



1.02. **TABLE OF CONTENTS**

1.02.1. This Agreement consists of the following sections:

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**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE 1. PARTIES.....</b>	<b>1</b>
1.01. ADDRESS.....	1
1.02. TABLE OF CONTENTS.....	2
1.03. PARTS INCORPORATED.....	5
1.04. CONTROLLING PARTS.....	5
1.05. SIGNATURES.....	6
<b>ARTICLE 2. DEFINITIONS.....</b>	<b>8</b>
<b>ARTICLE 3. DUTIES OF CONTRACTOR.....</b>	<b>10</b>
3.01. SCOPE OF SERVICES.....	10
3.02. COORDINATE PERFORMANCE.....	10
3.03. TIME EXTENSIONS.....	10
3.04. REPORTS.....	10
3.05. PAYMENT OF SUBCONTRACTORS.....	11
3.06. CONTRACTOR’S PERSONNEL.....	11
3.07. RELEASE.....	11
3.08. INDEMNIFICATION.....	12
3.09. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION.....	13
3.10. SUBCONTRACTOR’S INDEMNITY.....	13
3.11. INDEMNIFICATION PROCEDURES.....	13
3.12. INSURANCE.....	14
3.13. WARRANTIES.....	16
3.14. CONFIDENTIALITY.....	16
3.15. USE AND OWNERSHIP OF DATA AND WORK PRODUCTS.....	18
3.16. LICENSES AND PERMITS.....	19
3.17. COMPLIANCE WITH LAWS.....	19
3.18. COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE..	20
3.19. NON-DISCRIMINATION.....	20
3.20. MWBE COMPLIANCE.....	20
3.21. DRUG ABUSE DETECTION AND DETERRENCE.....	21
3.22. CONFLICTS OF INTEREST.....	22

3.23. PAY OR PLAY .....	22
3.24. CONTRACTOR’S PERFORMANCE.....	22
3.25. ADDITIONS AND DELETIONS .....	23
3.26. CHANGES .....	23
3.27. ANTI-BOYCOTT OF ISRAEL .....	25
3.28. ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES .....	25
3.29. DEBARMENT AND SUSPENSION .....	25
3.30. BYRD ANTI-LOBBYING AMENDMENT .....	26
3.31. CONTRACT AND SAFETY STANDARDS .....	26
3.32. ENVIRONMENTAL COMPLIANCE .....	27
3.33. USE OF PRODUCTS .....	27
3.34. PRESERVATION OF CONTRACTING INFORMATION .....	28
<b>ARTICLE 4. DUTIES OF CITY .....</b>	<b>29</b>
4.01. PAYMENT TERMS .....	29
4.02. TAXES .....	29
4.03. METHOD OF PAYMENT .....	29
4.04. LIMIT OF APPROPRIATION .....	30
4.05. ACCESS TO SITE .....	31
4.06. ACCESS TO DATA .....	31
<b>ARTICLE 5. TERM AND TERMINATION .....</b>	<b>31</b>
5.01. TERM.....	31
5.02. NOTICE TO PROCEED.....	31
5.03. RENEWALS .....	31
5.04. TERMINATION FOR CONVENIENCE BY CITY .....	32
5.05. TERMINATION FOR CAUSE BY CITY .....	32
5.06. TERMINATION FOR CAUSE BY CONTRACTOR .....	33
5.07. REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS .....	33
<b>ARTICLE 6. MISCELLANEOUS .....</b>	<b>34</b>
6.01. INDEPENDENT CONTRACTOR .....	34
6.02. FORCE MAJEURE .....	34
6.03. SEVERABILITY .....	35
6.04. ENTIRE AGREEMENT .....	35
6.05. WRITTEN AMENDMENT .....	35

6.06. GOVERNING LAW AND VENUE.....	35
6.07. NOTICES.....	35
6.08. CAPTIONS .....	36
6.09. NON-WAIVER.....	36
6.10. INSPECTIONS AND AUDITS .....	36
6.11. ENFORCEMENT .....	36
6.12. AMBIGUITIES.....	36
6.13. SURVIVAL.....	37
6.14. PUBLICITY.....	37
6.15. PARTIES IN INTEREST.....	37
6.16. SUCCESSORS AND ASSIGNS .....	37
6.17. BUSINESS STRUCTURE AND ASSIGNMENTS .....	37
6.18. REMEDIES CUMULATIVE .....	37
6.19. CONTRACTOR DEBT .....	38

**EXHIBITS:**

- A SCOPE OF SERVICES
- B FEE SCHEDULE
- C KEY PERSONNEL
- D TITLE VI: NON-DISCRIMINATION
- E DRUG POLICY COMPLIANCE AGREEMENT
- F CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- G DRUG POLICY COMPLIANCE DECLARATION
- H DEBARMENT AND SUSPENSION
- I BYRD ANTI-LOBBYING CERTIFICATION
- J EQUAL EMPLOYMENT OPPORTUNITY

1.03. **PARTS INCORPORATED**

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

1.04. **CONTROLLING PARTS**

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

1.05. **SIGNATURES**

1.05.1. 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.

[SIGNATURE PAGE FOLLOWS]

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

\_\_\_\_\_  
Name:  
Title:

**ATTEST/SEAL:**

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

**APPROVED:**

\_\_\_\_\_  
Director,  
Mayor's Office of Public Safety and  
Homeland Security

**APPROVED:**

\_\_\_\_\_  
Chief Procurement Officer

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. \_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:  
Federal Tax ID Number: \_\_\_\_\_

**CITY OF HOUSTON, TEXAS**  
Signed by:

\_\_\_\_\_  
Mayor

**COUNTERSIGNED BY:**

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

**COUNTERSIGNATURE DATE:**

\_\_\_\_\_

## ARTICLE 2. DEFINITIONS

- 2.01. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. 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. The word “shall” is always mandatory and not merely permissive.
- 2.01.1. “Agreement” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.01.2. “Business Day” means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.01.3. “Chief Procurement Officer” (“CPO”) means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.01.4. “City” is defined in the preamble of this Agreement and includes its successors and permitted assigns.
- 2.01.5. “City Data” means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Contractor under, pursuant to, or in connection with this Agreement, (ii) that Contractor obtains, receives, or collects under, pursuant to, or in connection with this Agreement, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software.
- 2.01.6. “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.
- 2.01.7. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.01.8. “Contractor Data” means all Documents and/or Information that Contractor discloses, supplies, or provides to the City under, pursuant to, or in connection with this Agreement.
- 2.01.9. “Countersignature Date” means the date shown as the date countersigned on the signature page of this Agreement.
- 2.01.10. “Deliverable(s)” mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Contractor to the City in connection with this Agreement.

- 2.01.11. “Director” means the Director of the City of Houston Finance Department or such other person as he or she designates.
- 2.01.12. “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.
- 2.01.13. “Documents” means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description. “Documents” includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, 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).
- 2.01.14. “Effective Date” means the date this Agreement is countersigned by the City Controller.
- 2.01.15. “Information” means all information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
- 2.01.16. “Notice to Proceed” means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.
- 2.01.17. “Party” or “Parties” means one or all of the entities set out in the Preamble who are bound by this Agreement.
- 2.01.18. “Proprietary Rights” mean any copyrights, trademarks, trade secrets, patents, or any other intellectual or proprietary rights.
- 2.01.19. “Receiving Party” means a Party who obtains, receives, or collects Confidential Information of another Party or who otherwise has possession, custody, or control of Confidential Information of another Party.

- 2.01.20. "Services" means all services required by or reasonably inferable from the Agreement and Exhibit A including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Contractor to fulfilling Contractor's obligations.
- 2.01.21. "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.
- 2.01.22. "Work Products" means all Documents or Information that the City and/or Contractor creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. "Work Products" does not mean or include the Software, the Source Code, or Object Code.

### **ARTICLE 3. DUTIES OF CONTRACTOR**

#### **3.01. SCOPE OF SERVICES**

- 3.01.1. In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit A.

#### **3.02. COORDINATE PERFORMANCE**

- 3.02.1. Contractor shall coordinate its performance with the Director and other persons that the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

#### **3.03. TIME EXTENSIONS**

- 3.03.1. If Contractor requests an extension of time to complete its performance, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

#### **3.04. REPORTS**

- 3.04.1. Contractor shall submit all reports and progress updates required by the Director or CPO.

3.05. **PAYMENT OF SUBCONTRACTORS**

- 3.05.1. In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment by, through, or under Contractor in the performance of this Agreement.
- 3.05.2. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.

3.06. **CONTRACTOR'S PERSONNEL**

- 3.06.1. In selecting Contractor for this Agreement, the City relied on the qualifications and experience of those persons identified by Contractor by name as performing the Services ("Key Personnel") as listed in Exhibit C. Contractor must not reassign or replace Key Personnel without the Director's prior written approval. Upon the Director's approval, the Director shall update Exhibit C, which does not require amendment to this Agreement, to reflect the new Key Personnel.
- 3.06.2. Consultant shall perform services under this Agreement employing the people listed in Exhibit C. Consultant shall not modify membership of the Key Personnel without prior written approval from the Director. Consultant shall not subcontract performance of services without the express prior written approval of the Director.
- 3.06.3. In the event the Director is dissatisfied at any time with any member of the Key Personnel, Consultant shall, promptly following the written request therefor by the Director, remove such person from the Key Personnel and replace such person with another who is satisfactory to, and approved in writing by, the Director.
- 3.06.4. If substitution of a member of the Key Personnel becomes necessary, Consultant shall propose one or more candidates for the Director's consideration. Candidates submitted for consideration shall be of equal or higher qualifications of the personnel being replaced. If a member of the Key Personnel is removed from this Agreement in accordance with this Section as a result of such member breaching the terms of this Agreement, then, in such circumstance, the City shall not be obligated to pay for any additional costs involving substituted Key Personnel members.

3.07. **RELEASE**

- 3.07.1. **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS**

**OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE 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.**

**3.08. INDEMNIFICATION**

- 3.08.1. CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**
- 3.08.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 1-3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
  - 3.08.1.2. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
  - 3.08.1.3. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**
- 3.08.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

**3.09. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION**

- 3.09.1. **CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**
- 3.09.2. **CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY’S PRIOR WRITTEN CONSENT.**
- 3.09.3. **WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

**3.10. SUBCONTRACTOR’S INDEMNITY**

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

**3.11. INDEMNIFICATION PROCEDURES**

- 3.11.1. Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 30 days. The notice must

include the following:

- 3.11.1.1. a description of the indemnification event in reasonable detail;
- 3.11.1.2. the basis on which indemnification may be due; and
- 3.11.1.3. the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

3.11.2. Defense of Claims

3.11.2.1. Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor 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 unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

3.11.2.2. Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

3.12. INSURANCE

3.12.1. **Risks and Limits of Liability**. Contractor 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"><li>• Bodily Injury by Accident \$500,000 (each accident)</li></ul>

	<ul style="list-style-type: none"> <li>• Bodily Injury by Disease \$500,000 (policy limit)</li> <li>• Bodily Injury by Disease \$500,000 (each employee)</li> </ul>
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: (i) Any Auto; or (ii) 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
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

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

3.12.3. **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: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) 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.

- 3.12.4. **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 Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor'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, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.
- 3.12.5. **Notice. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.
- 3.12.6. **Other Insurance.** If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

### 3.13. **WARRANTIES**

- 3.13.1. Contractor warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under this Agreement.

### 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, contractors, 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, contractors, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.
- 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. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors that bind them to the terms of this Section (Confidentiality).

3.15. **USE AND OWNERSHIP OF DATA AND WORK PRODUCTS**

- 3.15.1. The City may use and shall be permitted to use all City Data, Contractor Data, and Work Products.
- 3.15.2. Contractor warrants that it owns the copyright to Contractor Data.
- 3.15.3. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.
- 3.15.4. Contractor shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Contractor shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.
- 3.15.5. Contractor'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.
- 3.15.6. Contractor shall execute all documents required by the Director to further evidence Contractor's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Contractor shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.
- 3.15.7. All Work Products are "works made for hire."
- 3.15.8. Contractor shall deliver to the Director all or any part of the original City Data, Contractor Data, Work Products, and/or all other files and materials that

Contractor 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.

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

3.15.10. 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. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Contractor shall not possess or assert any lien or other right against any City Documents or Work Products.

3.16. **LICENSES AND PERMITS**

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

3.17. **COMPLIANCE WITH LAWS**

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

3.17.2. Contractor acknowledges that Federal Emergency Management Agency (“FEMA”) financial assistance will be used to fund this Agreement.

3.17.3. Contractor shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

3.17.4. Contractor acknowledges that 31 U.S.C. Chap. 38 (“Administrative Remedies for False Claims and Statements”) applies to Contractor’s actions pertaining to this Agreement.

3.17.5. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the Agreement.

3.17.6. Contractor shall not use the Department of Homeland (“DHS”) seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

3.18. **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

- 3.18.1. Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.
- 3.18.2. Contractor 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, Contractor 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 Emergency Purchase Order. This summary is set forth in Exhibit J.

3.19. **NON-DISCRIMINATION**

- 3.19.1. Contractor 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, Contractor 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 D.

3.20. **MWBE COMPLIANCE**

- 3.20.1. In its performance under this Agreement, Contractor 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. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least      % of the value of this Agreement to MWBEs. Contractor 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.
- 3.20.2. Contractor shall also adhere to and comply with 2 CFR 200.321 if subcontracts are to be let under this Agreement. Contractor, 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, under 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; (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; and (6) Contractor should clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements.

3.20.3. Contractor shall maintain records showing:

3.20.3.1. Subcontracts and supply agreements with Minority Business Enterprises;

3.20.3.2. Subcontracts and supply agreements with Women's Business Enterprises; and

3.20.3.3. Specific efforts to identify and award subcontracts and supply agreements to MWBEs.

3.20.4. Contractor shall submit periodic reports of its efforts under this Section to the Director of the Office of Business Opportunity in the form and at the times he or she prescribes.

3.20.5. Contractor shall require written subcontracts with all MWBE subcontractors and suppliers.

3.21. **DRUG ABUSE DETECTION AND DETERRENCE**

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

3.21.2. Before the City signs this Agreement, Contractor 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 E, together with a written designation of all safety impact positions and; 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 F.

3.21.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to Exhibit G. Contractor 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 Contractor begins work under this Agreement.

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

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

### 3.22. **CONFLICTS OF INTEREST**

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

### 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. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions.

### 3.24. **CONTRACTOR'S PERFORMANCE**

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

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

### 3.25. **ADDITIONS AND DELETIONS**

- 3.25.1. **Additional Products and Services.** Subject to the allocation of funds, the Director or CPO may add similar equipment, supplies, services, or locations, within the scope of this Agreement, to the list of equipment, supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the "Effective Date" means the date specified in the notification from the Director or CPO. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date. In the event the additional equipment, supplies, services, or locations are not identical to the items(s) already under this Agreement, the charges therefor will then be Contractor's normal and customary charges or rates for the equipment, supplies, services, or locations classified in the Fees and Costs (Exhibit B).
- 3.25.2. **Exclusion of Products and Services.** If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the Director or CPO may exclude it from the operation of this Agreement by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.
- 3.25.3. The total charges for additions and deletions to this Agreement must never exceed 25% of the original contract amount unless:
  - 3.25.3.1. The additions are exempt from the competitive bidding or proposal requirements set forth in Tex. Local Govt. Code Chapter 252; or
  - 3.25.3.2. The City acquires the additions from Contractor through a competitive bid or competitive proposal.

### 3.26. **CHANGES**

- 3.26.1. At any time during the Agreement Term, the Director or CPO may issue a Change Order to increase or decrease the scope of services or change plans and specifications as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the

extra work.

- 3.26.2. The CPO or Director will issue the Change Order in substantially the following form:

<b><u>CHANGE ORDER</u></b>	
TO:	[Name of Contractor]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]
SUBJECT:	Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]
Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:	
[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]	
Signed:	
[Signature of CPO or Director]	

- 3.26.3. The CPO or Director may issue more than one Change Order, subject to the following limitations:

3.26.3.1. The City Council expressly authorizes the CPO or Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.

3.26.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

3.26.3.3. The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.

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

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

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

3.27. **ANTI-BOYCOTT OF ISRAEL**

3.27.1. Contractor certifies that Contractor 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.

3.28. **ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

3.28.1. 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. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of the Countersignature Date. Contractor shall notify the CPO, City Attorney, and the Director of any information regarding possible violation by Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

3.29. **DEBARMENT AND SUSPENSION**

3.29.1. The Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the Contractor, 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).

3.29.2. The Contractor shall comply with 2 C.F.R. pt. 180, subpart C and 2C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3.29.3. This certification as set out in Exhibit H is a material representation of fact relied upon by the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

3.29.4. Contractor shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3.30. **BYRD ANTI-LOBBYING AMENDMENT**

3.30.1. For any bid, offer, or agreement exceeding \$100,000, Contractor shall file with the City a Certification Regarding Lobbying substantially in the form set out in Exhibit I.

3.30.2. Contractor shall comply with 31 U.S.C. § 1352 and include a requirement to comply with these regulations in any subcontractor or lower tier covered transaction it enters into.

3.31. **CONTRACT AND SAFETY STANDARDS**

3.31.1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work 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.

3.31.2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of this Article, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual employee employed in violation of the clauses set forth in this Article, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this Article.

3.31.3. 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 contractor 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 prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this Article.

3.31.4. Subcontracts. Contractor shall insert in any subcontracts the clauses set forth in this Article and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in the clauses in this Article.

3.32. **ENVIRONMENTAL COMPLIANCE**

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

3.32.2. Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. “Hazardous Materials” means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City’s storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

3.32.3. Contractor shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 § et seq.).

3.32.4. Contractor shall report all violations to the City, Texas Division of Emergency Management, FEMA and the regional office of the Environmental Protection Agency.

3.32.5. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

3.32.6. Contractor 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.).

3.33. **USE OF PRODUCTS**

3.33.1. In the performance of this Agreement, Contractor 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 contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price.

- 3.33.2. Contractor 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>.

3.34. **PRESERVATION OF CONTRACTING INFORMATION**

- 3.34.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

If Contractor fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Contractor and may terminate this Agreement. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

## ARTICLE 4. DUTIES OF CITY

### 4.01. PAYMENT TERMS

4.01.1. Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in Exhibit A that are rendered by Contractor based upon monthly invoices showing the number of individual tasks and related services performed at the rates set forth in Exhibit B. The fees must only be paid from Allocated Funds as provided below.

4.01.2. 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 (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:

Payment Time - 10 Days: 2% Discount

Payment Time - 20 Days: 1% Discount

4.01.3. 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.

### 4.02. TAXES

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

### 4.03. METHOD OF PAYMENT

4.03.1. The City shall pay Contractor on the basis of monthly invoices submitted by Contractor and approved by the Director in such detail showing the Services performed and Deliverables provided and the attendant fee. The invoices must include itemizations supporting the Contractor's hours worked in the preceding month (no arrears billing), the information listed in Exhibit A, and other documentation requested by the Director. To be effective, each invoice must include a summary progress report of hours worked by each level of professional for the period covered by the invoice, including any subcontractors.

4.03.2. If the City disputes any item in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After any dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.04. **LIMIT OF APPROPRIATION**

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

4.04.2. In order to comply with Article II, Sections 19 and 19a of the City’s Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$ \_\_\_\_\_ to pay money due under this Agreement during the City’s current fiscal year (the “Original Allocation”). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a “Supplemental Allocation” and collectively, the “Supplemental Allocations”) for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.04.2.1. The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

\$ \_\_\_\_\_

4.04.2.2. 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. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor’s only remedy is suspension or termination of its

performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.05. **ACCESS TO SITE**

4.05.1. Contractor may enter and leave the premises at all reasonable times without charge. Contractor and its employees may use the common areas and roadways of the premises where it is to perform the services together with all facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

4.06. **ACCESS TO DATA**

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

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

4.06.3. For any raw data created, assembled, used, maintained, collected, or stored by Contractor for or on behalf of the City, Contractor 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.

## **ARTICLE 5. TERM AND TERMINATION**

5.01. **TERM**

5.01.1. This Agreement is effective on the Countersignature Date and shall remain in effect three (3) years, unless sooner terminated under this Agreement (the "Initial Term").

5.02. **NOTICE TO PROCEED**

5.02.1. Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the CPO or Director.

5.03. **RENEWALS**

5.03.1. Upon expiration of the Initial Term, and so long as the City makes sufficient

supplemental allocations, this Agreement will be automatically renewed for two (2) successive 1-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

5.04. **TERMINATION FOR CONVENIENCE BY CITY**

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

5.05. **TERMINATION FOR CAUSE BY CITY**

- 5.05.1. If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies that exist now or in the future. Default by Contractor occurs if:
  - 5.05.1.1. Contractor fails to perform any of its material duties under this Agreement;
  - 5.05.1.2. Contractor becomes insolvent;
  - 5.05.1.3. all or a substantial part of Contractor's assets are assigned for the

benefit of its creditors; or

5.05.1.4. a receiver or trustee is appointed for Contractor.

5.05.2. If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date, with a copy of the notice to the CPO. The date must be at least 30 days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

5.05.3. To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.06. **TERMINATION FOR CAUSE BY CONTRACTOR**

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

5.07. **REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

5.07.1. Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove contractor-owned material and equipment from the City's premises. This City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

## **ARTICLE 6. MISCELLANEOUS**

### **6.01. INDEPENDENT CONTRACTOR**

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

### **6.02. FORCE MAJEURE**

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

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

6.02.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

6.02.2.2. provides the other Party with prompt written notice of the cause and its anticipated effect.

6.02.3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days.

6.02.4. 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.

6.02.5. If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE**

**TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6.03. **SEVERABILITY**

6.03.1. 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.

6.04. **ENTIRE AGREEMENT**

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

6.05. **WRITTEN AMENDMENT**

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

6.06. **GOVERNING LAW AND VENUE**

6.06.1. This Agreement 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 this Agreement shall lie exclusively in Harris County, Texas.

6.07. **NOTICES**

6.07.1. 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, 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 Article 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.

6.08. **CAPTIONS**

6.08.1. 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.

6.09. **NON-WAIVER**

6.09.1. 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.

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

6.10. **INSPECTIONS AND AUDITS**

6.10.1. City representatives may perform, or have performed: (i) audits of Contractor's books and records; and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least three years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.11. **ENFORCEMENT**

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

6.12. **AMBIGUITIES**

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

6.14. **PUBLICITY**

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

6.15. **PARTIES IN INTEREST**

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

6.16. **SUCCESSORS AND ASSIGNS**

6.16.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.17. **BUSINESS STRUCTURE AND ASSIGNMENTS**

6.17.1. Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the Director and CPO 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.

6.17.2. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

6.18. **REMEDIES CUMULATIVE**

6.18.1. 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 that exist now or in the future. Neither Party may terminate its duties

under this Agreement except in accordance with its provisions.

6.19. **CONTRACTOR DEBT**

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

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**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B**  
**FEES SCHEDULE**

**EXHIBIT C**  
**KEY PERSONNEL**

## EXHIBIT D

### TITLE VI: NON-DISCRIMINATION

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

1. Compliance with Regulations - The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Federal Emergency Management Agency (“FEMA”), 44 CFR Part 21 and Part 206, 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 Contractor, 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 leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 44 CFR §7.5 and 44 CFR §206.11.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor’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 Contractor 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 Director or FEMA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Director or, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Contractor’s noncompliance with the nondiscrimination provisions of this Agreement, the Director shall impose such contract sanctions as the Director or the FEMA may determine to be appropriate, including but not limited to:
  - 5.1. withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
  - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Contractor shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Director or FEMA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States.

**EXHIBIT E**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT F**

**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS**

**IN PERFORMANCE OF A CITY CONTRACT**

I, \_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing \_\_\_\_\_.  
(Project)

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**EXHIBIT G**

**DRUG POLICY COMPLIANCE DECLARATION**

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

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ A written Drug Free Workplace Policy has been implemented and employees notified.  
 Initials The policy 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  
 Initials Drug 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  
 Initials Services (HHS) guidelines.

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

From \_\_\_\_\_ to \_\_\_\_\_ the following test has occurred  
 (Start date) (End date)

	<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  
 Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

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

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

\_\_\_\_\_  
 (Date)

\_\_\_\_\_  
 (Typed or Printed Name)

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Title)

## **EXHIBIT H**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS**

This Addendum and Emergency Purchase Order 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, Vendor is required to confirm that none of the Vendor, 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 Vendor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Vendor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

**CERTIFICATION**

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT I**

**ANTI-LOBBYING CERTIFICATION**

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

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

## **EXHIBIT J**

### **EQUAL OPPORTUNITY CLAUSE**

The applicant 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 contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor 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 contractor 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 contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, 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 contractor 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 contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's

commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The contractor 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 contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction 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 Labor, or as otherwise provided by law.
- (8) The contractor 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 subcontractor or vendor. The contractor 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 contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant 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 contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors 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 further agrees that it will refrain from entering into any contract or contract modification subject to [Executive Order 11246](#) of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors 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.