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2015-0930

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

**AGREEMENT FOR FOUNDATIONAL CITYWIDE COMPLIANCE RISK  
ASSESSMENT FOR THE CITY OF HOUSTON**

**1. PREAMBLE**

1.1 Addresses of the Parties

1.1.1. **THIS AGREEMENT FOR FOUNDATIONAL CITYWIDE COMPLIANCE RISK ASSESSMENT CONSULTANT SERVICES** ("Agreement" or "Contract") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city, and **PRICEWATERHOUSECOOPERS LLP**, a limited liability partnership authorized to do business in Texas ("Consultant" or "Consultants" or "Contractor").

1.1.2. The initial addresses of the Parties, which one Party may change by giving written notice to the other Party, are as follows:

<u>City</u>	<u>Consultant</u>
City Purchasing Agent for the Office of Compliance and Ethics P.O. Box 61489 Houston, Texas 77208-1480	PricewaterhouseCoopers LLP Erik Hansen Partner 1000 Louisiana St., Suite 5800 Houston, Texas 77002

1.1.3. The City and Consultant hereby agree as follows:

[The rest of this page intentionally left blank.]

1.2 Table of Contents

This Agreement consists of the following sections:

	<u>Page</u>
<b>1. PREAMBLE</b>	<b>1</b>
1.1 Address .....	1
1.2 Table of Contents .....	2
1.3 Parts Incorporated .....	4
1.4 Controlling Parts .....	4
1.5 Signatures.....	5
<b>2. DEFINITIONS</b>	<b>6</b>
<b>3. DUTIES OF CONTRACTOR</b>	<b>7</b>
3.1 Scope of Services.....	7
3.2 Scheduling and Coordination of Performance .....	7
3.3 Reports .....	7
3.4 Payment of Subcontractors .....	7
3.5 Reserved.....	8
3.6 Release .....	8
3.7 Indemnification .....	8
3.8 Indemnification – Patent, Copyright, Trademark, and Trade Secret Infringement	9
3.9 Subcontractor’s Indemnification.....	10
3.10 Indemnification Procedures .....	10
3.11 Insurance .....	11
3.12 Warranties .....	13
3.13 Performance Standard .....	13
3.14 Confidentiality .....	13
3.15 Conflicts of Interest.....	14
3.16 Use of Work Products .....	14
3.17 Licenses and Permits.....	15
3.18 Compliance with Laws.....	15
3.19 Compliance with Equal Opportunity Ordinance.....	15
3.20 Drug Abuse Detection and Deterrence .....	15
3.21 Minority and Women Business Enterprises .....	16
3.22 Pay or Play .....	16
3.23 CJIS Compliance.....	17
<b>4. DUTIES OF THE CITY</b>	<b>17</b>
4.1 Payment Terms .....	17
4.2 Taxes .....	17
4.3 Method of Payment.....	17
4.4 Limit of Appropriation; Limitation of City’s Duites .....	18
<b>5. TERM AND TERMINATION</b>	<b>21</b>
5.1 Term.....	21
5.2 Renewals .....	21

5.3	Termination for Convenience by the City.....	21
5.4	Termination for Cause by the City.....	21
5.5	Termination for Cause by Consultant .....	22

**6. MISCELLANEOUS PROVISIONS**

**22**

6.1	Relationship of the Parties .....	22
6.2	Force Majeure .....	23
6.3	Severability .....	24
6.4	Entire Agreement .....	24
6.5	Written Amendment.....	24
6.6	Applicable Laws .....	24
6.7	Notices .....	24
6.8	Captions .....	24
6.9	Non-Waiver.....	24
6.10	Inspections and Audits .....	25
6.11	Enforcement .....	25
6.12	Ambiguities.....	25
6.13	Survival .....	25
6.14	Publicity .....	25
6.15	Parties in Interest.....	25
6.16	Successors and Assigns.....	26
6.17	Business Structure and Assignments .....	26
6.18	Acceptance and Approvals.....	26
6.19	Remedies Cumulative .....	26
6.20	Risk of Loss .....	26
6.21	Consultant Debt.....	27
6.22	Other Consultant Firms; PwC Subcontractors .....	27
6.23	Consultant Responsibilities.....	27
6.24	City Responsibilities .....	28
6.25	CPA Notice .....	28
6.26	Non-Exclusive Contract; Other Matters.....	28
	Exhibit A: Scope of Services .....	29
	Exhibit B: Fee Schedule.....	35
	Exhibit C: Equal Employment Opportunity.....	37
	Exhibit D: Drug Policy Compliance Agreement.....	39
	Exhibit E: Drug Policy Compliance Declaration .....	40
	Exhibit F: Contractor’s Certification of No Safety Impact Positions .....	42
	Exhibit G: MWBE Subcontract Terms .....	43
	Exhibit H: Play or Pay Forms.....	44

1.3 Parts Incorporated

1.3.1 The above described sections, exhibits and recitals are incorporated into this Agreement.

1.4 Controlling Parts

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

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):

CONSULTANT:  
PRICEWATERHOUSECOOPERS LLP

  
\_\_\_\_\_

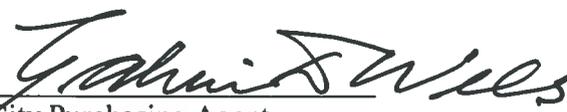
By:   
\_\_\_\_\_

Name: Erik Hansen

Title: Partner

Federal Tax ID No.: 134008324

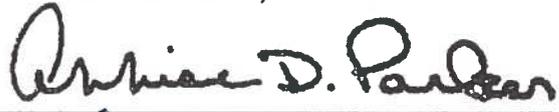
APPROVED

  
\_\_\_\_\_  
City Purchasing Agent

ATTEST/SEAL:

  
\_\_\_\_\_  
City Secretary

CITY:  
CITY OF HOUSTON, TEXAS

  
\_\_\_\_\_  
Mayor 

APPROVED:

  
\_\_\_\_\_  
Lynette Fons, J.D.  
Chief Compliance Officer

COUNTERSIGNED:

  
\_\_\_\_\_  
City Controller 

Countersignature Date: 10-8-15

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Sr. Assistant City Attorney  
L.D. File No.:00341500073001

## 2. DEFINITIONS

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

2.2 "Acceptance" means acceptance of the deliverables described Exhibit "A" of this Agreement.

2.3 "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Consultant.

2.4 "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).

2.5 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

2.6 "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.

2.7 "City Purchasing Agent" means the Purchasing Agent for the City of Houston, or the person he or she designates.

2.8 "Consultant" is defined in the preamble of this Agreement and includes its successors and assigns.

2.9 "Countersignature Date" means the date the City Controller countersigns this Agreement. The Countersignature Date is the effective date of this Agreement.

2.10 "Department" means Houston Office of Compliance and Ethics.

2.11 "Deliverables" mean all written material that is prepared for and delivered to the City under this Agreement.

2.12 "Director" means the City of Houston Chief Compliance Officer, or the person she designates.

2.13 "Documents" means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, computer programs, source codes of applications, operating manuals, models, photographs, specifications, and other work products prepared by the Consultant in accordance with this Agreement. The Director shall specify the medium and format in which Consultant shall provide the Documents.

2.14 "Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation".

2.15 "Notice to Proceed" means a written communication from the City Purchasing Agent to Consultant instructing Consultant to begin performance under this Agreement.

2.16 "Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

2.17 "Writing" or "written" shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

### **3. DUTIES OF CONSULTANT**

#### **3.1 Scope of Services**

3.1.1 In consideration of the payments specified in this Agreement, Consultant shall provide all labor, material, and supervision necessary to perform the services as described in Exhibit "A" ("Scope of Work" or "Services"), attached hereto and incorporated by reference.

3.1.2 Consultant agrees to perform such specific tasks as are set forth in this Article 3 of the Agreement, as well as the tasks listed in Exhibit "A". In the event of an inconsistency between the terms of this article and the terms of Exhibit "A", exclusively with respect to the content of the scope of work and required submitted documents, the terms of Exhibit "A" shall control.

#### **3.2 Scheduling and Coordination of Performance**

3.2.1 Consultant shall coordinate its performance with the Director and other persons that the Director designates. Consultant shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement or otherwise affecting or relating to the Agreement.

3.2.2 The City Purchasing Agent shall provide Consultant a written Notice to Proceed specifying a date to begin performance under this Agreement. Consultant shall continue to perform diligently until this Agreement is terminated or all services, including follow up testing and replacements, are completed, whichever comes later. Consultant acknowledges that time is of the essence.

#### **3.3 Reports**

3.3.1 Consultant shall submit to the Director, at a minimum, quarterly reports of progress on the project, including status of phase activity and the status of information requests made by Consultant to the City.

#### **3.4 Payment of Subcontractors**

3.4.1 Consultant shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. CONSULTANT SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING

OUT OF CONSULTANT'S FAILURE TO MAKE THESE PAYMENTS. Consultant shall submit disputes relating to payment of MWBE subcontractors to mediation in the same manner as any other disputes under the MWBE subcontract.

3.5 Reserved

3.6 Release

**3.6.1 CONSULTANT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ALL LIABILITY FOR BODILY INJURY, OR DEATH OR DAMAGE TO OR LOSS OR DESTRUCTION OF ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY CONSULTANT'S NEGLIGENCE OR INTENTIONAL MISCONDUCT AS WELL AS ALL LIABILITY FOR BODILY INJURY, OR DEATH OR DAMAGE TO OR LOSS OR DESTRUCTION OF ANY REAL OR TANGIBLE PERSONAL PROPERTY CAUSED IN CONNECTION WITH OR INCIDENTAL TO CONSULTANT'S PERFORMANCE UNDER THIS AGREEMENT.**

3.7 Indemnification

**3.7.1 CONSULTANT 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 ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR BODILY INJURY, OR DEATH OR DAMAGE TO OR LOSS OR DESTRUCTION OF ANY REAL OR TANGIBLE PERSONAL PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING THOSE CAUSED BY:**

**3.7.1.1 CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONSULTANTS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; AND**

**3.7.1.2 THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT.**

**3.7.2 CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS AS SET FORTH HEREIN DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT'S INDEMNIFICATION IS LIMITED TO**

**\$500,000.00 PER OCCURRENCE. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE. CONSULTANT'S AGGREGATE LIABILITY UNDER THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY INDEMNIFICATION PROVISIONS CONTAINED HEREIN) SHALL IN NO EVENT EXCEED 300% OF THE FEES RECEIVED BY CONTRACTOR FOR THE TOTAL COST OF THE WORK UNDER THIS AGREEMENT.**

**3.8 Indemnification – Patent, Copyright, Trademark, and Trade Secret Infringement**

- 3.8.1 CONSULTANT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AUTHORIZED AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY DELIVERABLES CONSULTANT FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONSULTANT SHALL PAY ALL DIRECT COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**
- 3.8.2 CONSULTANT SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE DELIVERABLES WITHOUT THE CITY'S PRIOR WRITTEN CONSENT, UNLESS THE USE OF SUCH DELIVERABLES IS DETERMINED TO HAVE INFRINGED OR IF, IN CONSULTANT'S JUDGMENT, SUCH USE IS LIKELY TO BE INFRINGING.**
- 3.8.3 SHOULD THE CITY'S USE OF SUCH DELIVERABLES BE DETERMINED TO HAVE INFRINGED OR IF, IN CONSULTANT'S JUDGMENT, SUCH USE IS LIKELY TO BE INFRINGING, CONSULTANT SHALL, AT ITS OWN EXPENSE, EITHER (1) USE COMMERCIALY REASONABLE EFFORTS TO OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE DELIVERABLES OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THE DELIVERABLES TO MAKE THEIR USE NON-INFRINGING WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT DELIVERABLES. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY TERMINATE THE AGREEMENT, RETURN THE DELIVERABLES TO CONSULTANT, AND CONSULTANT SHALL REFUND THE PURCHASE PRICE FOR SUCH DELIVERABLES.**
- 3.8.4 THIS INFRINGEMENT INDEMNITY DOES NOT COVER CLAIMS ARISING FROM (1) THE COMBINATION OF DELIVERABLES WITH PRODUCTS OR SERVICES NOT PROVIDED BY CONSULTANT; (2) THE MODIFICATION OF DELIVERABLES BY ANY PERSON OTHER THAN CONSULTANT, (3) DELIVERABLES COMPLYING WITH OR BASED ON INFORMATION,**

**SPECIFICATIONS OR DESIGNS PROVIDED BY OR AT CLIENT'S DIRECTION, OR (4) THE USE OF SERVICES AND/OR DELIVERABLES IN A MANNER NOT PERMITTED OR CONTEMPLATED UNDER THE AGREEMENT.**

**3.9 Subcontractor's Indemnification**

**3.9.1 CONSULTANT SHALL REQUIRE ANY OF ITS THIRD PARTY SUBCONTRACTORS PERFORMING SERVICES HEREUNDER (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. CONSULTANT IS RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICES HEREUNDER BY ANY OF ITS SUBCONTRACTORS.**

**3.10 Indemnification Procedures**

Notice of Claims. If the City or Consultant 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.

2. 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 Consultant is prejudiced, suffers loss, or incurs expense because of the delay. If Consultant does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that City is prejudiced, suffers loss or incurs expenses because of the delay.

**3. Defense of Claims.**

1. Assumption of Defense. Consultant may assume the defense of the claim at its own expense. If Consultant assumes the defense of the claim, Consultant shall then control the defense and any negotiations to settle the claim. Consultant shall notify the City of any and all offers to settle the claim.

3.10.3.2 Continued Participation. If Consultant 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. Consultant 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 Consultant 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 Insurance**

3.11.1 At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim. Such insurance is described as follows:

<u>Coverage</u>	<u>Limit of Liability</u>
Workers' Compensation	Statutory for Texas Workers' Compensation
Employer's Liability	Bodily Injury by Accident \$100,000 (each accident) Bodily Injury by Disease \$100,000 (policy limit) Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability: Including Contractual Liability, Bodily and Personal Injury, Property Damage, Products and Completed Operations Coverage (for two years following completion of the work under this Agreement)	Bodily Injury and Property Damage, Combined Limits of \$500,000 each occurrence and \$1,000,000 aggregate.
Business Automobile Liability (for vehicles Consultant uses in performing under this Agreement, including Employer's Non-Ownership and Hired Auto Coverage)	\$1,000,000 combined single limit. Aggregate Limits are per 12-month policy period unless otherwise indicated.
Professional Indemnity Coverage with no policy exclusions of any kind.	\$1,000,000 per claim/aggregate

Aggregate Limits are per 12-month policy period unless otherwise indicated.

If professional liability coverage is required and is written on a "claims made" basis, Consultant shall also provide:

1. Proof of renewal each year for two years after substantial completion of the Project; or
2. In the alternative, evidence of extended reporting period coverage for two years after substantial completion; or

3.11.2 Form of Insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer 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 Best's Key Rating Guide.

3.11.3 Required Coverage. The City shall be an Additional Insured under this Contract, and all policies, except Professional Indemnity and Worker's Compensation, shall name the City as an Additional Insured for claims caused by Consultant's sole negligence or willful misconduct during the performance of this Agreement and subject to indemnity as required by law. The Commercial General Liability Policy is primary to any other insurance available to the Additional Insured with respect to claims caused by Consultant during its performance under the Agreement.

3.11.4 Deductibles. Consultant 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.

3.11.5 Notice. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.11.6 Subrogation. Each policy, except for the Professional Indemnity policy, must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents or employees, except to the extent such claim arises out of the alleged negligence of the City.

3.11.7 Endorsement of Primary Insurance. The Commercial General Liability policy must be primary to any other insurance available to the Additional Insured with respect to claims caused by Consultant under this Agreement.

3.11.8 Liability for Premium. Consultant shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

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

### 3.12 Warranties

3.12.1. Consultant warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of the American Institute of Certified Public Accountants ("AICPA"). Consultant shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

### 3.13 Performance Standards

3.13.1 Consultant will perform the Services with qualified personnel in accordance with the relevant standards promulgated by the AICPA as set forth in the applicable Statement of Work.

### 3.14 Confidentiality

3.14.1 Subject to applicable federal, state and local laws, each Party will protect confidential information ("Confidential Information") using reasonable measures commensurate with those that the receiving party uses to protect its own confidential information. Each party may use or disclose the Confidential Information to perform the Services, or as permitted in this Contract or the applicable Statement of Work, or as requested or directed by the other party to this Contract, or as required by applicable law, statute, rule, regulation or professional standard. Neither party will otherwise disclose Confidential Information to third parties without the other party's prior consent. If disclosure is required by law, statute, rule or regulation (including any subpoena or other similar form of process), or by professional standards, the party to which the request for disclosure is made shall (other than in connection with government audits, investigations, or supervisory examinations by regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement) provide the other party with prior written notice (to the extent permissible by law) thereof and, if practicable under the circumstances, allow the other party to seek a restraining order or other appropriate relief. For the purposes of this section, "Confidential Information" shall mean all non-public information marked "confidential" or "proprietary" or information that otherwise should be understood by a reasonable person to be confidential in nature, provided by a party or on its behalf except for (1) information that the recipient rightfully possessed prior to the date of disclosure, (2) information is independently developed by the recipient without use of or reliance on Confidential Information, (3) information Consultant rightfully receives from a third party free to make such disclosure without breach of any legal obligation or (4) information that becomes publicly available without breach of this Agreement

3.14.2 Notwithstanding anything to the contrary in this Contract, Consultant may keep its

working papers, and such copies of the Deliverables and City's Confidential Information to comply with its document retention policies or in accordance with applicable law, rule, regulation or professional standards. Any copies of City's Confidential Information so kept shall be retained in accordance with the terms of this section.

### 3.15 Conflicts of Interest

3.15.1 If an actual or potential conflict arises between the City's interests and the interests of other clients Consultant represents, Consultant shall immediately notify the Director in writing. If the Director consents to Consultant's continued representation of the other clients, he shall notify Consultant in writing.

### 3.16 Use of Deliverables

3.16.1 The City will own all written material that is prepared for and delivered to it under this Contract ("Deliverables"), except as follows: Consultant will own its working papers, preexisting materials and software, as well as any general skills, know-how, processes, methodologies, tools, techniques or other intellectual property (including a non-City specific version of any Deliverables) which Consultant may have discovered or created as a result of the Services ("Consultant Materials"). Upon payment, City has a nonexclusive, non-transferable license to use any Consultant Materials included in the Deliverables for City's own internal use as part of those Deliverables.

3.16.2 Consultant provides the Services and Deliverables solely for City's internal use and benefit. The Services and Deliverables are not for a third party's use, benefit or reliance and Consultant disclaims any contractual or other responsibility or duty of care to others based upon the Services or Deliverables. Except as described below, City shall not discuss the Services with, or disclose Deliverables to, any third party without Consultant's prior written consent. City may disclose Deliverables to, or discuss information relating to the Services with, City's third party professional advisors (including accountants, auditors, attorneys, financial and other advisors) which are acting solely for City's benefit and on City's behalf and which have a need to know such information in order to provide advice or services to City, provided that such advisors agree: (i) that Consultant did not perform the Services or prepare Deliverables for such advisors' use, benefit or reliance and Consultant assumes no duty, liability or responsibility to such advisors, and (ii) to not disclose the Services or Deliverables to any other party without Consultant's prior written consent. Third party professional advisors do not include any parties that are providing or may provide insurance, financing, capital in any form, a fairness opinion, or selling or underwriting securities in connection with any transaction that is the subject of the Services or any counterparty to an anticipated transaction or dispute or any parties which have or may obtain a financial interest in City or an anticipated transaction.

3.16.3 The City may disclose any materials that do not contain Consultant's name or other information that could identify Consultant as the source (either because Consultant provided a Deliverable without identifying information or because City subsequently removed it) to any third party if City first accepts and represents them as its own and makes no reference to Consultant in connection with such materials.

### 3.17 Licenses and Permits

3.17.1 Consultant 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. Consultant shall promptly notify the Director of any suspension, revocation, or other detrimental action against its license(s).

### 3.18 Compliance with Laws

3.18.1 While performing its obligations under this Agreement and any relevant Statement of Work, each party will comply with all relevant United States federal, state and local laws and regulations which are applicable to such party's performance of its obligations hereunder.

### 3.19 Compliance with Equal Opportunity Ordinance

3.19.1 Consultant shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C".

### 3.20 Drug Abuse Detection and Deterrence

3.20.1 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 Consultants while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

3.20.2 Before the City signs this Agreement, Consultant shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):

3.20.2.1 A copy of its drug-free workplace policy;

3.20.2.2 The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D", together with a written designation of all safety impact positions; and,

3.20.2.3 If applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit F.

3.20.3 If Consultant 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". Consultant 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 date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.

3.20.4 Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant's employee work force.

3.20.5 Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

### 3.21 Minority and Women Business Enterprises

3.21.1 It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") 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 MWBEs, are incorporated into this Agreement.

Consultant shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWBEs. The City's policy does not require Consultant to in fact meet or exceed this goal, but it does require Consultant to objectively demonstrate that it has made good faith efforts to do so. To this end, Consultant 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 MWBEs. Consultant shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity Director in the form and at the times he or she prescribes.

Consultant shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with MWBE subcontractors to mediation in Houston, Texas, if directed to do so by the Office of Business Opportunity Director. All agreements must contain the terms set out in Exhibit G. If Consultant is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

### 3.22 Pay or Play Policy

3.22.1 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. Consultant has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. The Pay or Play Program Requirements Form (POP-1) and all other POP Forms are available for download from the City of Houston's website at: <http://www.houstontx.gov/obo/popforms.html>.

### 3.23 Criminal Justice Information Systems (CJIS) Compliance (Applicable to HPD Occupied Facilities)

3.23.1. The City of Houston recognizes that by allowing physical or logical (electronic) access to any HPD facilities or network resources, people may gain access to information or systems they are statutorily prohibited from accessing. To comply with state and federal regulations, the Houston Police Department is required to document and investigate access requests to be sure access is necessary and permitted. Consultant, therefore, agree to review the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein.

## **4. DUTIES OF THE CITY**

### 4.1 Payment Terms

4.1.1 Subject to the allocation of funds and upon acceptance by the Director of the deliverables detailed in Exhibit "A", City shall pay Consultant for their services and reimbursable expenses at the rates set forth in Exhibit "B".

4.1.2 Consultant shall provide itemized invoice for reimbursable expenses. Reimbursable Expenses are the actual expenditures Consultants and their subcontractors make while performing services for the project requested by the Director and are limited to airfare, hotel, ground transportation and parking. Consultant will take all reasonable measures to limit the use of team members who are located in offices outside of the City of Houston.

4.1.3 Subject to the allocation of funds, The City shall compensate the Consultant for extra services at the rates shown in Exhibit "B", but if no rate is specified for a requested service, compensation shall be made on the basis of rates agreeable to the Consultant and the Director as evidenced by written memorandum.

### 4.2 Taxes

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

### 4.3 Method of Payment

4.3.1 The City shall pay on the basis of deliverables described in Exhibit "B". Upon the submission of each Phase's draft deliverables, Consultant shall submit invoice for the price of the completed Phase in Exhibit B. The City shall pay Consultant within 30 calendar days of billing; however, the City may withhold payment of up to 10% of the Price for each completed Phase until acceptance by the Director. Unless otherwise agreed, deliverables will be deemed as accepted and final after (10) working days following receipt of each Phase's draft deliverables.

4.3.2 If the City disputes any items in an invoice Consultant submits for any reason, including lack of supporting documentation, the Director shall notify Consultant within 5 business days of receipt of invoice. The Director shall request remedial action. After the dispute is settled, Consultant shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

If the City fails to pay any undisputed amounts due and owing to Consultant and such failure continues for more than thirty (30) days after the due date for such payment, then Consultant may suspend performance of the services under this Agreement until Consultant receives such undisputed amounts. Prior to any such suspension, Consultant shall provide the Director with at least ten (10) days' prior written notice of its intent to suspend performance of the services under this Agreement. In the event of such delay payments and/or suspension of the services under this Agreement, the provisions of Tex. Gov't Code Ann. §§ 2251.025 and 2251.051 shall apply.

#### 4.4 Limit of Appropriation; Limitation of City's Duties

The City's duty to pay money to Consultant under this Agreement is limited in its entirety by the provisions of this Section.

4.4.1 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 **\$965,025.00** for services and reimbursable expenses 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: EH

4.4.1.1 The City makes a Supplemental Allocation by issuing to Consultant 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.

\$15,000.00.

EH  
EH

4.4.1.2 City Council delegates to the Director the authority to approve up to \$15,000.00 in supplemental allocations for this Agreement without returning to Council.

4.4.1.3 The Original Allocation plus all supplemental allocations are the "Allocated Funds". Funds are not allocated unless and until the funds have been (1) approved by the Director and (2) certified by the City Controller as required by Article II, Section 19a of the City Charter, notwithstanding any delegation of authority by City Council. This Agreement is not an allocation of funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Consultant'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.

4.4.1.4 At any time during the Agreement Term, the Director 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. Consultant 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.

4.4.1.5 The Director will issue the Change Order in substantially the following form:

**CHANGE ORDER**

TO: [Name of Consultant]  
FROM: City of Houston, Texas (the "City")  
DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Consultant] 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 Consultant 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 Director ]

4.4.1.6 The Director may issue more than one Change Order, subject to the following limitations:

- (a) Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.
- (b) If a Change Order describes items that Consultant is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Consultant.
- (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

4.4.1.7 Consultant will not undertake work that is beyond the scope of Services set forth in this Contract. Either party may request changes to the Services. To be effective, a change in scope must be in writing and signed by both parties. Consultant shall not be liable to the City for any delay or failure to perform any of the Services or obligations in this Statement of Work due to causes beyond its reasonable control.

4.4.1.8 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. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4.4.1.9 Unless a different time period is set forth in the Statement of Work, the City shall notify Consultant, in writing, within ten (10) working days following receipt of any Deliverable for which Consultant has responsibility for delivery if such Deliverable is not acceptable. The City's notice shall specify in reasonable detail the reasons such Deliverable has been deemed unacceptable. If the notice of non-acceptance is not sufficiently detailed to allow Consultant to determine why such Deliverable is unacceptable, Consultant may request in writing that the City provide additional information. Within fifteen (15) days after receipt of sufficient notice, Consultant will, at its option, either fix the problems identified in such Deliverable or present the City with a plan to fix such problems within a reasonable period of time under the circumstances. Acceptance by the City shall not be unreasonably withheld.

## 2. TERM AND TERMINATION

### 5.1 Term

5.1.1 This Agreement is effective on the Countersignature Date and remains in effect until one (1) year from the Effective Date unless sooner terminated according to the terms of this Agreement (the "Initial Term").

### 5.2 Renewals

5.2.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement may be renewed for two (2) additional one year terms on the same terms and conditions.

### 5.3 Termination for Convenience by the City

1. The Director may terminate this Agreement at any time by giving 30 days' written notice to Consultant. 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, Consultant 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, Consultant shall submit an invoice showing in detail the services performed under this Agreement up to the termination date.

3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONSULTANT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONSULTANT 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.

### 5.4 Termination for Cause by the City

4. If Consultant defaults under this Agreement, the Director may either terminate this Agreement or allow Consultant to cure the default as provided below. The City's right to terminate this Agreement for Consultant's default is cumulative of all rights and remedies which exist now or in the future. Default by Consultant occurs if:

5.4.1.1 Consultant fails to perform any of its material duties under this Agreement;

5.4.1.2 Consultant becomes insolvent;

5.4.1.3 All or a substantial part of Consultant's assets are assigned for the benefit of its creditors;  
or

5.4.1.4 A receiver or trustee is appointed for Consultant.

5.4.2 If a default occurs, the Director may, but is not obligated to, deliver a written notice to Consultant describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Consultant to cure the default and Consultant does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Consultant does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation to the City.

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

## 5.5 Termination for Cause by Consultant

5.5.1 Consultant may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Consultant wishes to terminate the Agreement, then Consultant must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives notice. Consultant, at its sole option, may extend the proposed termination date to a later date not to exceed 60 days. 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 Consultant may terminate its performance under this Agreement on the termination date.

5.5.2 Consultant may terminate this Agreement upon written notice to the City in the event that circumstances arise that would make continuation of all or any portion of the Services by Consultant in conflict with any independence or other professional regulations, standards or guidelines to which Consultant is required to conform to as a regulated accounting firm (e.g., AICPA, PCAOB, SEC).

## **6. MISCELLANEOUS PROVISIONS**

### 6.1 Relationship of the Parties

6.1.1 Consultant is an independent Consultant and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Consultants' performance under this Agreement. All personnel Consultant uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Consultant is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social

security, and other payroll taxes and all worker's compensation benefits coverage.

## 6.2 Force Majeure

6.2.1 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 Consultant. 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 against the City or Consultant, 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 Consultant to extra Reimbursable Expenses or other payment.

6.2.2 This relief is not applicable unless the affected Party does the following:

6.2.2.1 Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

6.2.2.2. Provides the other Party with prompt written notice of the cause and its anticipated effect.

6.2.3 The Director will review claims that a Force Majeure that directly impacts the City or Consultant has occurred and render a written decision within 14 days. The decision of the Director is final.

6.2.4 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.

6.2.5 If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Consultant. This termination is not a default or breach of this Agreement. CONSULTANT 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.

6.2.6 Consultant is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Consultant shall employ only fully trained and qualified personnel during a strike.

### 6.3 Severability

6.3.1 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

6.4.1 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

6.5.1 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 Consultant. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

### 6.6 Applicable Laws

6.6.1 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.

### 6.7 Notices

6.7.1 All notices to either party to the Agreement must be in writing and must be delivered 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 the Preamble 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

6.8.1 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

6.9.1 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.

6.9.2 An approval by the Director or by any other employee or agent of the City of any part of Consultant'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 Director is not authorized to vary the terms of this Agreement.

#### 6.10 Inspections and Audits

6.10.1 Upon reasonable written notice, not less than twenty-four (24) hours, City representatives have the right to perform, or have performed:

6.10.1.1 Audits of Consultant's financial books, documents, papers, and records pertaining to Services provided under this Agreement for the purpose of validating the amounts invoiced by Consultant hereunder (the "Records").

6.10.1.2 The audit of the Records will be conducted at the sole expense of the City. The City shall conduct such audit of the Records no more than once per annum and such right to audit expires six months after final payment hereunder. The Consultant shall maintain its Records for the period of time required by applicable law.

#### 6.11 Enforcement

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

#### 6.12 Ambiguities

6.12.1 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

6.13.1 Consultant 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.

#### 6.14 Publicity

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

#### 6.15 Parties in Interest

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

#### 6.16 Successors and Assigns

6.16.1 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

6.17.1 No party to this Contract may assign or transfer this Contract, any Statement of Work hereunder, or any rights, obligations, claims or proceeds from claims arising out of or in any way relating to this Contract, any Services provided hereunder, or any fees for the applicable Statement of Work or such Services, to anyone, without prior written consent of the other party, and any assignment without such consent shall be void and invalid. This Contract shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns, and, except as expressly provided herein, nothing in this Contract shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

#### 6.18 Acceptance and Approvals

6.18.1 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 the Consultant, its employees, agents, subcontractors or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, 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 prepared or services performed by the Consultant, its employees, agents, subcontractors or suppliers pursuant to this Agreement.

#### 6.19 Remedies Cumulative

6.19.1 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.

#### 6.20 Risk of Loss

6.20.1 Unless otherwise specified elsewhere in this Agreement, risk of loss for damage for each Product passes from Consultant to the City upon acceptance by the City.

## 6.21 CONSULTANT DEBT

6.21.1 CONSULTANT AGREES TO COMPLY WITH ALL APPLICABLE CURRENT UNITED STATES FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS RELATED TO CONSULTANT'S PERFORMANCE OF ITS SERVICES UNDER THIS CONTRACT.

## 6.22 Other Consultant Firms; PwC Subcontractors

6.22.1 Consultant is a firm in the global network of separate and independent PricewaterhouseCoopers firms (exclusive of Consultant, the "Other PwC Firms"). Consultant may draw on the resources of and/or subcontract to its subsidiaries and affiliates, the Other PwC Firms and/or third party consultants and subcontractors, within or outside of the United States (each, a "PwC Subcontractor") in connection with the provision of Services and/or for internal, administrative and/or regulatory compliance purposes. City agrees that Consultant may provide information Consultant receives in connection with this Contract to the PwC Subcontractors for such purposes. Consultant will be solely responsible for the provision of the Services (including those performed by the PwC Subcontractors) and for the protection of the information provided to the PwC Subcontractors. The PwC Subcontractors and theirs and Consultant's respective partners, principals or employees (collectively the "Beneficiaries") shall have no liability or obligations arising out of this Contract. City agrees to: (a) bring any claim or other legal proceeding of any nature arising from the Services against Consultant and not against the Beneficiaries; and (b) ensure or procure that the City's subsidiaries or consolidated affiliates that City binds to this Contract by its signature or which separately agree to the provisions of this Contract (collectively, the "Subsidiaries") do not assert any such claim or other legal proceeding against Consultant or the Beneficiaries. If any of the Subsidiaries receive Services under this Contract, City agrees to provide a copy of this Contract to such Subsidiaries, and City will notify them that although the Beneficiaries may interact with them, the delivery of the Services is governed by the terms of this Contract (including the liability limitations herein), and City's Subsidiaries should notify City of any disputes or potential claims arising from the Services. Consultant disclaims any contractual or other responsibility or duty of care to any other subsidiaries or affiliates. While Consultant is entering into this Contract on its own behalf, this section also is intended for the benefit of the Beneficiaries.

## 6.23 Consultant Responsibilities

6.23.1 Consultant will perform the Services in accordance with the relevant standards promulgated by the American Institute of Certified Public Accountants ("AICPA") as set forth in the applicable Exhibit or Statement of Work. Because Consultant will provide the Services solely for City's use and benefit and pursuant to a relationship exclusively with City, Consultant disclaims any contractual or other responsibility, liability or duty of care to others based upon the Services or upon any Deliverables or advice Consultant provides. Any spreadsheets, electronic materials or software tools that Consultant provides to City are for City's convenience and are provided as is. Consultant will not be responsible for results obtained by anyone other than Consultant from the use of those items.

#### 6.24 City Responsibilities

6.24.1 City is responsible for all management functions and decisions relating to the Services, including without limitation, evaluation and acceptance of the adequacy of the scope of Services in addressing City's needs. City will designate a competent member of City's management to oversee the Services. City will provide reasonable assistance and accurate and complete information on a timely basis, and Consultant will perform the Services on that basis. It is City's responsibility to establish and maintain its internal controls.

#### 6.25 CPA Notice

6.25.1 Consultant is owned by professionals who hold CPA licenses as well as by professionals who are not licensed CPAs. Depending on the nature of the Services, non-CPA owners may be involved in providing Services under this Contract.

#### 6.26 Non-Exclusive Contract; Other Matters

6.26.1 This is a non-exclusive agreement and, subject to its confidentiality obligations, Consultant and the Other PwC Firms are not prevented or restricted from providing services to other clients. Consultant is an independent consultant, not a fiduciary or agent of City, and shall not perform any obligation of City, whether regulatory or contractual, nor shall Consultant negotiate on City's behalf. Consultant may use City's name in experience citations and recruiting materials. If Consultant is requested or authorized by City or required by government regulation, regulatory agency, subpoena, or other legal process to produce Consultant's Deliverables, working papers or personnel for testimony or interview with respect to services Consultant performed for City, City will reimburse Consultant for Consultant's and its counsels' expenses and professional time incurred in responding to such a request.

## EXHIBITS

### Exhibit A: Scope of Services

1. Consultant shall conduct a foundational citywide risk assessment to ascertain and accurately document the current state of City operations and obligations from a compliance perspective. The risk assessment shall include, at a minimum, the following phases and deliverables:

#### 1.1 Phase I - Plan Assessment

- 1.1.1 Consultant will collaborate with the City to finalize the engagement scope and objectives, project milestones and goals, and timely project delivery timeframes. In addition, draft communications to key departmental stakeholders will be developed to facilitate awareness of the project's goals, timing, and departmental roles and responsibilities. Consultant will obtain approval on scope of work prior to commencing Phase II.

- 1.1.2 As part of Phase I, Consultant will perform the following activities:

- 1.1.2.1 Conduct kick-off meeting, confirming objectives and administrative responsibilities with City management.

- 1.1.2.2 Identify in-scope City departments and entities, project-specific departmental contacts, and stakeholders.

- 1.1.2.3 Confirm scope and depth of the assessment, with particular emphasis on departments that have been identified with a high-risk profile in compliance as part of recent City enterprise risk assessments.

- 1.1.2.4 Develop and confirm the compliance management and risk prioritization framework, including relevant assessment criteria.

- 1.1.2.5 Finalize project plan and timeline, including project status reporting frequency and format, with the City, with project sponsor input.

- 1.1.2.6 Prepare initial communication plan for departmental contacts and stakeholders, with City input.

- 1.1.2.7 Prepare initial document request list, focusing on establishing an initial risk profile and identifying department and other risk owners and high-level compliance program activity while leveraging publicly available materials, such as previous City reports and assessments; establish document repositories to facilitate data and information collection.

- 1.1.3 Consultant shall provide the following deliverables as part of Phase I:

- 1.1.3.1 Project plan and timeline.

- 1.1.3.2 Departmental contact and stakeholder communication plan.

- 1.1.3.3 Project document request.

#### 1.2 Phase II - Survey & Preliminary Assessment

- 1.2.1 Consultant will gather relevant information and conduct a preliminary assessment of the City's core compliance risk areas while mapping these and associated Citywide and departmental compliance infrastructure to the applicable departments and other entities.
- 1.2.2 As part of Phase II, Consultant shall perform the following activities:
  - 1.2.2.1 Gather and review relevant documentation identified in the document request list.
  - 1.2.2.2 Engage departmental stakeholders through the finalized communications developed in Phase I and conduct a centralized kickoff meeting to introduce the project team and explain relevant steps.
  - 1.2.2.3 Conduct an initial online compliance risk survey of departmental stakeholders to identify and preliminarily assess compliance risk areas, their applicability to specific departments, high-level Citywide and department compliance organization and risk mitigation activity and related controls and perceived effectiveness of those controls or activities.
  - 1.2.2.4 Conduct preliminary follow-ups with targeted departmental stakeholders to clarify survey results.
  - 1.2.2.5 Formulate an initial enterprise-wide baseline compliance risk inventory, mapping risks to specific departments and departmental owners and noting where there are commonalities across the City entities, versus those that are unique to certain departments.
  - 1.2.2.6 Using the results of the survey, follow-up discussions with department stakeholders, and the analysis of data and other documentation received, create a preliminary compliance risk prioritization noting high-, medium-, and low-rated risks, and those risks considered out of scope for this project, in addition to identifying and categorizing high-level compliance governance and other risk mitigation activities by department.
  - 1.2.2.7 Confirm the risk prioritization with City management.
  - 1.2.2.8 For risks that are identified as applicable across all or a number of City departments, identify any centralized City subject matter risk experts/owners, as applicable.
  - 1.2.2.9 Identify departmental compliance risk owners for follow up, and schedule and conduct interviews with those individuals, using Consultant subject matter specialists as needed.
  - 1.2.2.10 Consultant shall provide the following deliverables as part of Phase II:
    - 1.2.2.10.1 Initial enterprise-wide baseline compliance risk inventory, including identified "risk owners" and common/unique risk areas.
    - 1.2.2.10.2 Written preliminary compliance risk prioritization.
    - 1.2.2.10.3 Written preliminary summary of compliance governance, infrastructure and program by department.

1.3 Phase III - Inventory Compliance Information

1.3.1 Based on the baseline compliance risk inventory and prioritization created in Phase II, Consultant will work with the City's departmental stakeholders and risk owners to gather detailed compliance requirement information, understand those requirements, and gather more specific information on mitigating controls and processes, using the compliance management framework defined in Phase I. This information will be consolidated and presented to City management for review. As part of the data gathering process, Consultant will collect information related to compliance policies and processes, internal controls, and training for assessment in Phase IV.

1.3.2 As part of Phase III, Consultant shall perform the following activities:

1.3.2.1 For those risks that are deemed to be in scope, conduct an additional online survey to departmental and other risk owners to gather information on policies and procedures, training, and other related internal controls (using agreed-on compliance framework).

1.3.2.2 Using Consultant's state and local government expertise and contacts, conduct analysis of cities/municipalities of similar size to the City of Houston for compliance risks and approaches to mitigation.

1.3.2.3 Create inventory and repository of compliance policies and procedures, training, and other related internal controls designed to mitigate compliance risk.

1.3.2.4 Identify high-level gaps in compliance risk mitigation activity.

1.3.3 Consultant shall provide the following deliverables as part of Phase III:

1.3.3.1 Written inventory of compliance management activities, including but not limited to policies, procedures, training, and other internal controls, noting high-level gaps as applicable.

#### 1.4 Phase IV-Risk Mitigation Assessment

1.4.1 Using the risk inventory and high/medium/low prioritization created in the earlier phases, Consultant will assess the completeness and effectiveness of the controls, policies, processes, and training that have been designed to mitigate associated risks, on a citywide and departmental level.

1.4.2 As part of Phase IV, Consultant shall perform the following activities:

1.4.2.1 Consultant will conduct interviews with departmental and other risk owners to follow up on the survey and other information gathered in Phase III.

1.4.2.2 Consultant will conduct a detailed assessment of the existing risk mitigation activities occurring both Citywide and in each department, using the agreed Compliance Framework, including but not limited to:

- Policies and procedures
- Training and communication activities
- Internal control processes
- Monitoring of Citywide and departmental activity impacting specific compliance risks

1.4.2.3 Identify gaps in risk mitigation activities and prepare recommendations for risk mitigation enhancements.

1.4.2.4 Create a final prioritized compliance risk universe, with associated "heat map" identifying high-, medium-, and low-rated risks in terms of likelihood of occurrence, impact (factoring in the existence or lack of associated controls), and other relevant factors such as speed or velocity with which the City and/or department would feel the consequences of a risk-related breach.

1.4.2.5 Develop self-assessment tools for the City to utilize going forward as one mechanism to monitor risk and mitigation activities across City departments.

1.4.3 Consultant shall provide the following deliverables as part of Phase IV:

1.4.3.1 Detailed assessment of compliance risk mitigation activity and recommendations for enhancements.

1.4.3.2 Illustrated mapping of compliance risk universe and their associated risk level (heat map).

1.4.3.3 Compliance Self-Assessment tool(s).

## 1.5 Phase V- Report Results

1.5.1 During this phase, Consultant shall formally report its findings. This will include developing a summary of findings and recommendations for identified control deficiencies, and significant areas for improvement.

1.5.2 As part of Phase V, Consultant shall perform the following activities:

1.5.2.1 Prepare draft summary of findings and recommendations.

1.5.2.2 Discuss preliminary results with Project Sponsor and applicable stakeholders responsible for the risk areas identified with enhancement opportunities.

1.5.2.3 Confirm recommendations with City management.

1.5.2.4 Prepare for, and conduct presentations of, final results of findings and recommendations.

1.5.2.5 Consultant will provide up to two web-based and/or internal training sessions for compliance risk owners identified during phases 1 and 2.

1.5.3 Consultant shall provide the following deliverables as part of Phase V:

1.5.3.1 Final assessment report/gap analysis, which will include recommendations for enhancements in risk mitigation strategies, including but not limited to internal controls, policies and procedures, training, and tools and technologies that would enable improvements in compliance risk controls.

1.5.3.2 Strategic roadmap (one to three year plan), addressing priority compliance risk mitigation areas requiring further development and implementation of controls, policies & procedures, training, and technology and other tools to reduce compliance risks both overall and on a departmental basis.

## 1.6 Schedule of Deliverables

Unless otherwise agreed, deliverables will be as follows:

<b>Deliverable</b>	<b>Estimated Due Date</b>
All Phase I Deliverables	November 30, 2015
All Phase II Deliverables	November 30, 2015
All Phase III Deliverables	January 31, 2016
All Phase IV Deliverables	March 28, 2016
All Phase V Deliverables	June 30, 2016

## 1.7 Additional Related Services

1.7.1 Consultant is willing to negotiate future potential additional services deemed appropriate for the scope of services, as provided herein, or deemed necessary and/or desirable by the City.

## 1.8 Addition and Deletion

1.8.1 The City, by written notice from the City Purchasing Agent to the Contractor, at any time during the term of this contract, may add or delete like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services to be provided. Any such written notice shall take effect on the date stated in the notice from the City. Similar equipment, supplies, services, or locations added to the contract shall be in accordance with the contract specification/scope of services, and the charges or rates for items added shall be the same as specified in the fee schedule. In the event that the additional equipment, supplies, locations and/or services are not identical to the item(s) already under contract, the charges therefore will then be the Contractor's normal and customary charges or rates for the equipment, supplies, locations and/or services classified in the fee schedule.

## 1.9 Silence of Specifications

1.9.1 Consultant will perform the Services in accordance with the relevant standards promulgated by the American Institute of Certified Public Accountants ("AICPA").

## 1.10 Estimated Quantities

1.10.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services during the term of this Contract. The quantities may vary depending upon the actual needs of the Department. The quantities specified herein are good faith estimates of usage during the term of this Contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing all the quantities specified herein.

## 1.11 Warranty of Services

1.11.1 Consultant warrants that it will perform the Services with qualified personnel in accordance with the applicable AICPA standards;

1.11.2 THE WARRANTIES IN THIS SECTION 1.11 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Exhibit B: Fee Schedule

Phase	Description	Deliverables	Price
1	Plan Assessment	<ol style="list-style-type: none"> <li>1. Project plan and timeline</li> <li>2. Departmental contact and stakeholder communication plan</li> <li>3. Project document request</li> </ol>	\$313,250.00
2	Survey & Preliminary Assessment	<ol style="list-style-type: none"> <li>4. Initial enterprise-wide baseline compliance risk inventory, including identified "risk owners" and common/unique risk areas.</li> <li>5. Written preliminary compliance risk prioritization. Written preliminary summary of compliance governance, infrastructure and program by department.</li> </ol>	\$67,125.00
3	Inventory Compliance Information	<ol style="list-style-type: none"> <li>6. Written inventory of compliance management activities, including but not limited to policies, procedures, training, and other internal controls, noting high-level gaps as applicable.</li> </ol>	\$331,250.00
4	Risk Mitigation Assessment	<ol style="list-style-type: none"> <li>7. Detailed assessment of compliance risk mitigation activity and recommendations for enhancements.</li> <li>8. Illustrated mapping of compliance risk universe and their associated risk level (heat map).</li> <li>9. Compliance Self-Assessment tool(s).</li> </ol>	\$134,250.00
5	Report Results	Final assessment report/gap analysis, which will include recommendations for enhancements in risk mitigation strategies, including but not limited to internal controls, policies and procedures, training, and tools and technologies that would enable improvements in compliance risk controls.	\$67,125.00

		Strategic roadmap (one to three year plan), addressing priority compliance risk mitigation areas requiring further development and implementation of controls, policies & procedures, training, and technology and other tools to reduce compliance risks both overall and on a departmental basis.	
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**TOTAL PRICE**

**\$895,000.00**

**Key Assumptions:**

- All work will commence on October 1, 2015.
- PwC will perform the work on a fixed price basis, which includes expenses.
- The estimated period of performance is **six to seven** months from the date of award.
- Work performed will be done in Houston or virtually by PwC team members, with no other travel locations included in the scope of this project.
- Our proposed fees are based on an anticipated 60 to 70 significant risk categories (e.g., Privacy, Safety, Labor & Employment, etc.) that will have many subcategories/risks across the City's departments. Should the outcome of our initial risk inventory materially exceed this estimated range, or scoping assumptions change, we will negotiate in good faith with the City regarding the additional level of effort required to perform the additional scope of services.
- The City will provide PwC access to necessary facilities, space, and information systems prior to PwC starting fieldwork, to facilitate the exchange of information associated with this work.
- PwC and the City may have discussions throughout the course of this project that enhance their understanding of expectations, project goals, and the work being performed. Only written documents, however, will constitute deliverables under the resulting contract.

### Exhibit C: Equal Employment Opportunity

1. The Consultant, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Consultant, subcontractor, vendor, supplier, or lessee 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 Consultant, subcontractor, vendor, supplier or lessee 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 Consultant, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.
3. The Consultant, subcontractor, vendor, supplier, or lessee 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 Consultant'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 Consultant, subcontractor, vendor, supplier, or lessee 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 Consultant Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.
5. The Consultant, subcontractor, vendor, supplier, or lessee 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 Consultant, subcontractor, vendor, supplier, or lessee.
6. In the event of the Consultant's, subcontractor's, vendor's, supplier's, or lessee'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 Consultant, subcontractor, vendor, supplier, or lessee 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 Consultant 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 Consultant 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 Consultant becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

8. The Consultant shall file and shall cause his or her subcontractor, 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 Consultant and each subcontractor.

Exhibit D: Drug Policy Compliance Agreement

I, Erik J. Hansen Partner as an owner or officer of  
(Name) (Print/Type) (Title)  
PricewaterhouseCoopers LLP (Consultant)  
(Name of Company)

have authority to bind Consultant 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 Consultant 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 Consultant 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 Consultants (Executive Order No. 1-31).
2. Obtain an Area 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 Consultant 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.

September 17, 2015  
Date  
PricewaterhouseCoopers LLP  
Consultant Name  
[Signature]  
Signature  
Partner  
Title

Exhibit E: Drug Policy Compliance Declaration

I, Erik J. Hansen Partner as an owner or officer of  
 (Name) (Print/Type) (Title)

Pricewaterhouse Coopers LLP (Consultant)  
 (Name of Company)

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

This reporting period covers the preceding 6 months from n/a to n/a, 20n/a

EJ  
 Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

n/a  
 Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31. Employees have been notified of such procedures.

n/a  
 Initials Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

EJ  
 Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is 0.

n/a  
 Initials From n/a to n/a the following test has occurred:  
 (Start date) (End date)

	Random	Reasonable Suspicion	Post-Accident	Total
Number Employees Tested				<u>n/a</u>
Number Employees Positive				<u>n/a</u>
Percent Employees Positive				<u>n/a</u>

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

EJ  
 Initials 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.

September 17, 2015  
 Date  
Pricewaterhouse Coopers LLP

Consultant Name

Signature

Title

*Erik Ho*  
*Partner*

Exhibit F: Consultant's Certification of No Safety Impact Positions

I, Erik J. Hansen Partner  
(Name - Print/Type) (Title)

as an owner or officer of Pricewaterhouse Coopers LLP  
(Consultant) have authority to bind the Consultant with respect to its bid, and I hereby certify that Consultant 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. Consultant 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.

September 17, 2015  
Date

Pricewaterhouse Coopers LLP  
Consultant Name

Erik J. Hansen  
Signature

Partner  
Title

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**Consultant's Certification of Non-Application of  
City of Houston Drug Detection and Deterrence Procedures for Consultants**

I, n/a  
(Name - Print/Type) (Title)

as an owner or officer of n/a  
(Consultant) have authority to bind the Consultant with respect to its bid, and I hereby certify that Consultant has fewer than fifteen (15) employees during any 20-week period during a calendar year and also certify that Consultant 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 Consultant'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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Consultant Name

n/a  
Signature

\_\_\_\_\_  
Title

Exhibit G: MWBE Subcontract Terms

Consultant shall insure that all subcontracts with MWBE subcontractor and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO MEDIATION**" and contain the following terms:

- 1) (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director ("the Director").
- 2) (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. subcontractor shall keep such books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.
- 3) Within five business days of execution of this subcontract, Engineer (prime engineer) and subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
- 4) Any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to mediation. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to mediation.
  - a) Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to mediation.
  - b) All mediations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

Exhibit H: Play or Pay Forms[exhibits follow this page]



City of Houston

Pay or Play Program  
Acknowledgement Form

**What this form does.** This form acknowledges your awareness of the Pay or Play program. Your signature affirms that you will comply with the requirements of the program if you are the successful bidder/proposer, and ensure the same on behalf of subcontracts subject to the Pay or Play Program.

**For more information, contact the Contract Administrator.**

**Routing.** Return this form with your bid or proposal.

I declare under penalty of perjury under the laws of the State of Texas that if awarded a contract, I will comply with the requirements of the Pay or Play Program.

Erik Hansen  
Signature

September 17, 2015  
Date

Erik Hansen  
Print Name

113364  
City Vendor ID

PricewaterhouseCoopers LLP  
Company Name

713.356.8041  
Phone Number

erik.j.hansen@pwc.com  
Email Address



**City of Houston  
Certification of Compliance with  
Pay or Play Program**



Contractor Name: Price Waterhouse Coopers LLP \$ 895,000  
(Contractor/Subcontractor) (Amount of Contract)  
 Contractor Address: 1000 Louisiana Street, Suite 5800 Houston, TX 77002  
 Project No.: [GFS/CIP/AIP/File No.] 510-T25436  
 Project Name: [Legal Project Name] Foundational Citywide Compliance Risk Assessment  
 POP Liaison Name: Erik Hansen

In accordance with the City of Houston Pay or Play Program authorized by Ordinance 2007-534 and Executive Order 1-7, Contractor/Subcontractor agrees to abide by the terms of this Program. This certification is required of all contractors for contracts subject to the program. You must agree EITHER to PAY or to PLAY for all covered employees. The Contractor/Subcontractor may also Pay on behalf of some covered employees and Play on behalf of other covered employees.

The Contractor/Subcontractor will comply with all provisions of the Pay or Play Program and will furnish all information and reports requested to determine compliance with program requirements of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program) The criteria of the program is as follows:

The Contractor/Subcontractor agrees to "Pay" \$1.00 per hour for work performed by covered employees under the contract with the City. If independent contract labor is utilized the Contractor/Subcontractor agrees to report hours worked by the independent contract laborer and pay \$1.00 per hour for work performed.

Otherwise the Contractor/Subcontractor agrees to "Play" by providing health benefits to each covered employee. The health benefits must meet the following criteria:

1. The employer will contribute no less than \$150 per employee per month toward the total premium cost for single coverage only; and
2. The employee contribution, if any amount, will be no greater than 50% of the total premium cost and no more than \$150 per month.
3. Pursuant to E.O. 1-7 section 4.04 a contractor is deemed to have complied with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and the employee's contribution to the premium is no more than \$40 per month.

Please select whether you choose to:	Pay	Play	Both
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The Contractor/Subcontractor will file compliance reports with the City, which will include activity for covered employees subject to the program, in the form and to the extent requested by the administering department. Compliance reports shall contain information including, but not limited to, documentation showing employee health coverage and employee work records.

**Note: The Contractor is responsible to the City for the compliance of covered employees of covered subcontractors and only forms that are accurate and complete will be accepted.**

*Estimated Number of:	Prime Contractor	Sub-Contractor
Total Employees on City Job	20	5
Covered Employees	20	5
Non-Covered Employees		
Exempt Employees		

**\*Required**

I hereby certify that the above information is true and correct.

Contractor (Signature) *Erik Hansen* Date September 17, 2015  
 Name and Title (Print or type) Erik Hansen Partner