

1.3 Table of Contents.

1.3.1 This Agreement consists of the following sections:

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EXHIBITS

- Exhibit “A” Scope of Services
- Exhibit “B” Drug Policy Compliance Agreement
- Exhibit “C” Contractor’s Certification of No Safety Impact Positions in Performance of a City Contract
- Exhibit “D” Additional FEMA Clauses
- Exhibit “E” Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Exhibit “F” Anti-Lobbying Certification
- Exhibit “G” Equal Opportunity Clause

1.4 Parts Incorporated.

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

1.5 Controlling Parts.

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

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1.6 Signatures.

1.6.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

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

CONSULTANT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Federal Tax ID No.: _____

ATTEST/SEAL:

CITY:
CITY OF HOUSTON, TEXAS

City Secretary
APPROVED:

Mayor
COUNTERSIGNED:

Director, _____

City Controller
Countersignature Date: _____
("Effective Date")

APPROVED AS TO FORM:

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

2. DEFINITIONS

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

- 2.1.1 “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Consultant.
- 2.1.2 “Business Day” means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.1.3 “Chief Procurement Officer” or “CPO” means the City’s Chief Procurement Officer, or any person designated by the CPO to perform one or more of the CPO’s duties under this Agreement.
- 2.1.4 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.5 “City Attorney” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.6 “City Data” means any Confidential City Information, or Information as those terms are defined in Section 3.15 of this Agreement, Works as that term is defined in Section 3.17 of this Agreement, Documents that the City or persons acting on the City’s behalf provides, makes available to, or transmits to Consultant on the City’s behalf; and Documents Consultant receives, obtains, has access to, modifies, creates, develops, analyzes, uses for modeling or other services under this Agreement or otherwise prepares in connection with this Agreement.
- 2.1.7 “Consultant” is defined in the preamble of this Agreement and includes its successors and assigns as well as its legal counsel or law firm subcontractor.
- 2.1.8 “Countersignature Date” means the date the City of Houston Controller countersigns this Agreement and the date this Agreement becomes effective and binding on the Parties.
- 2.1.9 “Day(s)” or “day(s)” means Business Days as defined herein, unless otherwise defined in this Agreement.
- 2.1.10 “Director” means the Director of the Housing Department, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.

- 2.1.11 “Documents” means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description. The word “documents” includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, images, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them), plans, and other work products prepared, obtained, modified, or created by the Consultant pursuant to or in connection with this Agreement.
- 2.1.12 “Include” and “including”, and words of similar import, shall be deemed to be followed by the words “without limitation.”
- 2.1.13 “PA” or Public Assistance means the Public Assistance Program which provides grants primarily to state and local governments.
- 2.1.14 “Parties” mean all the entities set out in the Preamble who are bound by this Agreement.
- 2.1.15 “Regulations” include all applicable laws, statutes, codes, (including the City's Building Code, Fire Code, and electrical standards), judicial decisions, ordinances, regulations, rulings, restrictive covenants, certificates, permits, requirements or orders enforceable by all federal, state and local government authorities having jurisdiction over the subject matter of this Agreement.
- 2.1.16 “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 set forth in **Exhibit A**.

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) designed by the Director of all significant events relating to the performance of this Agreement or otherwise affecting or relating to the services.

3.2.2 Consultant shall complete its performance of the services within the number of days set out in Exhibit A. The Director, at his discretion may also extend the time for completion in writing. Consultant acknowledges that time is of the essence.

3.3 Reports

3.3.1 Consultant shall submit reports, data/statistical models, dashboards, algorithms and algorithmic approaches as requested by the Director and in furtherance of the services set forth in **Exhibit A**. Consultant shall also submit progress updates periodically on a weekly, monthly, quarterly and yearly basis, as required by the Director.

3.4 Consultant's Personnel

3.4.1 Consultant's initial team includes the persons listed in the chart below ("Team"):

Team Members	Position
TBD	TBD

3.4.2 Consultant shall perform services under this Agreement employing the people listed in its initial Team chart above. Consultant shall not modify membership of the Team without prior written approval from the Director. Consultant shall not subcontract performance of services without the express prior written approval of the Director.

3.4.3 In the event the Director is dissatisfied at any time with any member of the Team, Consultant shall, promptly following the written request from the Director, remove such person from the Team and replace such person with another who is satisfactory to, and approved in writing by, the Director.

3.4.4 If substitution of a member of the Team becomes necessary, Consultant shall propose one or more candidates for the Director's consideration. Candidates submitted for consideration shall be of equal or higher qualifications of the personnel being replaced. If a member of the Team is removed from this Agreement in accordance with this Section as a result of such member breaching the terms of this Agreement, then, in such circumstance, the City shall not be obliged to pay for any additional costs involving substituted Team members. The revised Team must include the following information for each professional-level employee proposed for assignment under this Agreement:

- a. Name of employee;
- b. Description of task(s);
- c. Applicable registrations, resumes, references, and professional credentials;
- d. Principal office of employment;
- e. Summary of relevant experience, including descriptions of prior projects where candidate performed in a similar role; and
- f. Date and expected duration of assignment.

3.5 Payment of Subcontractors

3.5.1 In accordance with the Texas Prompt Payment Act, Consultant shall make timely payments to all persons and entities supplying labor, materials or equipment for the execution and performance of this Agreement. **CONSULTANT SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT’S FAILURE TO MAKE THESE PAYMENTS.**

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 INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

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, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

3.7.1.1 CONSULTANT’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ COLLECTIVELY IN NUMBERED PARAGRAPHS 0 THROUGH 3.7.1.3 “CONSULTANT”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

3.7.1.3 THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT.

3.7.2 CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

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 EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS 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 EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

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

THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONSULTANT SHALL REFUND THE PURCHASE PRICE.

3.9 Subcontractor's Indemnification

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

3.10 Indemnification Procedures and Notice of Claims

3.10.1 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 30 days. The notice must include the following:

- a. a description of the indemnification event in reasonable detail, and
- b. the basis on which indemnification may be due, and
- c. the anticipated amount of the indemnified loss.

3.10.2 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 30-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.

3.10.3 Defense of Claims.

3.10.3.1 **Assumption of Defense.** Consultant may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. If Consultant assumes the defense of the claim, Consultant shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss. 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 With no intent to limit Consultant’s liability or the indemnification provisions set forth herein, the Consultant shall provide and maintain certain insurance and Endorsements in full force and effect at all times during the Term of this Agreement. Such insurance is described as follows:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> • Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	<ul style="list-style-type: none"> • Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	<ul style="list-style-type: none"> • \$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	<ul style="list-style-type: none"> • \$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.11.2 If professional liability coverage is written on a “claims made” basis, Consultant shall also provide:

- a. Proof of renewal each year for two years after substantial completion of the services; or
- b. In the alternative, evidence of extended reporting period coverage for two years after substantial completion; or

- c. A project liability policy for the services covered by this Agreement with a duration of two years after substantial completion.

3.11.3 Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Consultant shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Consultant shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Consultant shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Consultant 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.

3.11.4 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 Agreement. 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.

3.11.5 Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Consultant's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Consultant shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion.

3.11.6 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.

3.11.7 Cancellation. **CONSULTANT SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE**

POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Consultant shall provide other suitable policies in order to maintain the required coverage. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.

3.11.8 **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 quality prevailing in Harris County, Texas for work of this kind. 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 shall use that degree of care and skill ordinarily exercised by members of the same profession performing the same or similar services under similar conditions in Harris County, Texas and its performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Consultant provides under this Agreement.

3.14 Data Security and Data Return

3.14.1 Consultant shall maintain the security of all City Data whether in physical or electronic form, including but not limited to all City-specific data, personally identifiable information (PII), employee data, user or citizen data, and any other data that was provided to Consultant or that Consultant generates, creates, or analyzes for the City. Consultant shall continuously audit its controls designed to (i) protect the security of City Data and (ii) record and monitor the any software or hardware provided to City. Consultant shall regularly test and audit the systems, controls, and procedures outlined in this section, which tests and audits shall occur at least once per calendar month. Consultant shall implement and maintain appropriate and reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) secure, protect and safeguard the privacy, security, integrity, and confidentiality of the City Data, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City data, (iii) store City Data only in places and in a manner that is safe from access by unauthorized persons or for unauthorized uses, and (iv) ensure that the City Data is not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived, or disclosed contrary to the provisions of this Agreement or applicable laws concerning information technology security, network or data security, and privacy laws. At a minimum, Consultant shall develop, implement, and maintain a reasonable written security program that includes

appropriate administrative, technical, organizational, and physical safeguards and security measures that (i) maintain user identification and access controls designed to limit access to authorized users; (ii) protect the City Data from unauthorized activity; (iii) use encryption technology, and (iv) comply with any specifications as requested by the Director. Consultant shall be responsible and liable for the acts and omissions of Consultant's personnel, temporary employees, agents, and subcontractors in connection with the provision of the services required under this Agreement, as if such acts or omissions were Consultant's acts or omissions. In the event that information technology systems are used to store PII, Consultant will utilize the security and risk management provisions of the National Institutes of Standards and Technology (NIST) "Framework for Improving Critical Infrastructure Cybersecurity" to implement appropriate administrative, technical, and/or physical controls and safeguards (including but not limited to access controls that comply with the least user privileges principles, data encryption during transit and at rest, intrusion detection/intrusion prevention systems, etc.) to secure any and all IT systems holding City data and PII. With respect to any of Consultant's personnel, temporary employees, agents, and subcontractors who process, store, transmit, access, dispose of, or have access to the City Data or PII, or the software or hardware in so far as it relates to Consultant's performance of this Agreement, Consultant shall:

- (a) Limit access only to the authorized Consultant personnel who need to know or have access to this information to perform the Services described in Exhibit A;
- (b) Advise these persons of and require that they comply with the provisions of this Agreement applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City data;
- (c) Require these persons to execute and deliver to Consultant written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City data; and
- (d) With respect to Consultant's personnel with access to the City's physical property or premises, Consultant shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas.

3.14.2 Pursuant to this Agreement, Consultant shall be responsible for any fraudulent or dishonest acts committed by Consultant's personnel, employees, agents, subcontractors, directors, or officers.

3.14.3 **United States Restriction.** Consultant shall ensure that, at all times, all of the City data shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States. Consultant shall not transmit, disclose, have access to, or process City Data outside of the continental

United States. At all times, Consultant shall provide support call services from within the boundaries of the United States.

3.14.4 SSAE 16 Compliance. If Consultant has City Data, and for as long as Consultant has City Data, Consultant will maintain an information security program that provides for the security and protection of the City Data, including, but not limited to, processes and procedures to respond to security incidents. Consultant will operate in conformance with the physical, technical, operational and administrative measures and protocols regarding data security as set forth in its then current Standards for Attestation Engagements (“SSAE”) No. 16 SOC1 Type II Report (or equivalent report), received from its third-party auditors. Consultant will, upon written request, provide the Director with copies of then-current SSAE No. 16 report issued by its third party independent auditors in relation to the data security policies and procedures designed to meet the requirements set forth in this Agreement with regard to the services described in this Agreement and in Exhibit A.

3.14.5 Data Breach. If Consultant learns of a breach of information; any unauthorized exposure, release or misuse of City Data or PII; that any person (including Consultant personnel and third parties) has gained unauthorized access to City Data or PII; any person has gained unauthorized access to Consultant’s network and/or data storage facilities such that any City data is obtained by an outside party; or the City Data or PII has otherwise been disclosed to unauthorized parties in connection with this Agreement (other than in the proper performance of those services or support therefor), (each an “Incident”), then Consultant shall promptly (within 48 hours) (i) notify the City Attorney and Director in writing of the nature and extent of the Incident; (ii) conduct an investigation to determine when and, if possible, how the Incident occurred, and then (iii) reasonably assist the City in investigating and assessing the extent and nature of the Incident; (iv) use all reasonable endeavors to promptly remedy, mitigate, or respond the Incident and prevent the occurrence of any similar Incident; and (v) inform the City upon request as to the current status of such endeavors.

3.14.6 Data Loss. If as a result of Consultant’s negligence (including Consultant’s agents, employees, subcontractors, officers or directors or persons acting on behalf of or at the director of Consultant), the City Data or database(s) is lost or corrupted (including a database or data repository Consultant operates or maintains to store the City Data in connection with this Agreement), Consultant shall restore the data or database to the previous day’s uncorrupted state. Loss or corrupted data means a data or a database that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.

3.15 Confidentiality

3.15.1 Consultant, its agents, employees, contractors, and subcontractors shall hold all Confidential City Information, City Data, and Documents that they receive, or to which they have access in connection with this Agreement (collectively, “the Information”), in

strictest confidence. Consultant, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Consultant shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this section. Confidential City Information shall mean all Documents, data, and information given to Consultant by City except for (1) information that Consultant possessed prior to the date of this Agreement, (2) information that Consultant develops independently without use of any of the information provided by the City, (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. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any reason.

3.16 Conflicts of Interest

3.16.1 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.

3.16.2 Consultant acknowledges that it, and its employees and agents, and their respective immediate family members, are ineligible to participate in any manner in responding to any solicitation, request for qualification, request for proposals, or resulting agreements or payments that it will assist the City to develop, evaluate or negotiate. Such participation may create a conflict of interest and will provide an unfair advantage as it relates to the award of a contract to the successful bidder or proposer. This ineligibility is applicable to both a prime or subcontractor role and includes any affiliates, partners or members.

3.17 Work Products and Ownership

3.17.1 The City is, will be, and shall remain at all times the owner of all of the City Data. Consultant expressly acknowledges that the City has all right, title, or other ownership interest in the City Data and Consultant shall not possess or assert any lien or other right against the City Data. The City is, will be, and shall remain the owner of all City Data, including City-specific data created or generated by either party, pursuant to this Agreement. The City may use this City Data, including data provided by Contractor, for any purpose. At all times, including during or after the termination or expiration of this Agreement or any license Consultant grants to the City, the City retains the right to reveal or extract the City Data and all City-specific data from any Consultant owned or controlled software, programs, devices, and products, and the right to use the City Data for the City's own use, for use with other non-Consultant products, or to load elsewhere. Consultant shall provide a reasonable data export tool that is approved by the Director that returns City Data on demand. Consultant shall not use City Data for any other purposes other than what is expressly specified in this Agreement.

3.17.2 Consultant hereby irrevocably transfers, conveys and assigns to the City and its successors, licensees, and assigns, its entire right, title, interest and full ownership worldwide in and to any work, software (including Software), domain names, invention, creation, data, discovery, and all documents (including Documents), and the copyrights, patents, trademarks, trade secrets, service marks, moral rights, all contract and licensing rights, and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known, and any other proprietary rights therein (collectively “Proprietary Rights”) that Contractor, its agents, employees, contractors, and subcontractors (collectively “Authors”) develop, write, create, invent, discover, compile, or produce under this Agreement (collectively “Works”).

3.17.3 In the event Consultant has any rights in the Works which cannot be assigned, Consultant shall and does hereby waive enforcement worldwide of the rights against City, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to City with the right to sublicense. These rights are assignable by the City. The Authors shall not claim or exercise any Proprietary Rights related to the Works. If requested by the Director or the City Attorney, Consultant shall place a conspicuous notation on any Works, which states that the City owns the Proprietary Rights.

3.17.4 Consultant shall execute (and cause Authors to execute) all documents and perform all necessary steps required by the Director City Attorney to allow the Director and City Attorney to establish and demonstrate ownership of the Works and to further evidence this assignment and ownership. Consultant shall cooperate with the City in registering, prosecuting, creating, and enforcing Proprietary Rights arising under this Agreement. On termination or expiration of this Agreement, or if requested by the Director or the City Attorney during or after the Term of this Agreement, Consultant shall deliver all Works to the Director or the City Attorney at the Contractor’s expense. Consultant shall obtain written agreements from the Authors that bind the Authors to the terms in this Section, including without limitation, the assignment of all Works by Consultant (and Authors) to City which are created under, for, or in connection to this Agreement. Consultant’s failure to obtain written agreements from the Authors that bind the Authors to the terms of this Section is a material breach of this Agreement and City will be entitled to a full refund of all fees paid under this Agreement.

3.17.5 The Works and all rights are being sold in their entirety to the City and do not constitute a mere license or franchise to the City. On termination of this Agreement, and without regard to whether the Works are completed, Consultant shall deliver all Works to the City and all such Author assignment documents documenting the assignment of all the Works by Consultant and Author to City (“Assignment Documents”). Failure to submit the Assignment Documents to the City within 5 days of expiration or termination of this Agreement is a material breach and Consultant shall refund all fees charged to City under this Agreement.

3.17.6 All Works developed, written, or produced under this Agreement for use as a

contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, shall be deemed to be “works made for hire” under 17 U.S.C. §§ 101 and 201, as amended from time to time. Consultant acknowledges and agrees that all Information, Documents, and Works performed under or pursuant to this Agreement shall be deemed “works made for hire.” To the extent that title to the Works or any portion of the Works may not, by operation of law, vest in the City or the Works or any portion of the Works may not be considered “works made for hire”, Consultant hereby irrevocably assigns, conveys, and transfers to City and its successors, licensees, and assigns, all rights, title, and interest worldwide in and to the Works and all Proprietary Rights.

3.17.7 Consultant shall obtain written agreements from its agents, employees, contractors, and subcontractors performing work under this Agreement which bind them to the terms in this Section.

3.17.8 Consultant may retain copies of the Works for its archival purposes only. Consultant shall not otherwise use, sell, license, distribute, reproduce, publish, commercialize, or market the Works without the express written permission of the City. If such permission is agreed to by the Director, such express written permission shall be given by the City in a separate agreement between the City and Consultant.

3.17.9 The City owns all data it provides to Consultant under this Agreement. Consultant shall return all data provided in whatever form it is maintained or recorded at the end of this Agreement.

3.18 Licenses and Permits

3.18.1 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) or the license of any of its legal counsel or attorneys.

3.19 Compliance with Laws

3.19.1 Consultant shall comply with all applicable state and federal laws and Regulations and the City Charter and Code of Ordinances.

3.20 Compliance with Equal Opportunity Ordinance

3.20.1 Consultant shall comply with the City’s Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

3.21 MWSBE Compliance

3.21.1 Consultant shall comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least 24% of the value of this Agreement to MWSBEs. Consultant acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO"), and will comply with them.

3.21.2 Consultant shall ensure that all subcontracts with MWSBE subcontractors and suppliers contain the following terms:

1. _____ (MWSBE 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 OBO Director ("the Director").
2. _____ (MWSBE 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 such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Consultant (prime contractor) 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 may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.21.3 Consultant shall adhere to and comply with 2 C.F.R. § 200.321 if subcontracts are to be let under this Agreement. The Consultant, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women's business enterprises, and labor surplus area firms are used when possible, pursuant to 2 CFR Section §200.321. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they

are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

3.21.4 Consultant must clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements

3.22 Drug Abuse Detection and Deterrence

3.22.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("EO 1-31"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

3.22.2 Before the City signs this Agreement, Contractor shall file with the Agreement Compliance Officer for Drug Testing ("CCODT"): (a) a copy of its drug-free workplace policy, (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit B, together with a written designation of all safety impact positions and, (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit C.

3.22.3 If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 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 B. 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 Contractor begins work under this Agreement.

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

force.

3.22.5 Consultant shall require that its subcontractors comply with EO 1-31, and Consultant shall secure and maintain the required documents for City inspection.

4. DUTIES OF THE CITY

4.1 Payment Terms.

4.1.1 **Fixed Rate.** As full compensation for Consultant's services specified in **Exhibit A** and obligations in connection with this Agreement, the City shall pay Consultant a fixed fee of \$ _____ the services Consultant renders under this Agreement subject to appropriation made by the City. The City's obligation to pay Consultant for services performed must not exceed \$ _____. It is expressly understood that all overhead, indirect expenses, insurance premiums, local transportation costs, travel, over time, and similar expenses incurred in the performance of this Agreement are included in the Fixed Fee above, and that the City will not reimburse any expenses.

4.2 Method of Payment

4.2.1 To receive payment for services, Consultant must submit invoices showing the corresponding services performed and not previously invoiced. The City will pay Consultant on the basis of monthly invoices submitted by the Consultant and approved by the Director, showing the percentage of total services performed during the preceding month and the attendant portion of the fixed fee. The invoices must include itemizations supporting the Consultant's work performed in the preceding month (no arrears billing), and other documentation requested by the Director.

4.2.2 The City of Houston's standard payment term is to pay 30 days after receipt of invoice, receipt of goods, or receipt of services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code Chapter 2251).

4.2.3 However, the City will pay in less than 30 days in return in return for an early payment discount from Consultant as follows:

Payment Time - 10 Days: 2% Discount

Payment Time - 20 Days: 1% Discount

When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

4.2.4 All invoices must be approved by the Director. All payments will be made by check payable to the Consultant. Payments will be mailed to the address specified in Section 1.2. Neither partial payments made, nor approval of invoices or services by the Director, constitute final acceptance or approval of the Consultant's services to which the partial

payment or approval relates.

4.2.5 If the Director disputes any items in an invoice for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall notify Consultant of the dispute and request remedial action. After the dispute is settled, Consultant shall include the disputed amount in a subsequent monthly invoice or on a special invoice for the disputed item only, together with a notation that the dispute is settled. The City will then pay the invoiced amount within 30 days of receipt.

4.3 Acceptance and Rejection

4.3.1 Consultant shall not be entitled to payment and the City shall have no duty to pay Consultant unless the Director has Accepted the Services and other Deliverables as set forth in **Exhibit A**.

4.3.2 Consultant shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in **Exhibit A**. On or before the 20th Business Day after the date the Director receives such written notice of completion and/or delivery, the Director shall notify Consultant whether the Director has accepted the Services and other Deliverables or rejected said services and deliverables, along with the reason(s) for the rejection, if any.

4.3.3 Notwithstanding anything to the contrary in **Exhibit A** or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibit A**.

4.3.4 If the Director rejects any Services or other Deliverables, Consultant shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Agreement, at no additional cost to the City. Consultant shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Consultant shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.

4.3.5 Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Consultant, the Director may, in his sole discretion, issue a final rejection notice to Consultant for all Services and other Deliverables (whether or not previously Accepted), and then the City shall have no obligation to pay any amount whatsoever under this Agreement and this Agreement shall immediately terminate.

4.3.5 The City reserves all other available rights and remedies at law or in equity,

including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

4.4 Taxes

4.4.1 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.

4.5 Limit of Appropriation; Limitation of City's Duties

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

4.5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$ _____ dollars for services 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:

4.5.3 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.

\$ _____.

4.5.4 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.

4.6 Access to Data

4.6.1 The City grants to Consultant a non-exclusive, royalty-free license to use the City data and City-specific data during the Initial Term and any renewals thereto of this Agreement solely to provide services to the City as necessary and to monitor and improve the services under this Agreement.

4.6.2 The City shall, to the extent permitted by law, allow Consultant to access and make copies of documents in the possession or control of the City or available to it that is reasonably necessary for Consultant to perform under this Agreement.

4.6.3 The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Consultant's use.

4.6.4 For any raw data created, assembled, used, maintained, collected, or stored by the Consultant for or on behalf of the City, Consultant shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

4.7 Changes

4.7.1 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.

4.7.2 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]

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

- (a) Council expressly authorizes the Director to approve Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount 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%.

4.7.4 Whenever Consultant receives a Change Order, Consultant shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Consultant shall complete the work within the time prescribed. If no time for completion is prescribed, Consultant shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Consultant is required to perform under this Agreement, Consultant may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

4.7.5 A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

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

5. TERM AND TERMINATION

5.1 Term and Renewal Options

5.1.1 This Agreement is effective on the Countersignature Date and expires three (3) years after the Countersignature Date (“**Initial Term**”) unless sooner terminated according to the terms of this Agreement. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two additional successive one-year terms on the same terms and conditions. If the Director elects not to renew this Agreement, the Director shall notify the Consultant and the CPO in writing of non-renewal at least 30 days before the expiration of the then-current Term.

5.2 Termination for Convenience by the City

5.2.1 The Director may terminate this Agreement at any time by giving 30 days' written

notice to Consultant with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.2.2 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. The City shall then pay the fixed fee to Consultant for services actually performed, but not already paid for, in the same manner as prescribed in Section 4 unless the fees exceed the allocated funds remaining under this Agreement.

5.2.3 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.

5.3 Termination for Cause by the City

5.3.1 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:

- a. Consultant fails to perform any of its material duties under this Agreement;
- b. Consultant becomes insolvent;
- c. All or a substantial part of Consultant's assets are assigned for the benefit of its creditors; or
- d. A receiver or trustee is appointed for Consultant.

5.3.2 If a default occurs, the Director may, but is not obligated to, deliver a written notice to Consultant (with a copy of the notice to the CPO) describing the default and setting a 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 Agreement will terminate on the termination date, at no further obligation to the City. To effect final termination, the Director must notify Consultant in writing, with a copy of the notice to the

CPO.

5.3.3 After receiving the termination notice in Section 5.3.2, 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.

5.4 Effect of Termination

5.4.1 Upon termination of this Agreement Consultant is permitted ten days within which to remove Consultant-owned material and equipment from the City's premises. The Director shall make such material and equipment readily available to Consultant. The time period may be extended upon approval by the Director. The Director reserves the right to deny any extension of time.

5.4.2 In the event of termination or expiration, whichever is earlier, Consultant shall, at Consultant's own expense and at no cost to the City, transfer all City Information, Documents, all City data, including but not limited to City-specific data, Works, and any other work product created under this Agreement for the City or any other Documents or materials as specified by the Director, to City within two days.

3.14.7 Upon request by the Director at any time during the Initial Term or any renewals thereto, and upon expiration or termination of this Agreement, Consultant shall, at Consultant's own expense and at no cost to the City, retain, migrate, or dispose of the City Data as directed by the Director. Within two (2) days of Consultant's receipt of the Director's written request to retain, migrate, or dispose of the City's Data, Consultant shall notify the Director in writing of the estimated storage size and types of data to be retained, migrated, or disposed of. Within thirty (30) days of Consultant's receipt of the Director's written request to retain, migrate, or dispose of the City Data, Consultant shall, at no cost to the City, perform the following to the extent applicable unless otherwise directed by the Director:

- (1) deliver the City Data (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media requested by the Director;
- (2) destroy the City Data (in whole or in part, as directed by the Director) and provide a notarized statement of destruction to the Director;
- (3) destroy physical media using secure methods;
- (4) remove the City Data (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository or storage means; or

- (5) retain the City Data (in whole or in part, as directed by the Director) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.

5.5 Suspension of Services

5.5.1 The Director may, by written notice to Consultant, suspend at any time the performance of any or all portions of the services to be performed under the Agreement. Upon receipt of such notice, Consultant shall, unless the notice requires otherwise:

- a. Immediately discontinue services on the date and to the extent specified in the notice;
- b. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City of all subcontracts, orders and other agreements to the extent that they relate to the performance of suspended work;
- c. Continue to protect and maintain the services including those portions of the services which have been suspended; and
- d. Take any other reasonable steps to minimize costs associated with such suspension.

6. MISCELLANEOUS PROVISIONS

6.1 Independent Contractor

6.1.1 Consultant is an independent contractor 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:

- a. Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- b. Provides the other Party with prompt written notice of the cause, its anticipated effect and estimated time of suspension of performance.

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 Entire Agreement

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

6.4 Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Consultant. The Director is only authorized to perform

the functions specifically delegated to him or her in this Agreement.

6.5 Applicable Laws

6.5.1 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.

6.5.2 The Parties consent to venue for any litigation relating to this Agreement is Harris County, Texas.

6.6 Notices

6.6.1 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 Section 1.2. Postage or delivery charges must be paid by the party giving the notice.

6.7 Interpretation

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

6.7.2 Ambiguity - 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.

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

6.8 Non-Waiver

6.8.1 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.

6.8.2 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.

6.9 Acceptance and Approvals

6.9.1 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.

6.10 Inspections and Audits

6.10.1 City, State and Federal Government authorized representatives may perform, or have performed, (i) audits of all documents and records pertinent to services provided under this Agreement, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Consultant shall keep its books and records available for this purpose for (i) the time period required by 2 C.F.R. Section 200.333 (retention requirements for records) in the event the City receives federal funds for all or (ii) seven (7) years after the Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.10.2 Upon reasonable written notice, not less than twenty-four (24) hours, City representatives have the right to perform, or have performed, audits and inspections.

6.10.2 Audits of Consultant's books, documents, papers, and records, including electronic versions, pertaining to services provided under this Agreement, may include, but are not limited to:

- a. payroll and personnel records, such as salaries, benefits and bonuses;
- b. subcontractor agreements, records and invoices;
- c. any accounting or management systems, or computers or servers on which City information is stored; and
- d. all documents or files evidencing costs and underlying expenses relating to Consultant's performance.

6.10.3 Consultant shall provide the Director, the Texas Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making copies, audits, examinations, excerpts, and transcriptions. Consultant shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6.10.4 Consultant shall provide the Director and the FEMA Administrator or his authorized representatives access to work sites pertaining to the work being completed

under this Agreement.

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 Survival

6.12.1 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 and confidentiality provisions.

6.13 Publicity

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

6.14 Parties in Interest

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

6.15 No Quantity Guarantee

6.15.1 This Agreement does not create an exclusive right in Consultant to perform all services concerning the subject of this Agreement. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.

6.15.2 The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Consultant through this Agreement or any Scope of Services; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Consultant may ultimately derive from or through this Agreement or any Scope of Services.

6.16 Successors, Assignments and Delegation

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.

6.16.2 Consultant shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent which consent shall not be unreasonably withheld. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Consultant shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

6.16.3 Consultant shall not delegate any portion of its performance under this Agreement without the Director's prior written consent, which shall not be unreasonably withheld.

6.17 Remedies Cumulative

6.17.1 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.

6.18 Dispute Resolution

6.18.1 For purposes of this Section "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.

6.18.2 Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Consultant must be handled as described below:

(a) The Project Administrator shall put its decision in writing and mail or otherwise furnish Consultant with a copy. Consultant may abide by the decision or may appeal the decision to the Director.

(b) If Consultant desires to appeal a decision of the Project Administrator, Consultant must submit a written appeal to the Director. Consultant must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Consultant with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

6.19 Pay or Play

6.17.1 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>.

6.20 Non-Discrimination

6.20.1 Consultant shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 C.F.R. Part 21. These provisions are inclusive of any amendments which may be made to such regulations. Further, Consultant shall include the summary of the provisions of 49 C.F.R. Part 21, as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit G**.

6.21 FEMA Requirements

The Parties acknowledge that the City intends to seek reimbursement from the Federal Emergency Management Agency ("FEMA") for costs incurred under this Agreement. The Parties agree to comply with all FEMA requirements outlined in the Agreement, including the applicable exhibits (including Exhibits E, F, and G), and the additional clauses outlining FEMA requirements attached hereto as **Exhibit D** to this Agreement, and made a part hereof.

6.22 CONSULTANT DEBT

6.22.1 IF CONSULTANT, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONSULTANT HAS INCURRED A DEBT, HE/SHE SHALL IMMEDIATELY NOTIFY CONSULTANT IN WRITING. IF CONSULTANT DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONSULTANT UNDER THIS AGREEMENT, AND CONSULTANT WAIVES ANY RECOURSE THEREFOR. CONSULTANT SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

6.23 Zero Tolerance Policy for Human Trafficking and Related Activities

6.23.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Consultant has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions

as they are set out at the time of the Countersignature Date. Consultant shall notify the City's Chief Procurement Officer, City Attorney, and Director of any information regarding possible violation of the Consultant or its subcontractors providing services or goods under this Agreement.

6.24 Anti-Boycott of Israel

6.24.1 Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

EXHIBIT A

Scope of Services

TO BE DETERMINED

EXHIBIT C

**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in '5.17 of Executive Order No. 1-31, that will be involved in performing

(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

Date

Typed or Printed Name

Signature

Title

EXHIBIT D
ADDITIONAL FEMA CLAUSES

1. Consultant acknowledges that the Federal Government is not a party to this Agreement and Agreement and is not subject to any obligations or liabilities to the City, Consultant, or any other party pertaining to any matter resulting from this Addendum and Agreement.
2. Consultant acknowledges that Federal Emergency Management Agency (FEMA) financial assistance will be used to fund this Agreement.
3. Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Consultant's actions pertaining to this Agreement.
4. Consultant shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
5. Consultant shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.
6. Debarment and Suspension.
 - a. This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such the Consultant is required to verify that neither the Consultant, nor any of its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - b. Consultant shall comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification as set out in more detail in **Exhibit E** is a material representation of fact relied upon by the City. If it is later determined that Consultant did not comply with 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City, the State of Texas (including an agency or division thereof) and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d. Consultant shall comply with the requirements of 2 C.F.R. Part 180, subpart C, and 2 C.F.R. Part 3000, subpart C, while this offer is valid and throughout the period of any contract that may arise from this offer. Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.
7. Byrd Anti-Lobbying Amendment.

- a. For any bid, offer, or contract exceeding \$100,000, Consultant shall file with the City a Certification Regarding Lobbying substantially in the form set out in **Exhibit F**.
 - b. Consultant shall comply with 31 U.S.C. § 1352 and include a requirement to comply with 31 U.S.C. § 1352, and any applicable implementing regulations, in any subcontractor or lower tier covered transaction it enters into. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an office or employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
8. Environmental Compliance.
- a. Consultant shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
 - b. Consultant shall report all violations to the Director, Texas Division of Emergency Management, FEMA and the regional office of the Environmental Protection Agency.
 - c. Consultant shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.
 - d. Consultant shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201 et seq.).
9. Contract Work and Safety Standards.
- a. Overtime requirements. Neither Consultant or nor any subcontractor contracting for any part of the contract work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, the Consultant and any subcontractor

responsible therefor shall be liable for the unpaid wages. In addition, the Consultant and subcontractor shall be liable to the United States (for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in this section.

- c. Withholding for unpaid wages and liquidated damages. FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Consultant, such sums as may be determined to be necessary to satisfy any liabilities of the Consultant or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.
- d. Subcontracts. Consultant shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

10. Use of Products.

- a. In the performance of this Agreement, Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the Agreement performance schedule; (ii) meeting Agreement performance requirements; or (iii) at a reasonable price.
 - i. Consultant shall abide by the list of EPA-designated items available on EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11. Consultant shall comply with the applicable Equal Opportunity Clause required by the United States of America, including but not limited to the provisions of 41 C.F.R. § 60-1.4(b). These provisions are inclusive of any amendments which may be made to such regulations. Further, Consultant shall include the summary of the provisions of 41 C.F.R. § 60-1.4(b), as may be amended, in subcontracts it enters into under this Addendum and Agreement. This summary is set forth in **Exhibit G**.

EXHIBIT E
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This Addendum and Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension). As such, Consultant is required to confirm that neither the Consultant, its principals (defined at 2 C.F.R. §180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Addendum, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded*, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United

States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-Procurement Programs.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

CERTIFICATION

- 1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant Company Name

Name and Title

Signature

Date

EXHIBIT F
ANTI-LOBBYING CERTIFICATION

The undersigned Consultant certifies, to the best of his or her knowledge, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any City agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned Consultant, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Consultant Name:	
President:	
Name of Authorized Official:	
Signature:	
Date:	

EXHIBIT G

EQUAL OPPORTUNITY CLAUSE

The applicant/Consultant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this Agreement, the Consultant agrees as follows:

- (1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Consultant legal duty to furnish information.
- (4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- (6) The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

The applicant/Consultant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The applicant/Consultant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Consultant and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant/ Consultant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Consultant and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with

these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.