

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

SOLICITATION NO. S76-T29032
ORDINANCE # _____
CONTRACT # _____

**AGREEMENT FOR MASTER PROGRAM MANAGEMENT SERVICES FOR
DISASTER RELATED PROJECTS - PHASE 2**

THIS AGREEMENT FOR MASTER PROGRAM MANAGEMENT SERVICES FOR DISASTER RELATED PROJECTS – PHASE 2 (“Agreement”) is made on the date countersigned by the City Controller (“Effective Date”), by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Home Rule City of the State of Texas principally situated in Harris County, and _____ (the “Consultant”), a _____ Company.

The Parties agree as follows:

ARTICLE 1. PARTIES

1.1. ADDRESS

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

<u>City</u>	<u>Consultant</u>
Director or Designee	_____
Housing and Community	_____
Development Department	_____
City of Houston	_____
P. O. Box 1562	_____
Houston, Texas 77251	

1.2. TABLE OF CONTENTS

1.2.1. This Agreement consists of the following articles and exhibits:

TABLE OF CONTENTS

<u>No.</u>	<u>Page</u>
I. PARTIES.....	1
1.1. Address	1
1.2. Table of Contents	1
1.4. Controlling Parts	4
1.5. Signatures.....	5
II. DEFINITIONS.....	6
III. DUTIES OF CONTRACTOR.....	8
3.1. Scope of Services	8
3.2. Coordinate Performance	10
3.3. Reports	10
3.5. Prompt Payment of Subcontractors	11
3.7. RELEASE.....	11
3.7. INDEMNIFICATION	12
3.8. SUBCONTRACTOR’S INDEMNITY	12
3.9. INDEMNIFICATION PROCEDURES.....	13
3.10. INSURANCE.....	14
3.11. Professional Standards	15
Error! Bookmark not defined.	
3.13. Use and Ownership of Data and Work Products	16
3.14. Confidentiality	17
<u>3.15. Use of Work Products.....</u>	<u>18</u>
3.16. Licenses and Permits.....	19
3.17. Compliance with Laws	19
3.18. Compliance with Equal Opportunity Ordinance.....	19
3.19. Conflicts of Interest.....	19
3.20. Non-Discrimination	19
3.21. Drug Abuse Detection and Deterrence	19
3.22. Contractor’s Performance	20
3.23. Pay or Play	21
IV. DUTIES OF CITY.....	23
4.1. Payment Terms	23
4.2. Expenses and Reimbursement	24
4.5. Taxes	25
4.6. Method of Payment.....	26
VI. DUTIES OF CITY.....	26
4.7. Limit of Appropriations	26
<u>4.8. Access to Data.....</u>	<u>27</u>
4.8. No Quantity Garunteed.....	27

V. TERM AND TERMINATION 28

5.1. Term..... 28

5.2. Renewals 28

5.3. Termination for Convenience by the City 28

5.4. Termination for Cause by the City..... 29

VI. MISCELLANEOUS 30

6.1. Independent Contractor..... 30

6.2. Force Majeure 30

6.3. Severability 31

6.4. Entire Agreement 31

6.5. Written Amendment..... 31

6.6. Applicable Laws 31

6.7. Notices 31

6.8. Captions 32

6.9. Non-Waiver..... 32

6.10. Inspections and Audits 32

6.11. Enforcement..... 34

6.12. Ambiguities..... 34

6.13. Survival 34

6.14. Publicity 34

6.15. Risk of Loss 35

6.16. Parties In Interest 35

6.17. Successors and Assigns..... 35

6.18. Business Structure and Assignments 35

6.19. Dispute Resolution..... 35

6.20. Remedies Cumulative 36

6.21. Contractor Debt..... 36

6.22. Federal Requirements 37

6.23. Anti-Boycott of Israel 37

6.24. Zero Tolerance Policy for Human Trafficking and Related Activities..... 37

6.25. Flow-Through Provisions 37

EXHIBITS	
A	Scope of Services or Task Order No. 1
B	Fee Schedule
C	Title VI: Non-Discrimination
D	Drug Policy Compliance Agreement
E	Consultant's Certification of No Safety Impact Positions
F	Drug Policy Compliance Declaration
G	Federal Regulations CDBG and HOME Program Requirements
G-1	CDBG-DR Non-exclusive List of Applicable Laws, Rules, and Regulations
G-2	Certification Regarding Debarment, Suspension and Other

SAMPLE CONTRACT – SUBJECT TO CHANGE

	Responsibility Matters - Primary Covered Transactions
G-3	Anti-Lobbying Certification
G-4	Equal Opportunity Clause
H	GLO Harvey Contract

1.3. PARTS INCORPORATED

1.3.1. The above described articles and exhibits are incorporated into this Agreement.

1.4. CONTROLLING PARTS

1.4.1. If a conflict among the articles and exhibits arises, the articles control over the exhibits.

SAMPLE CONTRACT – SUBJECT TO CHANGE

1.5. SIGNATURES

1.5.1. 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. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

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

CONSULTANT’S NAME

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax ID No.:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director, Housing and Community
Development Department

City Controller

APPROVED:

DATE COUNTERSIGNED:

Chief Procurement Officer
APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

SAMPLE CONTRACT – SUBJECT TO CHANGE

ARTICLE 2. DEFINITIONS

- 2.1.** In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1. “*Agreement*” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Consultant.
 - 2.1.2. “*City*” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.3. “*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.
 - 2.1.4. “*City’s Project Manager*” is a City employee designated by the Director with the responsibility and authority to manage a Project or Projects for a City Department.
 - 2.1.5. “*City Personnel*” means all City employees, but not elected officials.
 - 2.1.6. “*Confidential Information*” means all non-public Documents or Information of a Party to this Agreement, including without limitation any such Documents or Information that is identified as or would be reasonably understood to be confidential, proprietary, and/or sensitive.
 - 2.1.7. “*Consultant*” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.8. “*Director*” means the Director of the City’s Housing and Community Development Department, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
 - 2.1.9. “*Disclosing Party*” means a Party who discloses, supplies, or provides Confidential Information to another Party or whose Confidential Information is otherwise in the possession, custody, or control of another Party.
 - 2.1.10. “*Documents*” means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
 - 2.1.10.1. 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

SAMPLE CONTRACT – SUBJECT TO CHANGE

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, 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).

2.1.11. “*Effective Date*” means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.

2.1.12. “*GLO Harvey Contract*” means the subrecipient agreement between the City and the Texas General Land Office (“GLO”), GLO Contract No. 19-147-001-B489, Community Development Block Grant Disaster Recovery Program Projects Non-Research & Development Harvey Round 1 Funding (signed by the City Controller on January 4, 2019 and approved by City of Houston Ordinance No. 2019-10), which is attached as Exhibit H.

2.1.13. “*Labor Rate*” means the labor rates by category as shown on Exhibit B attached hereto and, by reference, incorporated.

2.1.14. “*Notice to Proceed*” means a written communication from the Director to Consultant instructing Consultant to begin performance under this Agreement.

2.1.15. “*Party*” or “*Parties*” means City and Consultant who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.

2.1.16. “*Project*” means all work, including but not limited to those services set forth under Exhibit A or any subsequent Task Order, involved in the administration and implementation of housing program design and housing program management services for housing recovery for the Housing and Community Development Department. The Project is limited exclusively to those services for which the City receives funding from the following _____ sources:

- _____;

SAMPLE CONTRACT – SUBJECT TO CHANGE

- _____;
- _____;
- _____;

2.1.17. "*Project Manager*" is a person designated by the Consultant and given the responsibility and authority to manage all or an identified portion of the Project.

2.1.18. "*Services*" means the professional housing program management services that are the purpose of this Agreement.

2.1.19. "*Subconsultant*" or "*Subcontractor*" means a person under contract with Consultant to perform services under this Agreement.

2.1.20. "*Subcontract Cost*" means the actual cost of subcontracts made by Consultant with prior approval of the Director for services rendered under this Agreement.

2.1.21. "*Task Order*" is an individual project assignment with a defined scope of services, budget and schedule issued by the Director under this Agreement.

2.1.22. "*Term*" means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions thereof.

2.1.23. "*Work*" is the entire completed Project, including all labor, materials, equipment and services provided in connection with housing program design and housing program management services under this Agreement.

2.1.24. "*Work Products*" means all Documents or Information that the City and/or Consultant creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. "*Work Products*" does not mean or include software, source code, or object code.

2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.

2.3. The word "*shall*" is always mandatory and not merely permissive.

ARTICLE 3. DUTIES OF CONSULTANT

3.1. SCOPE OF SERVICES

3.1.1. For and in consideration of the payments specified in this Agreement, Consultant shall provide all services necessary to execute the Project.

SAMPLE CONTRACT – SUBJECT TO CHANGE

Consultant shall provide all labor and supervision and materials not specifically listed as a Reimbursable Expense that are necessary to perform the services as set out in this Agreement, as specifically described in Exhibit A and in individual Task Orders.

3.1.2. Consultant shall not perform professional engineering, architectural, or legal services under this Agreement.

3.1.3. Consultant shall perform services in connection with this Agreement only in response to a Task Order signed by the Director. Task Orders must not vary the terms of this Agreement. Task Orders with an initial cost to the City of more than \$500,000 must be reviewed by the City Attorney and the Chief Procurement Officer or the person he designates (“CPO”). Task Orders must include the following:

- 3.1.3.1. Agreement number;
- 3.1.3.2. Project Manager's responsibilities, name, address, and telephone number;
- 3.1.3.3. Task Order number, date, and funding source;
- 3.1.3.4. Identity of the Consultant’s key personnel who will perform Services under the Task Order. (The Director must approve the proposed number of staff for a Task Order or portions of Task Order under which Consultant is paid pursuant to the Labor Rates or Unit Rate Prices set forth in Exhibit B, Fee Schedule.);
- 3.1.3.5. A scope of services specifically identifying the services to be performed;
- 3.1.3.6. Time of performance;
- 3.1.3.7. Place of performance;
- 3.1.3.8. The name of the City Project Manager designated by the Director for the Task Order;
- 3.1.3.9. A breakout to include identification, by line item, of the required position classifications to perform the services, the estimated hours, and the Labor Rates or Unit Rate Prices set forth Exhibit B, Fee Schedule.
- 3.1.3.10. Identification of the estimated amount of services to be performed by Minority and Women Business Enterprises, if applicable;
- 3.1.3.11. A total not-to-exceed amount for services to be performed;
- 3.1.3.12. Balance of funds remaining in the Agreement;
- 3.1.3.13. A breakout of all Reimbursable Expenses, by line item, to include the estimated quantity of the item required, the unit cost, and an extended "not to exceed" dollar amount;
- 3.1.3.14. Submittal requirements, including schedule and deliverables, (i.e., reports, analyses, statements, etc.);
- 3.1.3.15. A breakout of subcontractor costs;
- 3.1.3.16. Metrics, performance measures, or benchmarks the Consultant must reach along with the effect of attaining or failing to attain

SAMPLE CONTRACT – SUBJECT TO CHANGE

the metrics, performance measures, or benchmarks, which results may include, but are not limited to actual damages from the harm the City will suffer, liquidated damages, percentage discounts on the maximum hourly rates as defined in this Agreement, or other items mutually agreed upon by the Director and Consultant; and

- 3.1.3.17. Any other information necessary to perform the services, or as required by the Director.
- 3.1.4. Upon the Consultant's written request, the Director, in his sole discretion, may grant extensions for completion of services under individual Task Orders for delays caused by the City or other agencies with which the work must be coordinated and for other reasonable causes over which the Consultant has no control. The Director's approval of the extension must be in writing. Task Orders continue in effect until all requirements have been met and a written acceptance of the services performed has been made by the Director or until the Consultant receives written notification from the Director to discontinue services. The Director may amend Task Orders in the same manner as they are issued.
- 3.1.5. The City shall not be obligated to pay for any services under a Task Order that exceeds the scope of this Agreement, is not signed by the Director, or is not in compliance with the strict requirements of this Agreement, including but not limited to this Section 3.
- 3.1.6. The cumulative value of all Task Orders issued under this Agreement must not exceed \$_____. The City shall not be obligated to pay for any services that exceed the total cumulative Task Order value of \$_____.
- 3.1.7. Task Orders may only be funded using one or more of the funding sources listed in Section 2.1.6. The Director is permitted to issue one or more Task Orders, but each such Task Order must correspond to one of the funding sources listed in Section 2.1.6. Subject to Section 3.1.6 and Section 4.7 (inclusive of all subparts), the City may not issue and shall have no obligation to pay for any services that are provided without being attached to one of the funding sources explicitly referenced in Section 2.1.16.

3.2. COORDINATE PERFORMANCE

- 3.2.1. Consultant shall coordinate its performance with the Director. Consultant shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.3. REPORTS

SAMPLE CONTRACT – SUBJECT TO CHANGE

3.3.1. Consultant shall submit all reports and progress updates required by the Director.

3.4. PAYMENT OF SUBCONTRACTORS

3.4.1. In accordance with the Texas Prompt Payment Act, Consultant shall make timely payments to all persons and entities supplying labor, materials, equipment, or services for the performance of this Agreement. **CONSULTANT SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT’S FAILURE TO MAKE THESE PAYMENTS.** Consultant shall submit disputes relating to payment of MWBE subcontractors to mediation in the same manner as any other disputes under the MWBE subcontract if directed to do so by the Director of the Office of Business Opportunity. Failure of Consultant to pay its employees and subcontractors as required by law shall constitute a default under this Agreement, for which Consultant and its surety, if any, shall be liable on Consultant’s performance security, if any, if Consultant fails to cure the default as provided under this Agreement.

3.5 SCHEDULE OF PERFORMANCE

3.5.1. Time of Performance

3.4.1.1 The Director shall provide Consultant with a written Notice to Proceed specifying a date to begin performance.

3.5.2. Time Extensions

3.5.2.1 If Consultant requests an extension of time to complete its performance, then the Director may, in consultation with the CPO, extend the time so long as the extension does not exceed 180 calendar days. The extension must be in writing, but does not require amendment of this Agreement. Consultant is not entitled to damages for delay(s) regardless of the cause of the delay(s).

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. CONSULTANT HEREBY COVENANTS AND AGREES NOT TO SUE THE

SAMPLE CONTRACT – SUBJECT TO CHANGE

CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

3.7 INDEMNIFICATION

3.7.1 CONSULTANT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, 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 REFERRED TO AS “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 FIVE YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY’S SOLE NEGLIGENCE.

3.8 SUBCONTRACTOR’S INDEMNITY

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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

3.9 INDEMNIFICATION PROCEDURES

3.9.1 *Notice of Claims.*

3.9.1.1 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 10 days. The notice must include the following:

3.9.1.1.1 a description of the indemnification event in reasonable detail, and

3.9.1.1.2 the basis on which indemnification may be due, and

3.9.1.1.3 the anticipated amount of the indemnified loss.

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

3.9.2 *Defense of Claims.*

3.9.2.1 *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, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not be unreasonably withheld. Consultant shall notify the City of any and all offers to settle the claim. If Consultant does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.9.2.2 *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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

3.10 INSURANCE

3.10.1 *Risks and Limits of Liability.* Consultant shall maintain the following insurance coverages in the following amounts:

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

3.10.2 *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 requirements of the Agreement. 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

SAMPLE CONTRACT – SUBJECT TO CHANGE

commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.10.3 *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.

3.10.4 *Required Coverage.* The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other provisions of this Agreement. Consultant 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 Contract with a duration of two years after substantial completion.

3.10.5 *Notice.* **CONSULTANT SHALL GIVE A 30-DAY 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 sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.

3.11 PROFESSIONAL STANDARDS

SAMPLE CONTRACT – SUBJECT TO CHANGE

Consultant’s performance shall conform to the professional standards prevailing in the Harris County, Texas, with respect to the scope, quality, due diligence, and care of the services and products Consultant provides under this Agreement.

3.12 WARRANTIES

Consultant assigns all manufacturer’s warranties on any deliverables to the City and will deliver all related documentation to the Director within 5 days after execution of this Agreement.

3.13 USE AND OWNERSHIP OF DATA AND WORK PRODUCTS

3.13.1 The City may use and shall be permitted to use all City Data, Consultant Data, and Work Products.

3.13.2 Consultant warrants that it owns the copyright to Consultant Data.

3.13.3 Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.

3.13.4 Consultant shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Consultant shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.

3.13.5 Consultant’s assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City.

3.13.6 Consultant shall execute all documents required by the Director to further evidence Consultant’s assignment and the City’s ownership of the Work Products and the Proprietary Rights therein. Consultant shall cooperate with City in registering, creating, and enforcing the City’s ownership of the Work Products and the Proprietary Rights therein.

3.13.7 All Work Products are “works made for hire.”

3.13.8 Consultant shall deliver to the Director all or any part of the original City Data, Consultant Data, Work Products, and/or all other files and materials that Consultant produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.

3.13.9 Consultant may retain copies of the Work Products for its archives. Consultant shall not otherwise use, sell, license, or market the Work

SAMPLE CONTRACT – SUBJECT TO CHANGE

Products.

3.13.10 Notwithstanding anything to the contrary, the City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Consultant expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Consultant shall not possess or assert any lien or other right against any City Documents or Work Products.

3.14 CONFIDENTIALITY

3.14.1 Except as otherwise provided in this Agreement, each Receiving Party shall:

3.14.1.1 Hold all Confidential Information of a Disclosing Party in strict confidence;

3.14.1.2 Protect all Confidential Information of a Disclosing Party with at least the same degree of care and in accordance with the security regulations by which it protects its own Confidential Information;

3.14.1.3 Not use, reproduce, or copy any Confidential Information of a Disclosing Party except as necessary for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;

3.14.1.4 Not disclose any Confidential Information of a Disclosing Party to any person or entity except the Receiving Party's agents, Consultants, employees, and representatives with a need to know for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;

3.14.1.5 Not remove any Confidential Information of a Disclosing Party from the continental United States;

3.14.1.6 Return or destroy all Confidential Information of a Disclosing Party and any copies of such Confidential Information upon request of the Disclosing Party and, in any event, when no longer needed or permitted for use under, pursuant to, or in connection with this Agreement; and

3.14.1.7 Advise its agents, Consultants, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.

SAMPLE CONTRACT – SUBJECT TO CHANGE

- 3.14.2 No Receiving Party shall have any obligation under this Section (Confidentiality) as to any Confidential Information of a Disclosing Party that:
- 3.14.2.1 Was previously known to it free and clear of any obligation to keep it confidential;
 - 3.14.2.2 Except as otherwise provided under this Agreement, is disclosed to third parties by the Disclosing Party without restriction;
 - 3.14.2.3 Is or becomes publicly available by other than unauthorized disclosure;
 - 3.14.2.4 Is independently developed by it; or
 - 3.14.2.5 Is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the Receiving Party ordered to disclose the Confidential Information shall: (i) give the Disclosing Party of the Confidential Information prompt written notice of all such requests, and (ii) cooperate with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure.
- 3.14.3 No Receiving Party shall be liable for the inadvertent or accidental disclosure of Confidential Information of a Disclosing Party, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the Receiving Party normally takes to protect its own Confidential Information of a similar nature.
- 3.14.4 Consultant shall obtain written agreements from its agents, employees, Consultants, and subcontractors that bind them to the terms of this Section (Confidentiality).

3.15 USE OF WORK PRODUCTS

- 3.15.1 The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products Consultant prepares or obtains under this Agreement.
- 3.15.2 Consultant warrants that it owns the copyright to the Documents.
- 3.15.3 Consultant shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Consultant shall deliver to the Director the original Documents, and all other files and materials Consultant produces or gathers during its performance under this Agreement, in a format determined by the Director.

SAMPLE CONTRACT – SUBJECT TO CHANGE

3.16 LICENSES AND PERMITS

3.16.1 Consultant shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Consultant shall immediately notify the Director of any suspension, revocation, or other detrimental action against his license.

3.17 COMPLIANCE WITH LAWS

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

3.18 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

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

3.19 CONFLICTS OF INTEREST

3.19.1 Consultant shall comply with all conflicts of interest laws and regulations applicable to this Agreement. Consultant shall promptly disclose in writing to the City all actual or potential conflicts of interest relative to the performance of this Agreement.

3.19.2 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 by fax transmission or telephone. If the Director consents to Consultant's continued representation of the other clients, he or she shall notify Consultant in writing. If the Director does not issue written consent within 3 business days after receipt of Consultant's notice, Consultant shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

3.20 NON-DISCRIMINATION

3.20.1 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 CFR 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 CFR Part 21, as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit C**.

3.21 DRUG ABUSE DETECTION AND DETERRENCE

SAMPLE CONTRACT – SUBJECT TO CHANGE

- 3.21.1 It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Consultants while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Consultants, Executive Order No. 1-31 (“Executive Order”), which is incorporated into this Agreement and is on file in the City Secretary’s Office.
- 3.21.2 Before the City signs this Agreement, Consultant shall file with the City Contract Compliance Officer for Drug Testing (“CCODT”):
- 3.21.2.1 a copy of its drug-free workplace policy,
 - 3.21.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit D**, together with a written designation of all safety impact positions and,
 - 3.21.2.3 if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit E**.
- 3.21.3 If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit F**. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each 6-month period of performance and within thirty (30) days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.
- 3.21.4 Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant’s employee work force.
- 3.21.5 Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

3.22 CONSULTANT’S PERFORMANCE

- 3.22.1 Consultant shall make citizen satisfaction a priority in providing services under this Agreement. Consultant shall train its employees to be customer service-oriented and to positively and politely interact with citizens when

SAMPLE CONTRACT – SUBJECT TO CHANGE

performing contract services. Consultant's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Consultant is not interacting in a positive and polite manner with citizens, he or she shall direct Consultant to take all remedial steps to conform to these standards.

3.23 PAY OR PLAY

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

3.24 ACCEPTANCE AND REJECTION

3.24.1. 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** or in any subsequent Task Orders.

3.24.2. 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** or in any subsequent Task Orders. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Consultant stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.

3.24.3. Notwithstanding anything to the contrary in **Exhibit A**, subsequent Task Orders, 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** or in any subsequent Task Orders.

3.24.4. 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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

- 3.24.5. 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), the City shall return all Equipment and Software to Consultant at no cost to the City, the City shall have no obligation to pay any amount whatsoever under this Agreement, Consultant shall immediately refund any and all amounts paid by City under this Agreement, and this Agreement shall immediately terminate.
- 3.24.6. 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.

3.25 MWBE COMPLIANCE

- 3.25.1. In its performance under this Agreement, Consultant shall comply with the City's Minority and Women Business Enterprise ("MWBE") 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 MWBEs. Consultant acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.
- 3.25.2 Consultant shall adhere to and comply with 2 CFR § 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.
- 3.25.3 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

SAMPLE CONTRACT – SUBJECT TO CHANGE

information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements.

ARTICLE 4. DUTIES OF CITY

4.1. PAYMENT TERMS

4.1.1. For services described in **Exhibit A** or in any subsequent Task Orders, the City shall pay and Consultant shall accept the fees at the Labor Rates and Unit Price Rates set forth in **Exhibit B, Fee Schedule** as full compensation for all Services rendered and Deliverables furnished by Consultant under this Agreement, excluding any Reimbursable Expenses. The fees must be paid from allocated funds as provided in **Section 4.7**, inclusive of all sections therein.

4.2 COMPENSATION FOR CONSULTANT’S SERVICES

4.2.1. Compensation to the Consultant, excluding Reimbursable Expenses, shall be a not-to-exceed amount agreed upon by the Consultant and Director that will be set forth in each Task Order subject to the following:

4.2.1.1. All Labor Rates and Unit Prices in Exhibit B, Fee Schedule shall remain firm and unchanged for at least 365 days after the Effective Date. If the Consultant seeks to adjust the Labor Rates or the Unit Price Rates in Exhibit B to become effective after the first [redacted] [days/years] after the Effective Date, then at least one hundred and twenty (120) days prior to the end of [redacted], Consultant shall submit a written Labor Rate or Unit Price Rate adjustment request to the Director and propose new rates for each labor category and unit price for which Consultant seeks an increase. Consultant may request to increase its Labor Rates and Unit Price Rates by no more than the percentage of increase in the average Consumer Price Index (“CPI”) plus [redacted] percent ([redacted]%) for Greater Houston as published by the U.S. Department of Labor for the current year over the average CPI for the first [redacted] [days/years] of the Agreement. An Agreement Year means the one (1) year period beginning on the Effective Date, and each succeeding twelve (12) month period thereafter during the Term of this Agreement, including any renewals (referred to as the Second Agreement Year, Third Agreement Year, etc.). In communicating its anticipated increases for the Director’s review, verification, and approval, Consultant shall submit the following:

- i. its anticipated increase calculations and all underlying data and formulas,

SAMPLE CONTRACT – SUBJECT TO CHANGE

- ii. the published index of the CPI-U referenced below,
- iii. detailed statement describing any changes to Consultant’s operations or the breadth of services provided under the Agreement, costs or expenses outside of Consultant’s control, actual documented price increases from Consultant’s suppliers, the value proposition for the price increase or cost adjustment, and any other bases unrelated to the CPI-U that justify the anticipated price increase,
- iv. supporting documentation demonstrating the bases and justifications described in the detailed statement; and
- v. any other information reasonably requested by the Director to assist the Director in performing a cost analysis of rates.

4.2.1.2. If the Director performs a cost analysis that documents any Labor Rate or Unit Price Rate adjustments that the Consultant has requested and the Director determines the adjustments are reasonable and based primarily on customary increases over time, then beginning [days/years] after the Effective Date and each year thereafter, Consultant may increase its Labor Rates and Unit Price Rates by no more than the percentage of increase in the average Consumer Price Index (“CPI”) plus percent (%) for Greater Houston as published by the U.S. Department of Labor for the current year over the average CPI for the first twelve months of the Agreement upon thirty (30) days written notice to the City.

- 4.2.2. If the time initially established for completion of the Project is extended, through no fault of the Consultant, for more than **90** calendar days, the Consultant may request compensation for any required extension of services, which, if authorized, shall be paid in accordance with the provisions of **Section 4.2**.
- 4.2.3. Payments for Consultant’s Services may be made monthly upon presentation of the Consultant’s statement of services rendered and expenses incurred, including invoices, on forms provided by the City, and any other documentation reasonably required by the Director.

4.3 REIMBURSABLE EXPENSES

- 4.3.1. The City shall pay Consultant for reimbursable expenses if any, at documented actual costs, upon receipt and Director’s approval of Consultant’s itemized invoice.

SAMPLE CONTRACT – SUBJECT TO CHANGE

4.3.2. Consultant shall propose a maximum amount for each Reimbursable Expense at the time that services requiring such expenses are requested by the Director. The Director must approve Reimbursable Expenses before Consultant incurs them. The compensation for Reimbursable Expenses shall never exceed this agreed-upon maximum amount set out in a Task Order. Reimbursable Expenses are the actual expenditures Consultant and its subcontractors make while performing services for the Project requested by the Director. They include travel costs outside the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees), if requested in writing by the Director and such travel is reasonably necessary to accomplish a task in connection with the Project, plus living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction over the Project. Expenses for reproductions for submittals or correction of submittals required under the design phases, reproductions for the office use of the Consultant and/or the Consultant's subcontractors are not reimbursable.

4.4 COMPENSATION FOR REIMBURSABLE EXPENSES

4.4.1 Payments for Reimbursable Expenses, if any, shall be paid at documented actual costs and may be made monthly upon presentation of the Consultant's monthly invoice.

4.4.2 For Reimbursable Expenses, as described in Article 4.3, compensation to the Consultant shall be documented actual amounts expended by the Consultant, the Consultant's employees and/or subcontractors in the interest of the Project.

4.4.3 Compensation for Reimbursable Expenses as described in Article 4.3, shall not exceed the total dollar limit for Reimbursable Expenses set forth in each Task Order. The compensation for Reimbursable Expenses must be paid from allocated funds as provided in **Section 4.7**, inclusive of all sections thereof.

4.5 TAXES

4.5.1 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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

4.6 METHOD OF PAYMENT

- 4.6.1. The City shall pay Consultant on the basis of invoices submitted by Consultant and approved by the Director in such detail showing the Services performed and Deliverables provided and the attendant fee. The City shall make payments to Consultant at its address for notices within thirty (30) days of receipt of an approved invoice.
- 4.6.2. If the Director disputes an invoice Consultant submits for any reason, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Consultant of the dispute and request remedial action. After the dispute is settled, Consultant shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.6.3 Early Payment Discount

The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Texas Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

If the City fails to make a payment according to the early payment schedule above but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. 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.

4.7 LIMIT OF APPROPRIATION

- 4.7.1 The City's duty to pay money to Consultant under this Agreement is limited in its entirety by the provisions of this Section.
- 4.7.2 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 [REDACTED] dollars (\$[REDACTED]) to pay money due 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:

SAMPLE CONTRACT – SUBJECT TO CHANGE

4.7.2.1 The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued 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.

<p>NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS. By the signature below, the City Controller certifies that, upon the request of the 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. \$_____</p>

4.7.2.2 The Original Allocation plus all supplemental allocations are the “Allocated Funds.” The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. 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.

4.8 ACCESS TO DATA

- 4.8.1. 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 are reasonably necessary for Consultant to perform under this Agreement.
- 4.8.2. 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.
- 4.8.3. 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.

4.9 NO QUANTITY GUARANTEE

4.9.1 This Agreement does not create an exclusive right in Consultant to perform all services concerning the subject of this Agreement. The City may procure

SAMPLE CONTRACT – SUBJECT TO CHANGE

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.

- 4.9.2 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.

ARTICLE 5. TERM AND TERMINATION

5.1. TERM

- 5.1.1. This Agreement is effective on the Effective Date and expires three (3) years after the Effective Date (“Initial Term”), unless sooner terminated in accordance with the terms and conditions of this Agreement. The Director may issue Task Orders at any time during the Initial Term and any renewal period. Each Task Order may be issued for the period set forth in the Task Order, which shall not exceed one (1) year. If the Director, at his sole discretion, makes a written request for renewal of a Task Order and if sufficient funds are allocated, then the Task Order may be renewed for up to two successive one-year periods. If, upon the final expiration or other termination of this Agreement, a Task Order is still in effect, then this Agreement shall likewise remain in effect for those purposes necessary and appropriate for the Task Order to continue to its own expiration or termination.

5.2. RENEWALS

- 5.2.1. If the Director, at his or her sole discretion, makes a written request for renewal to Consultant at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement may be renewed for two (2) successive one-year terms upon the same terms and conditions.

5.3. TERMINATION FOR CONVENIENCE BY THE CITY

- 5.3.1. The Director may terminate this Agreement and/or any and all Task Orders at any time by giving 30 days’ written notice to Consultant. The City’s right to terminate this Agreement and/or any Task Order for convenience is cumulative of all rights and remedies which exist now or in the future. Termination of one or more Task Orders does not terminate this Agreement.
- 5.3.2. On receiving the notice, Consultant shall, unless the notice directs

SAMPLE CONTRACT – SUBJECT TO CHANGE

otherwise, immediately discontinue all Services under this Agreement or Task Order, as applicable, and cancel all existing orders and subcontracts that are chargeable to this Agreement or Task Order. As soon as practicable after receiving the termination notice, Consultant shall submit a final invoice marked “FINAL” showing in detail the Services performed under this Agreement or Task Order up to the termination date.

- 5.3.3. RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONSULTANT’S ONLY REMEDIES FOR THE CITY’S TERMINATION OF THIS AGREEMENT OR ANY TASK ORDER 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 OF ANY TASK ORDER OR THE AGREEMENT.

5.4. TERMINATION FOR CAUSE BY THE CITY

- 5.4.1. If Consultant defaults under this Agreement or any Task Order(s), the Director may either terminate this Agreement or Task Order(s) or allow Consultant to cure the default as provided below. The City's right to terminate this Agreement or any Task Order(s) for Consultant’s default is cumulative of all rights and remedies which exist now or in the future. Default by Consultant occurs if:
- 5.4.1.1. Consultant fails to perform any of its material duties under this Agreement or any Task Order(s);
 - 5.4.1.2. Consultant becomes insolvent;
 - 5.4.1.3. all or a substantial part of Consultant’s assets are assigned for the benefit of its creditors; or
 - 5.4.1.4.a receiver or trustee is appointed for Consultant.
- 5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Consultant describing the default and the termination date. The Director, at his sole option, may extend the termination date to a later date. If the Director allows Consultant to cure the default and Consultant does so to the Director’s satisfaction before the termination date, then the termination is ineffective. If Consultant does not cure the default before the termination date, then the Director may terminate this Agreement or any Task Order(s) on the termination date and pay Consultant for all Services performed, if any, through such date.

SAMPLE CONTRACT – SUBJECT TO CHANGE

- 5.4.3. To effect final termination, the Director must notify Consultant in writing. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement or any Task Order(s), and promptly cancel all orders or subcontracts chargeable to this Agreement and any Task Orders(s).

ARTICLE 6. MISCELLANEOUS

6.1. INDEPENDENT CONTRACTOR

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

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 any reimbursement of expenses or any other payment whatsoever.
- 6.2.2. This relief is not applicable unless the affected Party does the following:
- 6.2.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - 6.2.2.2. provides the other Party with prompt written notice of the cause and its anticipated effect.
- 6.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Consultant has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.

SAMPLE CONTRACT – SUBJECT TO CHANGE

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 five days from the date performance is affected, the Director may terminate this Agreement by giving seven (7) days' written notice to Consultant. This termination is not a default or breach of this Agreement. **CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

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

6.3. SEVERABILITY

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

6.4. ENTIRE AGREEMENT

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

6.5. WRITTEN AMENDMENT

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

6.6. GOVERNING LAW AND VENUE

6.6.1. This Agreement is shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to the Agreement shall lie exclusively in Harris County, Texas.

6.7. NOTICES

SAMPLE CONTRACT – SUBJECT TO CHANGE

6.7.1. All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section 1.1. of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

6.8. CAPTIONS

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

6.9. NON-WAIVER

6.9.1. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of Consultant's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10. INSPECTIONS AND AUDITS

6.10.1. City, State of Texas and Federal Government (meaning the Federal Government of the United States, including, but not limited to, any of the agencies or departments that are or may provide funding for the Services to be completed under this Agreement, such as the Office of the Comptroller General of the United States, the Government Accountability Office, the Office of the Inspector General, or any authorized representative of the U.S. Housing and Urban Development Department or the United States Government), authorized representatives may perform, or have performed, (i) audits of Consultant's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Consultant shall keep its books and records available for (1) the time period required by 2 CFR Section 200.333 (retention requirements for records) in the event the City receives federal funds for all or a portion of this Agreement, 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

SAMPLE CONTRACT – SUBJECT TO CHANGE

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.
- 6.10.3. 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.
- 6.10.4 Consultant has been advised that the City is the subrecipient of federal funds under CDBG-DR Federal Award Number B-17-DM-48-0001, awarded February 9, 2018, administered by the General Land Office under CFDA No. 14.228, “Community Development Block Grants/State’s program and Non-Entitlement Grants in Hawaii”. The City is a party to the GLO Harvey Contract, a copy of which has been made available to Consultant for review. Consultant shall comply with all terms of the GLO Harvey Contract, including but not limited to the provisions with respect to inspections and audits, and maintenance of records and Documents, as if it were the City, including, without limitation, GLO Harvey Contract Article VII and Attachment D, as reproduced within Exhibit H to this Agreement. For purposes of Consultant’s required compliance, “Subrecipient” shall refer to Consultant and “GLO” shall refer to the City within these Sections. Consultant shall cooperate fully with any request(s) made by the Director or any other entity with authority as provided therein in Exhibit H.
- 6.10.5 Consultant shall provide the Director, the U.S. Department of Housing and Urban Development (“HUD”) Administrator, the Comptroller General of the United States, Inspectors General, the GLO, the Texas State Auditor’s Office 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.
- 6.10.5 Consultant shall provide the Director, the HUD Administrator or his authorized representatives, the GLO, the Texas State Auditor’s Office or any other authorized representatives of these individuals or the State of Texas

SAMPLE CONTRACT – SUBJECT TO CHANGE

or Federal Government, as defined in Section 6.10.1 access to work sites pertaining to the work being completed.

6.10.6 If any audit or inspection performed by HUD, GLO, the City or any other local, state or federal entity providing funding to pay for Consultant's services under this Agreement, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of funds used by the City to pay fees and/or expenses for Consultant's services, based on Consultant's performance under this Agreement or any Task Order, Consultant shall repay, refund, and/or reimburse the City for all of such fees and/or expenses required to be paid by the City or in the case of a City audit, amounts requested or disallowed by the City, as unallowed, unauthorized, or otherwise inconsistent with this Agreement or Task Order. Consultant shall be given a reasonable opportunity to review and dispute in writing the findings of such audit or inspection. Any adjustments or payments that must be made as a result of any such audit or inspection of the Consultant's performance under the Agreement, including invoices or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the written findings by the City to the Consultant. In no event will Consultant be responsible for disallowed, recaptured or reimbursed amounts that the City has paid to any party other than Consultant. Each Party shall bear its own costs of any such audit.

6.11. ENFORCEMENT

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

6.12. AMBIGUITIES

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

6.13. SURVIVAL

6.13.1. Consultant shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

6.14. PUBLICITY

6.14.1. Consultant shall make no announcement or release of information

SAMPLE CONTRACT – SUBJECT TO CHANGE

concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

6.15. RISK OF LOSS

6.15.1. Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Consultant to the City upon Acceptance by the City.

6.16. PARTIES IN INTEREST

This Agreement does not bestow any rights upon any third party but binds and benefits the City and Consultant only. Except as may be specifically set forth in this Agreement and the GLO Harvey Contract (i) nothing expressed or referred to in this Agreement or a Task Order shall be construed to give any person, body, or legal entity, other than the City and Consultant, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement or Task Order issued hereunder; and (ii) there are no third-party beneficiaries to this Agreement, and this Agreement and all of its provisions are for the sole and exclusive benefit of the City and Consultant.

6.17. SUCCESSORS AND ASSIGNS

6.17.1. 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 set out in **Section 6.18**. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.18. BUSINESS STRUCTURE AND ASSIGNMENTS

6.18.1. 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. 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.

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

6.19. DISPUTE RESOLUTION

SAMPLE CONTRACT – SUBJECT TO CHANGE

- 6.19.1. For purposes of this Section “Project Administrator” means the person the Director designates to monitor the progress of all Parties’ performance under this Agreement.
- 6.19.2. Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Consultant must be handled as described below:
- 6.19.2.1. 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.
- 6.19.2.2. 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 seven Business Days following receipt of the Project Administrator’s original decision. The Director shall provide Consultant with a written response to the appeal within 14 Business Days following its receipt. The decision of the Director is final.

6.20. REMEDIES CUMULATIVE

- 6.20.1. 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. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

6.21 CONSULTANT DEBT

- 6.21.1. 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, CONSULTANT SHALL IMMEDIATELY BE NOTIFIED 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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

6.22 FEDERAL REQUIREMENTS

6.22.1. The Parties acknowledge that City may seek reimbursement from the HUD for costs incurred under this Agreement. The Consultant shall comply with all Community Development Block Grant (“CDBG”) including CDBG-Disaster Recovery and HOME program requirements outlined in Exhibits G and G-1) and made a part hereof. Notwithstanding the previous sentence, the Parties acknowledge that the Federal Government is not a party to this Agreement and is therefore not obligated to perform any actions under this Agreement. Consultant shall comply with and shall perform services in compliance with all GLO/HUD requirements outlined in this Agreement and otherwise applicable to the Services performed, any subsequent audit by the GLO, HUD, or any other reviewing agency, and reimbursement, if any, from the GLO, HUD, or any other federal agency for the costs incurred under this Agreement.

6.23 ANTI – BOYCOTT OF ISRAEL

6.23.1. 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.

6.24 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

6.24.1. 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 Agreement’s Effective Date. Consultant shall notify the City’s Chief Procurement Officer, City Attorney, and Director of any information regarding possible violation by the Consultant or its subcontractors providing services or goods under this Agreement within 7 days of Consultant becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

6.25 FLOW-THROUGH PROVISIONS

6.25.1. The City is a party to the GLO Harvey Contract that contains the provisions set out in Exhibit H to this Agreement. Consultant shall comply with the applicable terms set out in Exhibit H as if it were the City, except to the extent this Agreement specifically addresses a topic also covered in Exhibit

SAMPLE CONTRACT – SUBJECT TO CHANGE

H, in which case the terms of this Agreement shall apply. In the event Consultant believes a term or condition of the GLO Harvey Contract is inapplicable, Consultant must seek clarification from the Director. The Director, in his sole but reasonable discretion, shall determine which terms are applicable to this Agreement, any Task Order, and the Services provided thereunder. If the Parties fail to reach an agreement, the Consultant may submit a dispute in accordance with Section 6.19 of this Agreement. Consultant may utilize the Section 6.19 dispute resolution process under this Section regardless of whether the dispute involves a question of law.

- 6.25.2 In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Consultant for services or expenses provided under this Agreement, Consultant shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Consultant's scope of work, ("Additional Flow Down Provisions"). Consultant's agreement to the Additional Flow Down Provisions must be in writing, signed by the Consultant and Director and approved by the City Attorney. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed 15 business days), the Parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his sole discretion may (i) immediately suspend Consultant from any further performance under the applicable Task Order(s), or (ii) terminate the applicable Task Order(s).

6.26. 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

SAMPLE CONTRACT – SUBJECT TO CHANGE

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 Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor 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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT A

SCOPE OF SERVICES

[TO BE DETERMINED]

TASK ORDER NO. 1

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT B

FEE SCHEDULE

TOTAL HOURLY LABOR RATES

UNIT PRICE RATES

[TO BE DETERMINED]

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT C

TITLE VI: NON-DISCRIMINATION

During the performance of this Agreement, Consultant, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations - The Consultant shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (“DOT”) 49 CFR Part 21, as may be amended from time to time (“Regulations”), which are incorporated by reference and made a part of this Agreement.
2. Non-discrimination - The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and Agreements of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Consultant for work to be performed under a subcontract, including procurement of materials or Agreements of equipment, each potential Subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Consultant shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Consultant’s noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
 - 5.1. withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or
 - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Consultant shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and Agreements of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Consultant becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Consultant may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Consultant may request the United States of America to enter into such litigation to protect the interests of the United States.

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT D

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Name of Company) (Consultant)

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

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

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

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

Date

Consultant Name

Signature

Title

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT E

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

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

as an owner or officer of _____ have
authority to bind _____,
(Name of Company)

Consultant with respect to its bid, and hereby certify that Consultant has no employee safety impact
positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved in performing

(Project)

Consultant agrees and covenants that it shall immediately notify 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)

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT F

DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or
(Name) (Print/Type) (Title)
officer of _____ (Contractor) (Name of Company), have personal knowledge and full authority
to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, _____.

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

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

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

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

_____ From _____ [Start date] to _____ [End date] the following test has occurred:
Initials

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT G

**FEDERAL REGULATIONS
CDBG AND HOME PROGRAM REQUIREMENTS**

General Provisions

1. To the extent applicable to the Agreement, the specific work performed under the Scope of Services, or work performed under a specific Task Order:
 - a. Consultant shall comply with the requirements of Title VIII of the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964, relating to prohibitions against discrimination in housing and the benefits of federally funded programs because of race, color, religion, sex or national origin. Consultant shall also adhere to federal regulations prohibiting discrimination on the basis of age under the Age Discrimination Act of 1975, and prohibit discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.
 - b. Consultant shall also comply with the requirements of Executive Order 11246, relating to equal employment opportunity in connection with federally programs. Consultant must also meet the requirements of Executive Orders 11625, 12432 and 12138 relating to the use of minority and women’s business in connection with federally funded programs.
 - c. The Consultant shall be deemed to have read and understood and, to the extent such requirements are applicable to the Consultant and the work to be performed hereunder, agrees to abide by all laws and regulations applicable to the CDBG-DR Grant including, but not limited to: Lists of Applicable Laws, Rules and Regulations attached hereto and incorporated herein as Exhibit “G”; the CDBG-DR Project Implementation Manual found at: <http://recovery.texas.gov/local-government/hud-requirements-reports/implementation-manual/index.html>; and the State of Texas Action Plan for Disaster Recovery found at: <http://recovery.texas.gov/action-plans/hurricane-harvey/index.html>.

To the extent applicable to the Agreement, the specific work performed under the Scope of Services, or work performed under a specific Task Order, Consultant shall also comply with the following specific provisions, program requirements and laws.

Specific Provisions

SECTION 1

Title VI of The Civil Rights Act of 1964

Consultant shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) ("Title VI") and with Title 24 Code of Federal Regulations (CFR) Part 1, which implements Title VI. In accordance with Title VI, no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Consultant receives federal financial assistance. The Consultant will immediately take any measures necessary to comply with Title VI. If any real property or structure thereon is provided or improved with the aid of federal financial assistance, this clause shall obligate the owner, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the federal

SAMPLE CONTRACT – SUBJECT TO CHANGE

financial assistance is extended or for another purpose involving the provision of similar services or benefits.

CDBG: 24 CFR § 570.601

HOME: 24 CFR § 92.350

SECTION 2

Section 109 of The Housing and Community Development Act of 1974

Consultant shall comply with Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and implementing federal regulations, **24 CFR § 570.602**, issued pursuant to Section 109. No person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds. Section 109 also prohibits discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

CDBG: 24 CFR § 570.602

HOME: 24 CFR § 92.350

SECTION 3

Environmental Standards

Consultant understands that it does not assume the environmental responsibilities located at **24 CFR § 58**.

CDBG: 24 CFR § 570.604

HOME: 24 CFR § 92.352

SECTION 4

National Flood Insurance Program

A. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.

B. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

CDBG: 24 CFR § 570.605

HOME: 24 CFR § 92.358

SECTION 5

Displacement, Relocation, Acquisition

Consultant understands that projects funded hereunder are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655); and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

CDBG: 24 CFR § 570.606

HOME: 24 CFR § 92.353

SECTION 6

Section 3 Of The Housing And Urban

SAMPLE CONTRACT – SUBJECT TO CHANGE

Development Act Of 1968

(a) The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u, "Section 3") applies to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Consultant shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

(b) The Consultant will comply with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Agreement. The Consultant certifies and agrees that there is no contractual or other disability which would prevent compliance with these requirements.

(c) The Consultant shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(d) The Consultant will include or have included a Section 3 clause in every subcontract for work in connection with the project. The Consultant shall, at the direction of the City, take appropriate action pursuant to any subcontract upon a finding that the subcontractor is in violation of this Section 3 clause. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR § 135. The Consultant shall not let any subcontract unless the subcontractor has provided the Consultant with a preliminary statement of ability to comply with the requirements of this Section 3 clause.

(e) Compliance with the provisions of Section 3, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement shall be a condition of the federal financial assistance provided to the project. These provisions are binding upon the City, its contractors and subcontractors, their successors and assigns. Failure to fulfill these requirements shall subject the City, its contractors and subcontractors, their successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided.

(f) The Consultant shall have completed, signed and delivered a Voluntary Compliance Form (provided by the City) to the Director prior to the execution of this Agreement.
CDBG: 24 CFR § 570.607 **HOME: 24 CFR § 92.350**

SECTION 7

Executive Order 11246, as amended by 12086

The Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and the

SAMPLE CONTRACT – SUBJECT TO CHANGE

employees are treated during employment, without regard to their race, color, religion, sex, 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 by the City setting forth the provisions of this nondiscrimination clause.

- B. 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, or national origin.
- C. The Consultant will send to each labor union or representative of workers with which the Consultant has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City, advising the labor union or workers' representative of the Consultant's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. 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 set forth at 41 CFR § 60.
- E. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of the U.S. Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of such 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 contracts 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 the U.S. Department of Labor, or as otherwise provided by law.
- G. The Consultant will include provisions similar to paragraph A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of the U.S. Department of Labor, issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors. The Consultant will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

SAMPLE CONTRACT – SUBJECT TO CHANGE

SECTION 8

Lead-Based Paint Poisoning Prevention Act

This contract may be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the implementing regulations at 24 CFR § 35, together with the Federal Lead-Based Paint Regulation, effective September 15, 2000, implementing Title X of the Housing and Community Development Act of 1992. Specifically, this contract may be subject to the provisions for the elimination of lead-based paint hazards pursuant to said regulations, and the Consultant may be responsible for all required inspections and certifications.

CDBG: 24 CFR § 570.608

HOME: 24 CFR § 92.355

SECTION 9

Use Of Debarred, Suspended, Or Ineligible Contractors or Subrecipients

(a) The Consultant shall not employ, award contracts to, or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status under provisions of 2 CFR § 180 or under the authority of the City.

(b) The Consultant shall not use CDBG funds for any contract for the construction, alteration or repair of the project funded under this agreement with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, that is identified by the Office of the United States Trade Representative as discriminating against U.S. Consultants in conducting procurement for public works projects. This restriction covers, without limitation, all architectural, engineering and construction services, and includes all products or goods, except construction equipment or vehicles used during the construction, alteration or repair which do not become part of a delivered structure, product or project.

**CDBG: 24 CFR § 570.608
92.355**

HOME: 24 CFR §

SECTION 10

Uniform Administrative Requirements And Cost Principles

The Consultant shall comply with the policies, guidelines, and requirements of **2 CFR § 200**, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," as they relate to the acceptance and use of Federal funds. **The applicable sections of 2 CFR Part 200, or modifications thereto, are set forth at 24 CFR § 570.502.**

CDBG: 24 CFR § 570.610

HOME: 24 CFR § 92.505

SECTION 11

Conflict Of Interest

A. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 CFR § 200 respectively, shall apply. In all cases not governed by 2 CFR § 200, the following shall apply:

In all cases not governed by 2 CFR § 200, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other

SAMPLE CONTRACT – SUBJECT TO CHANGE

improvements of private properties or facilities pursuant to §570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455.

- (i) In accordance with **24 CFR § 570.611**, no persons described in paragraph (ii) (below) who exercise or have exercised any functions with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to CDBG assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- (ii) The requirements of paragraph (i) apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, or subrecipient under which receives funds under the CDBG grant agreement with HUD.

CDBG: 24 CFR § 570.611

HOME: 24 CFR § 92.356

SECTION 12

Executive Order 12372

Consultant understands that implementing regulations at 24 CFR § 52 are applicable to planning or construction of water or sewer facilities only, and that such regulation does not impart any responsibility upon it, rather the regulation imposes the Executive Order Review Process upon the City when funds are proposed for activities subject to review.

CDBG: 24 CFR § 570.612

HOME: 24 CFR § 92.359

SECTION 13

Eligibility for Certain Resident Aliens

Consultant understands that certain newly legalized aliens, as described in 24 CFR § 49, are not eligible to apply for benefits under activities meeting the requirements of section § 570.208 (a) that either (1) have income eligibility requirements limiting the benefits exclusively to low and moderate income persons or are targeted geographically are otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of application.

Consultant further understands that this restriction applies to covered activities funded under the Housing and Community Development Act of 1974, as amended; and that "benefits" under this section means financial assistance, public services, jobs, and access to new rehabilitated housing and other facilities made available under covered activities funded by the Community Development Block Grant Program. Benefits do not include relocation services and payments to which displaces are entitled by law. Furthermore, these restrictions apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section. Compliance can be accomplished by obtaining certification as provided in **24 CFR § 49.20. [24 CFR § 570.613]**

SECTION 14

Findings Confidential

SAMPLE CONTRACT – SUBJECT TO CHANGE

All of the reports, information, data, etc., prepared or assembled by the Consultant for purposes of meeting program requirements are confidential and the Consultant agrees that they shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior approval of the City.

SECTION 15

Court Actions

The Consultant agrees to give the City immediate notice in writing of any actions or suits filed and prompt notices of any claims made against the City, the Consultant, or any of the parties involved in the implementation and administration of this Agreement.

SECTION 16

Records For Audit Purposes

Without limitation to any other provision of this Agreement the Consultant shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires for **four years** from the expiration date of the Agreement unless a longer period is required under **24 CFR § 570.502**. The Consultant will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

SECTION 17

Compliance With Clean Air And Water Acts and Energy Policy and Conservation Act and Recovered Materials

This Agreement is subject to the requirements of the Clean Air Act, as amended (42 U.S.C. § 7400 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.) and the regulations of the Environmental Protection Agency, **40 CFR § 15**. In compliance with the regulations, the Consultant agrees that:

A. No facility to be utilized in the project or program is listed on the list of Violating Facilities issued by the U.S. Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.

B. The Consultant will comply with all the requirements of section 114 of the Clean Air Act, as amended, (42 U.S.C. § 7414) and section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) pertaining to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 and section 308, and all regulations and guidelines issued thereunder.

C. As a condition for the award of this Agreement, the Consultant shall give prompt notice to the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized is under consideration to be listed on the EPA List of Violating Facilities.

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.)

SAMPLE CONTRACT – SUBJECT TO CHANGE

E. The Consultant will include or cause to be included the requirements contained in paragraphs A through D of this clause in every lower-tier nonexempt contract and will take such action as the City may direct as a means of enforcing such provisions.

In no event shall any amount of the funds provided under the Agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act.

Use of Recovered Materials. 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. 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>.

SECTION 18

Architectural Barriers Act and The Americans with Disabilities Act

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 for residential structures, and Appendix A to 41 CFR Part 101-19, Subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 25, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable--that is, easily accomplished and able to be carried out without much difficulty or expense. **24 CFR § 570.614**

SECTION 19

Audit Requirements

a. Limited Scope Audit - Consultant understands that Non-Federal entities that expend less than \$500,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available to review and audit as described hereinabove at Section 16. Consultant further understands that limited scope audits can and may be required by the City for Non-Federal entities that expend less than \$500,000. If the City requires such limited scope audits, same shall be performed in accordance with Office of Management and Budget (OMB) Circular A-133 - "Audits of States, Local Governments, and Non-Profits "which rescinds Circular A-128,

SAMPLE CONTRACT – SUBJECT TO CHANGE

Audits of State and Local Governments (codified at 24 CFR Part 45) and it supersedes the prior Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions, issued April 22, 1996 (codified at 24 CFR Part 44).

b. Single Audit - Consultant further understands that Non-Federal entities that expend \$500,000 or more a year in Federal awards shall have a single audit conducted pursuant to A-133, except when they elect to have a program-specific audit pursuant to and as described in A-133. Prior arrangements must be made to conduct such audit. Once the Contract is executed, Consultant understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

SECTION 20

Labor Standards/Davis-Bacon Act

To the extent applicable, Consultant shall comply with the federal wage requirements for federally-assisted construction projects pursuant to the Davis-Bacon Act, as amended.

24 CFR § 570.603

SECTION 21

Executive Order 11063, as amended by Executive Order 12259

Consultant understands that HUD has been directed to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental or other disposition or residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants or contributions agreed to be made by the Federal Government.

CDBG: 24 CFR Part 107

HOME: 24 CFR § 92.350

SECTION 22

Site and Neighborhood Standards

Consultant understands that pursuant to 24 CFR § 882.708 (c), all new construction projects must meet site and neighborhood standards. Limiting conditions are placed on building in areas of minority concentration and racially mixed areas.

CDBG: (NOT APPLICABLE)

HOME: 24 CFR § 92.202

SECTION 23

Fair Housing Act

Consultant understands that "Public Law 90-284" refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601, et seq.), popularly known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex or national origin. Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of Title VIII.

CDBG: 24 CFR § 570.601

HOME: 24 CFR § 92.350

SAMPLE CONTRACT – SUBJECT TO CHANGE

Byrd Anti-Lobbying Amendment

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 “G-3”** 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.

Equal Opportunity Clause

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 CFR §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 CFR § 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-3”**.

CDBG: 24 CFR Part 107

HOME: 24 CFR § 92.350

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT G-1

CDBG-DR REQUIREMENTS

For purposes of this Exhibit G-1, "Program or Activity" shall refer to the Project and "Provider" shall refer to "Consultant", as applicable

NONEXCLUSIVE LIST OF APPLICABLE LAWS, RULES, AND REGULATIONS

If applicable to a Program or Activity, Provider must be in compliance with the following laws, rules, and regulations; and any other state, federal, or local laws, rules, and regulations as may become applicable throughout the term of the Contract, and Provider acknowledges that this list may not include all such applicable laws, rules, and regulations.

Provider and is deemed to have read and understands the requirements of each of the following, if applicable to the Project under this Contract:

GENERALLY

The Acts and Regulations specified in this Contract;

Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Public Law 115-56);

The Housing and Community Development Act of 1974 (12 U.S.C. § 5301 *et seq.*);

The United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f(o)(13) (2016) and related provisions governing Public Housing Authority project-based assistance, and implementing regulations at 24 C.F.R. Part 983 (2016);

Cash Management Improvement Act regulations (31 C.F.R. Part 205);

Community Development Block Grants (24 C.F.R. Part 570);

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Disaster Recovery Implementation Manual;

GLO Housing Guidelines; and

State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, dated April 6, 2018, as amended.

CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d *et seq.*); 24 C.F.R. Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, *et seq.*);

SAMPLE CONTRACT – SUBJECT TO CHANGE

Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, *et seq.*), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Provider to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*); and

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8. By signing this Contract, Provider understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, *et seq.*), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

LABOR STANDARDS

The Davis-Bacon Act, as amended (originally, 40 U.S.C. §§ 276a-276a-5 and re-codified at 40 U.S.C. §§ 3141-3148); 29 C.F.R. Part 5;

The Copeland "Anti-Kickback" Act (originally, 18 U.S.C. § 874 and re-codified at 40 U.S.C. § 3145); 29 C.F.R. Part 3;

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (originally, 40 U.S.C. §§ 327A and 330 and re-codified at 40 U.S.C. §§ 3701-3708);

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 C.F.R. Part 5); and

Federal Executive Order 11246, as amended.

EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u); 24 C.F.R. §§ 135.3(a)(2) and (a)(3);

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212);

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1688); and

Federal Executive Order 11246, as amended.

GRANT AND AUDIT STANDARDS

Single Audit Act Amendments of 1996, 31 U.S.C. § 7501;

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200);

Uniform Grant and Contract Management Act (Texas Government Code Chapter 783) and the Uniform Grant Management Standards, issued by Governor's Office of Budget and Planning; and

SAMPLE CONTRACT – SUBJECT TO CHANGE

Title 1 Texas Administrative Code § 5.167(c).

LEAD-BASED PAINT

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831(b)).

HISTORIC PROPERTIES

The National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470, *et seq.*), particularly sections 106 and 110 (16 U.S.C. §§ 470 and 470h-2), except as provided in §58.17 for Section 17 projects;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 C.F.R., 1971-1975 Comp., p. 559, particularly section 2(c);

Federal historic preservation regulations as follows: 36 C.F.R. Part 800 with respect to HUD programs; and

The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469, *et seq.*), particularly section 3 (16 U.S.C. § 469a-1).

ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities (24 C.F.R. Part 58, as amended);

National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321-4347); and

Council for Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508).

FLOODPLAIN MANAGEMENT AND WETLAND PROTECTION

Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 C.F.R., 1977 Comp., p. 117, as interpreted in HUD regulations at 24 C.F.R. Part 55, particularly Section 2(a) of the Order (For an explanation of the relationship between the decision-making process in 24 C.F.R. Part 55 and this part, see § 55.10.); and

Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 C.F.R., 1977 Comp., p. 121 particularly Sections 2 and 5.

COASTAL ZONE MANAGEMENT

The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. § 1456(c) and (d)).

SOLE SOURCE AQUIFERS

The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f), *et seq.*, and 21 U.S.C. § 349) as amended; particularly section 1424(e)(42 U.S.C. § 300h-3(e)); and

Sole Source Aquifers (Environmental Protection Agency-40 C.F.R. part 149.).

ENDANGERED SPECIES

The Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*) as amended, particularly section 7 (16 U.S.C. § 1536).

SAMPLE CONTRACT – SUBJECT TO CHANGE

WILD AND SCENIC RIVERS

The Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) as amended, particularly sections 7(b) and (c) (16 U.S.C. § 1278(b) and (c)).

AIR QUALITY

The Clean Air Act (42 U.S.C. § 7401, *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. §7506(c) and (d)).

Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-40 C.F.R. Parts 6, 51, and 93).

FARMLAND PROTECTION

Farmland Protection Policy Act of 1981 (7 U.S.C. § 4201, *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. §§ 4201(b) and 4202); and

Farmland Protection Policy (Department of Agriculture-7 C.F.R. part 658).

HUD ENVIRONMENTAL STANDARDS

Applicable criteria and standards specified in HUD environmental regulations (24 C.F.R. Part 51)(other than the runway clear zone and clear zone notification requirement in 24 C.F.R. § 51.303(a)(3); and

HUD Notice 79-33, Policy Guidance to Address the Problems Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979.

ENVIRONMENTAL JUSTICE

Executive Order 12898 of February 11, 1994—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (59 FR 7629), 3 C.F.R., 1994 Comp. p. 859.

SUSPENSION AND DEBARMENT

Use of debarred, suspended, or ineligible contractors or subrecipients (24 C.F.R. § 570.609);

General HUD Program Requirements; Waivers (24 C.F.R. Part 5); and

Nonprocurement Suspension and Debarment (2 C.F.R. Part 2424).

OTHER REQUIREMENTS

Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

ACQUISITION / RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, *et seq.*), 24 C.F.R. Part 42, and 24 C.F.R. § 570.606.

FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002 - Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141).

EXHIBIT G-2

**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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

- 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.

Contractor Company Name

Name and Title

Signature

Date

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT G-3

ANTI-Lobbying Certification

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

- 1) No Federal appropriated funds 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 USC § 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 USC § 3801 *et seq.*, apply to this certification and disclosure, if any.

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

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT G-4

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's 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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

(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 Consultant 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.

SAMPLE CONTRACT – SUBJECT TO CHANGE

EXHIBIT H

GLO HARVEY CONTRACT

**GLO Contract No. 19-147-001-B489
COMMUNITY DEVELOPMENT BLOCK GRANT
DISASTER RECOVERY PROGRAM PROJECTS
NON-RESEARCH & DEVELOPMENT
HARVEY ROUND 1 FUNDING**

For purposes of this Exhibit H, "Subrecipient" shall also refer to "Consultant" and "GLO" shall also refer to the "City," as applicable.