Project Team shall assist the City in the completion of the following deliverables memorialized in written Documents, reports, studies, guidelines, or plans associated with program/project management task area:

- A. Conduct project plan and implementation reviews.
- B. Strategy Roadmap consultation and review.
- C. Provide Project and tools Portfolio Management consultation and services.
- D. Validate NIST alignment as well as other security methodologies/policies that the City of Houston is required to adhere to including state or federal regulatory standards or Laws, including Homeland Security cyber-security initiative as mentioned above in this Exhibit.
- E. Project plan with the objectives and the required coordination between organizational departments.
- F. Schedule of project priorities and projected completion dates.
- G. Monthly performance reports that identify potential problems and genuine progress.
- H. Continuous review of the Project's cost/benefit analysis and recommendations for alternate courses of actions if required.

Task 6 – Services Project Quality Assurance

Task 6 – Further Defined

The assigned Virtuo Group technical Project Team shall assist the City with the project quality assurance process as follows:

- A. Assist the City's Project Manager for each individual Project with tracking all significant assignments from status reports and note completion dates as reported.
- B. Assist the City's Project Manager for each individual Project with communicating directly with end-users and management within the City to obtain feedback on contractor performance.
- C. Assist the City's Project Manager for each individual Project with directing contractor(s) to track all problems identified in status reports, which describe the type of problem, and the recommendations to resolve the problem.
- D. Assist the City's Project Manager for each individual Project with conducting scheduled meetings or conference calls to communicate directly with contractor(s) on work progress and pending problem resolutions.

Task 6 – Deliverables

The assigned Virtuo Group technical Project Team shall assist the City in the completion of the following deliverables memorialized in written Documents, reports, studies, guidelines, or plans associated with program/project management task area:

- A. Assist the City's Project Manager to implement the Department of Homeland Security Cyber security initiatives as modified and applicable to the City and requesting City Department.
- B. Provide documentation verifying and tracking tasks and deliverables as directed by the City's Project Manager.

Task 7 – IT Staff Augmentation

Task 7 – Further Defined

In addition to the support provided by Contractor’s key personnel team of IT security specialists, Virtuo Group shall support the City by providing IT staff augmentation services necessary to successfully execute upon the requirements of the CIO or Handling COH Director. In support of the City, Virtuo Group shall leverage its “Try and Hire” staffing program as set out in Exhibit B-1. In the event that the CIO or Handling COH Director desires to onboard and hire staffed individuals as City employees, Virtuo Group shall offer this mechanism and the transition for the personnel as Virtuo Group employees to City of Houston employees will be at limited or no cost to the City. This IT Staff Augmentation provision is subject to the Allocated Funds provision, the City’s then-current hiring policies, and compliance with any applicable procurement and bid Laws.

2. SERVICES UTILIZATION ESTIMATE AND APPROACH

Outlined below is an estimate of the allocation of the project budget to each Task Area in the Scope of Services, which estimated allocation will be utilized to provide services under each task in accordance with LOAs issued in the City’s current fiscal year by COH Directors of the following departments: Houston Airport System (HAS), Public Works and Engineering (PWE), and Houston Information Technology Services (HITS).

| <i>Tasks for FY14</i> | <i>HITS</i> | <i>HAS</i> | <i>PWE</i> | <i>Total</i> |
|---|--------------|--------------|--------------|--------------|
| 1. Risk Assessment and Technology Planning Services | \$25,000.00 | \$25,000.00 | \$100,000.00 | \$150,000.00 |
| 2. Security Policy and Handbook Development | \$146,000.00 | \$75,000.00 | \$25,000.00 | \$246,000.00 |
| 3. Tool Evaluation Selection and Implementation Support | \$25,000.00 | \$25,000.00 | \$25,000.00 | \$75,000.00 |
| 4. Ongoing Security Monitoring and Support of Security Initiatives | \$25,000.00 | \$50,000.00 | \$25,000.00 | \$100,000.00 |
| 5. Program/Project Management | \$25,000.00 | \$25,000.00 | \$25,000.00 | \$75,000.00 |
| Total: | \$246,000.00 | \$200,000.00 | \$200,000.00 | \$646,000.00 |

Each City fiscal year, the COH Directors shall update the chart above for that fiscal year, which updated chart shall be incorporated as if fully set forth herein. The allocations and appropriations associated with each updated chart and fiscal year shall be subject to Section 4.4, Limit of Appropriations and the necessary approvals of City Council. The maximum allocation and maximum contract amount for all LOAs issued under this Agreement shall not exceed **\$5,646,000** unless approved by Council in an Ordinance amending the maximum contract amount.

The individual Directors of HITS, HAS, and PWE reserve the right to and are permitted to redistribute funds associated with each Task Area above for the COH Directors' respective department subject to providing written notification of all expenditures under this Agreement to the CIO. The CIO, in consultation with the other COH Directors and subject to appropriations by City Council, is permitted to reassign the estimated allocations above between any of the departments above. The COH Directors are permitted to make the redistributions or reallocations authorized in this paragraph without the need to amend this Agreement provided the COH Directors notify the CIO in writing of any such redistributions or reallocations.

**EXHIBIT B
MAXIMUM HOURLY BASE RATES AND EXPENSES**

| | Labor Category | Hourly Rate | Type |
|---|--|-------------|---------------------------|
| 1 | Project Manager | \$ 120.00 | Telecommute - NO TRAVEL |
| D E S C R I P T I O N | <p>Skills: Provides knowledge and guidance to plan and manage the analysis of security infrastructure projects. Implements the security plans, policies and security recommendations put forth by the Security Architect and Security Engineer, to improve security in support of the organization's mission. Performs the day to day tasks to manage the overall direction of projects in support of the COH Program Manager. Education: Bachelor's degree in Computer Information Security, or related Computer Technology field or equivalent work experience of six to eight years. Certification: Information Systems Security Certifications. PMP Preferred.</p> | | |
| 2 | Deputy Project Manager | \$ 80.00 | Local Resource, NO TRAVEL |
| D E S C R I P T I O N | <p>Skills: Provide reporting on the progress of the project, identifying critical activities and areas for improvement. Provide weekly and monthly progress reporting with written narrative reports. Assists in the development of project work plans, schedules, project estimates, resource plans and status reports. Assists with project tracking and analysis. Assistance with adherence to project quality standards and deliverables. Education: Bachelor's degree or equivalent work experience of two to three years. Certification: PMP preferred</p> | | |
| 3 | Project Coordinator | \$ 69.00 | Local Resource, NO TRAVEL |
| D E S C R I P T I O N | <p>Skills: Provides daily support for the Project Manager and Deputy Project Manager in project management tasks. Participates in project scheduling, project monitoring, project reports and project meetings. Assists with project tracking and reporting. Assist with research, training or documentation as needed. Education: Associates degree or equivalent work experience of one to two years.</p> | | |

| | | | | |
|--|---|----------------------------|-------------------------------|---------------------------|
| DESCRIPTION | 4 | Security Engineer | \$ 120.00 | Telecommute - NO TRAVEL |
| | Skills: Analyzes security infrastructure and makes recommendations to improve security of applications, data, systems and networks. Supports Vulnerability Management. Performs reverse engineering of targeted malware in support of advanced incident response engagements. Performs evaluation of information assurance technologies for applications, projects, and systems. Education: Bachelor's degree in Computer Information Security, Computer Science, or related Computer Technology field or equivalent work experience of six to eight years. Certification: Information Systems Security Education: Bachelor's degree in Computer Information Security, or related Computer Technology field or equivalent work experience of six to eight years. Certification: Three or more certifications in Information Technology Security | | | |
| | 5 | Security Analyst I | \$ 65.00 | Local Resource, NO TRAVEL |
| | Skills: Assist in the implementation and compliance of security plans and policies. Assist in identifying application, system or network vulnerabilities and provide remediation guidance. Assist in the training of end-users on security measures. Education: Associate degree in Computer related technology or three years of equivalent work experience in Computer Technology. Certifications: Security + or similar IT Security related certification. | | | |
| | 6 | Security Analyst II | \$ 90.00 | Local Resource, NO TRAVEL |
| Skills: Implement security policies and assist in implementation and compliance of security plans and policies. Assist in identifying application, system or network vulnerabilities and provide remediation guidance. Education: Bachelor's Degree in Computer Information or Information Technology, or or equivalent work experience of five years. Certifications: Preferred Certified Information Systems Security Professional (CISSP), Certified Cyber Forensics Professional (CCFP) or related security certification | | | | |
| 7 | Security Architect | \$ 108.00 | Telecommute - includes travel | |
| Skills: Perform Risk Assessments and Security Control Assessments. Develops and implements Risk Management Framework for information system authorization (ISA) and continuous monitoring (CM). Identify information, classify the information system, and implement security control baseline protections. Develops strategies, policies, and procedures to improve security. Performs evaluation of information assurance technologies for applications, projects, and systems with consideration of best practices for information security. Education: Bachelor's degree in Computer Information Security or related Computer Technology field or equivalent work experience of six to eight years. Certification: Two or more Information Systems Security certifications | | | | |

| | | | |
|---|---|----------|---------------------------|
| 8 | Desktop Support Technician | \$ 48.00 | Local Resource, NO TRAVEL |
| D E S C R I P T I O N | Skills: Provides basic level 1 technical support and troubleshooting for Windows OS desktop computers. Assist in desktop migrations, identifying application, system or network issues, conduct research and remediate the problem. Education: High School graduate or equivalent. One to two years of experience with help desk or support. Certifications: A+ or similar technical certification | | |
| 9 | Windows System Administrator | \$72.00 | Local Resource, NO TRAVEL |
| D E S C R I P T I O N | Skills: Monitors and maintains Windows servers following server hardware and software configuration standards. Resolve daily server support issues. Administers, monitors and troubleshoots Windows systems in support of critical applications and production systems. Apply software patches, upgrades. Education: Associates degree or equivalent work experience of two to three years. Certifications: MCP or other Microsoft certification | | |
| 10 | Infrastructure Architect | \$112.00 | Local Resource, NO TRAVEL |
| D E S C R I P T I O N | Skills: Maintains knowledge of IT infrastructure architecture, standards and practices and consistently applies these standards. Ensures alignment to infrastructure architectural standards and strategy. Ensures that infrastructure architectures support the business needs and infrastructure capabilities. Education: Bachelor's degree in Computer Information Systems of related Computer Technology. Five or more years of IT infrastructure architecture experience or Infrastructure Engineer experience. | | |
| 11 | Senior Security Analyst | \$125.00 | Telecommute - NO TRAVEL |
| D E S C R I P T I O N | Skills: Provides intelligence analysis on cyber security threats. Maintains knowledge and secures intelligence against cyber criminal threats such as malware, viruses, network intrusions, denial of service threats, etc. Provides up to date communications with security team and corporate officials as to threats and remedies. Certification: Information Systems Security Education: Bachelor's degree in Computer Information Security, or related Computer Technology field or equivalent work experience of six to eight years. Certification: Four or more certifications in Information Technology Security. | | |

1. Labor Rate Inclusions and Exclusions

- a) Inclusions. The hourly base rates set forth above are for services only and are based on the specified job functions, responsibilities, education, and experience within specific geographic regions. These hourly Base Rates also include labor rate buildups, salary cost, labor overhead, general and administrative overhead and profit.
- b) Exclusions. The hourly Base Rates set forth above do not include hardware, software, and other direct costs.

2. Price Uplifts

The hourly Base Rates set forth above shall remain in effect from the Countersignature Date through and including December 31, 2014. Beginning on January 1, 2015, and continuing annually thereafter, all Virtuo Group Labor rates set forth above will increase by 2.75% each calendar year. The price uplifts for Virtuo Group Labor hourly Base Rates set forth above will follow this schedule:

| Year | Time Period | Rate |
|-------------|--|---|
| Year One | December 18, 2013 to December 31, 2014 | Hourly Base Rates set forth above |
| Year Two | January 1, 2015 to December 31, 2015 | All hourly Base Rates from Year One increase by 2.75% |
| Year Three | January 1, 2016 to December 31, 2016 | All hourly Base Rates from Year Two increase by 2.75% |

Notwithstanding anything to the contrary in this Exhibit, in no event shall price uplifts for hourly Base Rates exceed 2.75% per year, per labor category during and throughout the Initial Term and all option periods, if any. If the CIO exercises the option period(s), each option year may include price uplifts, subject to the 2.75% annual limit on price uplifts.

3. Travel

- a) Virtuo Group key personnel, who reside outside of the State of Texas and are identified as “telecommute with NO TRAVEL,” will not travel. Travel is outside the scope of this Agreement and any LOA for personnel designated as “telecommute with NO TRAVEL.”
- b) Virtuo Group key personnel, who reside outside of the State of Texas and are identified as “telecommute with travel,” will have a travel maximum of eight (8) trips to Houston, Texas per calendar year. The length of stay will not exceed eight (8) consecutive Business Days per trip.
- c) To lower the expense of travel, the Handling COH Director will use its best efforts to provide Contractor with a written travel request or travel request schedule at a minimum of fifteen (15) days in advance of the first date of requested travel. The City will reimburse Virtuo Group, in accordance with the provisions of this Agreement, for travel expenses that qualify as Reimbursable Expenses when such travel expenses are requested, in writing, by the Handling COH Director.
- d) For each trip, if the travel requirements are outside the scope of this Agreement or the travel requirements exceed the outlined travel parameters in this Agreement (collectively “Additional Travel Expenses”), Contractor shall notify the Handling COH Director before Contractor incurs any Reimbursable Expenses or travel expenses. Subject to appropriations by City Council, the City’s then-current travel policy, and the Handling COH Director’s written pre-approval of the travel expense, Contractor is permitted to invoice the City for Additional Travel Expenses that qualify as Reimbursable Expense. The City will pay Contractor for the pre-approved Additional Travel Expenses that qualify as Reimbursable Expenses in accordance with the provisions of this Agreement. Unless otherwise pre-approved, in writing, by the Handling COH Director, Contractor shall not make or purchase any non-cancellable or non-refundable travel arrangements, including non-cancellable airfare, hotel, or car rental reservations. All payments and reimbursements for travel expenses and related cancellation fees described in this Exhibit shall be subject to the Allocated Funds provisions in this Agreement.

- e) Handling COH Director will use its best efforts to notify Contractor of a cancelled trip as far in advance as feasible so that Contractor may be able to mitigate its expenses.
- f) Upon Contractor's reservation, payment and confirmation of airfare for a trip requested, in writing, by the Handling COH Director and scheduled by the Virtuo Group, AND if Virtuo Group cancels the trip for any reason, the City shall not reimburse Virtuo Group for any monetary loss associated with the trip cancellation.

EXHIBIT B-1
“TRY AND HIRE” PROGRAM

“Try and Hire” Program

How the program works:

The City, at its sole discretion and in accordance with its employment policies and procedures, may desire to transition Virtuo Group Resources assigned to a Project from Virtuo Group employees to City employees. “Resource” means a person on the Project Team or a Team Member as defined in Exhibit C, Project Team Personnel. This transition is associated with a sliding scale fee or no cost at all as set out below. Upon notice of the City’s desire to exercise either of the “try” or “hire” options below, Virtuo Group shall notify the City in writing, of the Conversion Fees if any, and provide supporting documentation including all of the figures and data used to calculate the Conversion Fee, and the starting and ending dates for the Resource’s contract term with Virtuo Group. All Conversion Fees, if any, shall be subject to appropriations and the execution of the appropriate documents. LOAs shall not and cannot be used to pay for or exercise options under the Try and Hire Program.

The transition options under this program are:

- (1) “Try” the Resource after the completion of the Resource’s contract with Virtuo Group
OR
- (2) “Hire” the Resource after “trying” and prior to the completion of the Resource’s contract with Virtuo Group subject to the payment of the Conversion Fees.

Contract Conversion Fees:

Conversion Fees are assessed to convert Virtuo Group Resources to City employees based on the following information:

- (1) Fees based on the balance of billable hours remaining on the Resource’s contract term with Virtuo Group that is being converted.
- (2) The *Average Monthly Billable Hours* will be assumed at 160 hours each calendar month. To the extent a transition involves a partial monthly period, the *Average Monthly Billable Hours* will be prorated. This 160 hour average does not imply a fixed number of billable monthly hours, but is an average to facilitate the calculation of the Conversion Fee.
- (3) *Billable Balance* is defined as the *Resource Hourly Rate*, as set forth in Exhibit B or in an LOA, multiplied by the *Remaining Months* on the Resource’s contract term with Virtuo Group multiplied by the *Average Monthly Billable Hours*. Example: [Conversion

requested at the 3rd month of a 6 month contract.] *Resource Hourly Rate* (\$100.00 per hour) multiplied by *Remaining Months* (3 months remaining) multiplied by *Average Monthly Billable Hours* (160) = *Billable Balance* \$100.00 x 3 x 160 = \$48,000.00

- (4) The *Conversion Fee* is defined and shall be calculated by multiplying the applicable percentage listed in the Conversion Rate Table below by the *Billable Balance*. Example: [Conversion requested at the 3rd month of a 6 month contract.] *Billable Balance* = \$48,000.00. *Conversion Fee* = 20% x \$48,000.00 = \$9,600.00.
- (5) For purposes of the Conversion Fees, the Resource's initial contract term with Virtuo Group shall be deemed to begin on the date the Resource begins performance on a Project or the first date the Resource provides a billable service or provides services billed to the City under an LOA.
- (6) Regardless of the length of Resource's contract term with Virtuo Group, if the City converts a Resource within the first 60 days of the Resource's contract term with Virtuo Group, then the conversion calculation will equal (fifty) 50 percent of the *Billable Balance*.
- (7) Notwithstanding anything to the contrary in this Agreement or Exhibit B-1, and regardless of the length of the Resource's contract term with Virtuo Group, if the Resource enters into a successive contract term with Virtuo Group or renews its contract with Virtuo Group and the City converts the Resource within the first 45 days of the Resource's successive or renewal contract term with Virtuo Group, then the conversion calculation shall not apply, the City shall not pay any Conversion Fees, and the City may transition the Resource from a Virtuo Group employee to a City employee at no cost at all to the City.

Conversion Rate Table:

| Length of Contract | Months Remaining on Contract | % Conversion Fee on Billable Balance |
|--------------------|------------------------------|--------------------------------------|
| 3 Month | 3 | 50% |
| | 2 | 50% |
| | 1 | 20% |
| 6 Month | 6 | 50% |
| | 5 | 50% |
| | 4 | 20% |
| | 3 | 20% |

| | | |
|----------|----|-----|
| | 2 | 20% |
| | 1 | 0% |
| | | |
| 12 Month | 12 | 50% |
| | 11 | 50% |
| | 10 | 50% |
| | 9 | 30% |
| | 8 | 30% |
| | 7 | 30% |
| | 6 | 20% |
| | 5 | 20% |
| | 4 | 10% |
| | 3 | 10% |
| | 2 | 10% |
| | 1 | 0% |

Notwithstanding anything herein, including the Try and Hire Program, this Agreement does not and shall not restrict one Party from hiring any employee of the other where the employee responds to regular employment solicitation efforts, such as newspaper advertisements, online job postings, employment agencies, open hours or job fair events or widely distributed announcements of job openings. The City shall not pay any Conversion Fees for any Virtuo Group employee or Resource that the City hires through regular employment solicitation efforts such as those described in the preceding sentence.

EXHIBIT C
PROJECT TEAM PERSONNEL

Virtuo Group shall provide the services under the Agreement and any LOA through a technical project team (“Program Team”) comprised of Persons with Subject Matter Expertise similar to the expertise and qualifications identified below (collectively “Team Members”). Virtuo Group shall not substitute or replace any Team Member without the prior written authorization of the CIO and Handling COH Director. In the event that any Team Member becomes unavailable to provide services under the Agreement for a period of three or more business days, Virtuo Group shall immediately notify the City’s Project Manager for each individual Project. If a Team Member comes unavailable to provide services for an individual Project for a period of more than 7 business days or if the Member’s unavailability, for any length of time, is likely to negatively or materially impact or affect meeting a critical milestone or deadline set by the City’s Project Management or under an LOA, then Virtuo Group shall notify the City’s Project Manager and the Handling COH Director in writing and, upon the Handling COH Director’s request, identify a substitute or replacement Team Member. Any substitute, replacement, or additional Team Member shall have the same or substantially similar credentials as the Team Member being replaced or as otherwise agreed by the Handling COH Director and CIO.

Ms. Theresa Blackwell, President and CEO of Virtuo Group, shall be actively engaged with the City, the COH Directors, the CISO, and other relevant personnel from the City’s supported departments to ensure the performance of this Agreement, any LOA, and any Project.

Program/Project Managers

Laurel O. Bledsoe shall be the designated Virtuo Group Program Manager for the Agreement. Ms. Bledsoe shall be responsible for the overall management and coordination of all Services under the Agreement, any Project, and any LOA and shall act as the central point of contact. Unless Virtuo Group otherwise notifies the COH Directors, in writing, Ms. Bledsoe shall have full authority to act for Virtuo Group in the performance of the required services.

Virtuo Group shall assign at least one other senior level program/project manager with more than 15 years of program and Project Management experience. The senior level program/project manager shall have the capability of managing complex security, infrastructure, and application implementation projects and leading cyber security professional services and consultative teams. This senior level program/project manager shall also have proven project planning, execution, and monitoring skills with demonstrated ability to support multiple simultaneous projects in a matrix organizational structure. The senior level program/project manager shall hold an appropriate advanced degree as well as industry certifications such as:

- Certified Information Systems Auditor (CISA)
- Certified Information Security Manager (CISM)
- Project Management Processional (PMP)

Security Architect

Virtuo Group shall assign an accomplished, analytical professional with more than 25 years of experience in computer programming, software engineering, data processing on mainframes, personal computers, and client server platforms including more than 10 years in computer security, information assurance, and security control system assessments. The Security Architect shall possess advanced skills in developing processes, providing problem resolutions for protecting sensitive data, automating business process workflows, and recommending innovative and cost-effective IT security solutions. The Security Architect shall hold an appropriate advanced degree as well as industry certifications such as:

- Certified Information Systems Auditor (CISA)
- Certified Information Systems Security Professional (CISSP)
- Certification and Authorization Professional (CAP)

Security Engineer

Virtuo Group shall assign a seasoned Security Engineer with experience in providing consulting services related to information security and creating the tools, policies and frameworks to further the field of information security and vulnerability research. The Security Engineer shall hold an appropriate degree or have corresponding work experience as well as industry certifications such as:

ISC2 Certifications

- CISSP-ISSEP (Information Systems Security Engineering Professional)
- CISSP-ISSAP (Information Systems Security Architecture Professional)
- CISSP-ISSMP (Information Systems Security Management Professional)
- CSSLP (Certified Secure Software Lifecycle Professional)
- CISSP (Certified Information Systems Security Professional)

Offensive Security Certifications

- OSCE (Offensive Security Certified Expert)
- OSCP (Offensive Security Certified Professional)

EXHIBIT D
EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or Contractor agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.
2. The contractor, subcontractor, vendor, supplier, or Contractor states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The contractor, subcontractor, vendor, supplier, or Contractor will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor, subcontractor, vendor, supplier, or Contractor will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The contractor, subcontractor, vendor, supplier, or Contractor will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or Contractor.
6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or Contractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or Contractor may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246,

and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

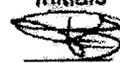
8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

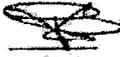
**ATTACHMENT E
DRUG POLICY COMPLIANCE DECLARATION**

I, Theresa G. Blackwell, CEO as an owner or officer of
 (Name) (Print/Type) (Title)
VIRTUO GROUP CORPORATION (Contractor)
 (Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding six months from May 15th to November 12th 2013

-  A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).
-  Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been notified of such procedures.
-  Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.
-  Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of total employees on safety impact positions during this reporting period is 0

 From May 15th to November 15th the following testing has occurred:
 Initial (start date) (end date)

| | <u>Random</u> | <u>Suspicion</u> | <u>Accident</u> | <u>Total</u> |
|------------------------------|---------------|------------------|-----------------|--------------|
| Number of Employees Tested | 0 | 0 | 0 | 0 |
| Number of Employees Positive | 0 | 0 | 0 | 0 |
| Percent Employees Positive | 0 | 0 | 0 | 0 |

 Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

 I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

12 November 2013
 Date

Contractor Name Theresa G. Blackwell

Signature 

Title CEO

ATTACHMENT F
DRUG POLICY COMPLIANCE AGREEMENT

I, Theresa G. Blackwell _____ as an owner or officer of

(Title) (Name) (Print/Type)
Virtuo Group Corporation _____ (Contractor)

(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed.

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

5 November 2013

Date

Contractor Name Theresa G. Blackwell

Signature 

Title

President/CEO

ATTACHMENT G

Contractor's Certification of No Safety Impact Positions
In Performance of a City Contract

I, Theresa G. Blackwell, CEO as an owner or officer of
(Name) (Print/Type) (Title)

VIRTUO GROUP CORPORATION (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

12 November 2013

Date

Contractor Name Theresa G. Blackwell

Signature



Title

CEO

ATTACHMENT D

CONTRACTOR'S CERTIFICATION OF NON-APPLICATION OF
CITY OF HOUSTON DRUG DETECTION AND DETERRENCE PROCEDURES
FOR CONTRACTORS

I, Theresa G. Blackwell, CEO as an owner or officer of
(Name) (Print/Type) (Title)

VIRTUO GROUP CORPORATION (Contractor) have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Contractor has no employee safety impact positions as defined in 5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Safety impact position means a Contractor's employment position involving job duties that if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real and/or imminent threat to the personal health or safety of the employee, co-workers, and/or the public.

12 November 2013

Date

Contractor Name Theresa G. Blackwell

Signature



Title

CEO