

**SAMPLE AGREEMENT
TERMS SUBJECT TO CHANGE**

**AGREEMENT FOR DISASTER
RECOVERY AND CONSULTING SERVICES**

THIS AGREEMENT FOR DISASTER RECOVERY AND CONSULTING SERVICES (“Agreement”) is made on the date countersigned by the City Controller (“Effective Date”) by and between the **CITY OF HOUSTON, TEXAS** (the “City”), a Home Rule City of the State of Texas principally situated in Harris County, and _____ (the “Consultant”), a _____ (*state of incorporation*) _____ (*type of legal entity*) doing business in Texas.

The Parties agree as follows:

ARTICLE 1. PARTIES

1.01. **ADDRESS**

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

City

Consultant

Director or Designee
Finance Department
City of Houston
P. O. Box 1562
Houston, Texas 77251

Attention: _____

1.02. **TABLE OF CONTENTS**

1.02.1. This Agreement consists of the following sections:

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- A SCOPE OF SERVICES
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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,
Finance Department

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

Assistant City Attorney
L.D. File No. _____

CONSULTANT:

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 Consultant.
- 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 Consultant under, pursuant to, or in connection with this Agreement, (ii) that Consultant 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. “Consultant” is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.01.8. “Consultant Data” means all Documents and/or Information that Consultant 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 Consultant 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. “FEMA” means the Federal Emergency Management Agency.
- 2.01.16. “Information” means all information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
- 2.01.17. “Notice to Proceed” means a written communication from the Director or the CPO to Consultant instructing Consultant to begin performance.
- 2.01.18. “Party” or “Parties” means one or all of the entities set out in the Preamble who are bound by this Agreement.
- 2.01.19. “Project Worksheet” means the document or form prescribed by FEMA to gather sufficient information about a project under the Public Assistance Program.
- 2.01.20. “Proprietary Rights” mean any copyrights, trademarks, trade secrets, patents, or any other intellectual or proprietary rights.
- 2.01.21. “Public Assistance Program” means the FEMA program to provide assistance to state and local governments for response and recovery from federally-declared disasters or emergencies.

- 2.01.22. "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.
- 2.01.23. "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 Consultant to fulfilling Consultant's obligations.
- 2.01.24. "Task Order" means an individual project assignment with a defined scope of services, budget and schedule issued by the Director that is substantially in the form attached as Exhibit D.
- 2.01.25. "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.
- 2.01.26. "Work Products" means all Documents or Information that the City and/or Consultant creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. "Work Products" does not mean or include the Software, the Source Code, or Object Code.

ARTICLE 3. DUTIES OF CONSULTANT

3.01. SCOPE OF SERVICES

- 3.01.1. For and in consideration of the payments specified in this Agreement, Consultant shall provide all labor and supervision and materials that are necessary to perform the services as set out in this Agreement, as specifically described in Exhibit A and in individual Task Orders.
- 3.01.2. Consultant shall perform services in connection with this Agreement only in response to a Task Order signed by the Director. Task Orders must not vary the terms of this Agreement. Upon the Director's issuance of a Task Order for an individual assignment within the scope of services in Exhibit A, Consultant shall perform such services in accordance with the applicable Task Order. For any Task Order involving legal services, Consultant shall perform such legal services under the direction of a Handling City Attorney and in accordance with the City Attorney's Policy on Engagement of Outside Counsel, attached as Exhibit B. In preparation of a Task Order and within a period of time to be determined by the Director's request, the Consultant shall submit to the Director a cost estimate for performance of such services. Upon written approval by the Director of the Consultant's estimate, such estimate shall become the maximum cost for such services under the applicable Task Order and the Task Order will be issued. The Director may, in his or her sole

discretion, increase the maximum cost of each Task Order upon receipt from Consultant of a written revised estimate and written justification, subject to the availability of funds. Task Orders must include the following:

- 3.01.2.1. Agreement number;
 - 3.01.2.2. Task Order number, date, and funding source;
 - 3.01.2.3. Identity of the Consultant's employees, and employees of any subcontractor, if applicable ("Key Personnel") who will perform Services under the Task Order. (The Director must approve the proposed number of staff for a Task Order or portions of Task Order under which Consultant is paid pursuant to the Labor Rates in Exhibit C.);
 - 3.01.2.4. A scope of services specifically identifying the services to be performed;
 - 3.01.2.5. A final deliverable for the close out of each Task Order ("Task Order Close-out"). Each Task Order Close-out shall require Consultant to perform, at a minimum, the tasks required by the Task Order. The amount of the Task Order Close-out shall be a percentage equal to 10% of the total amount of each applicable Task Order. The City shall not pay such amount until the Director has accepted the Task Order Close-out and received an approved invoice from Consultant;
 - 3.01.2.6. A total not-to-exceed amount for services to be performed;
 - 3.01.2.7. Whether some or all of Consultant's services shall be paid based on an hourly fee or fixed fee, as applicable;
 - 3.01.2.8. Submittal requirements, including schedule and deliverables, (i.e., reports, analyses, statements, etc.), if applicable;
 - 3.01.2.9. A breakout of subcontractor costs;
 - 3.01.2.10. Metrics, performance measures, or benchmarks the Consultant must reach along with the effect of attaining or failing to attain the metrics, performance measures, or benchmarks, which results may include, but are not limited to actual damages from the harm the City will suffer, liquidated damages, percentage discounts on the maximum hourly rates as defined in this Agreement, or other items mutually agreed upon by the Director and Consultant; and
 - 3.01.2.11. Any other information necessary to perform the services, or as required by the Director.
- 3.01.3. Upon the Consultant's written request, the Director, in his sole discretion, may grant extensions for completion of services under individual Task Orders for delays

caused by the City or other agencies with which the work must be coordinated and for other reasonable causes over which the Consultant has no control. The Director's approval of the extension must be in writing. Task Orders continue in effect until all requirements have been met and a written acceptance of the services performed has been made by the Director or until the Consultant receives written notification from the Director to discontinue services. The Director may amend Task Orders in the same manner as they are issued.

- 3.01.4. The City shall pay Consultant for costs that are reasonable, necessary, and allowable under applicable federal, state, and local laws and applicable federal regulations, including 2 CRF Part 200. Consultant acknowledges that the City shall only pay for costs that are eligible for federal reimbursement. The City shall not be obligated to pay for any services under a Task Order that exceeds the scope of this Agreement, is not approved or signed by the Director, or is not in compliance with the strict requirements of this Agreement, including but not limited to this Section 3.

3.02. **COORDINATE PERFORMANCE**

- 3.02.1. Consultant shall coordinate its performance with the Director and other persons that the Director designates. Consultant shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.
- 3.02.2. Consultant shall complete performances of the Services and Deliverables within the number of days set out in each Task Order, if applicable, or contained in state or federal deadlines as set out in applicable state or federal rules or regulations that are in effect at the time of each Task Order.

3.03. **TIME EXTENSIONS**

- 3.03.1. If Consultant 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 180 days. The extension must be in writing but does not require amendment of this Agreement. Consultant is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.04. **REPORTS**

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

3.05. **PAYMENT OF SUBCONTRACTORS**

- 3.05.1. In accordance with the Texas Prompt Payment Act, Consultant shall make timely payments to all persons and entities supplying labor, materials, or equipment by,

through, or under Consultant in the performance of this Agreement.

3.05.2. CONSULTANT SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT'S FAILURE TO MAKE THESE PAYMENTS.

3.06. **CONSULTANT'S PERSONNEL**

3.06.1. Consultant shall perform services under this Agreement employing the positions listed in Exhibit C and the people identified in each Task Order. Consultant shall not modify membership of the Key Personnel, including Consultant's employees or the employees of any subcontractor, without prior written approval from the Director. Consultant shall not subcontract performance of any service without the express prior written approval of the Director.

3.06.2. In the event the Director is dissatisfied at any time with any member of the Key Personnel, Consultant shall, promptly following the written request 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.

3.06.3. If substitution of a member of the Key Personnel becomes necessary, Consultant shall propose one or more candidates for the Director's consideration. In Consultant's proposal to the Director, Consultant shall include the following information for each professional-level employee:

- a. Name of employee;
- b. Title and Role on the Team;
- c. Resume, references and professional credentials; and
- d. Summary of relevant experience, including descriptions of prior projects where candidate performed in a similar role.

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.

3.06.4 Any position proposed by the Consultant must be approved in writing by the Director for a specific Task Order with the number of hours, tasks and deliverables tied to the Task Order.

3.06.5. Consultant shall retain copies of all records until the later of the following: final disposal of the Project Worksheet reimbursement, the close of any audits by any state or federal entity, or any applicable record retention requirement. Upon the completion of a Project Worksheet and submission for reimbursement to FEMA,

Consultant shall provide the Director with the original of each record requested by the Director. No later than 10 days after the expiration or termination of the Agreement, Consultant shall provide the Director with the original of each record not previously provided to the Director.

- 3.06.6 Consultant shall allocate its employees', and subcontractors' hours, spent on each PW such as Direct Administrative costs or management administrative costs and will detail the allocation of time per PW.

3.07. RELEASE

- 3.07.1. CONSULTANT AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONSULTANT HEREBY COVENANTS AND AGREES NOT TO SUE THE 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. CONSULTANT AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- 3.08.1.1. CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 1-3, "CONSULTANT") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

- 3.08.1.2. THE CITY'S AND CONSULTANT'S ACTUAL OR ALLEGED**

CONCURRENT NEGLIGENCE, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT; AND

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

3.08.2. CONSULTANT SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONSULTANT SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.09. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

3.09.1. CONSULTANT 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 CONSULTANT, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONSULTANT FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONSULTANT SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

3.09.2. CONSULTANT SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.

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

3.10. SUBCONTRACTOR'S INDEMNITY

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

3.11. INDEMNIFICATION PROCEDURES

3.11.1. Notice of Claims. If the City or Consultant receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 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 Consultant is prejudiced, suffers loss, or incurs expense because of the delay.

3.11.2. Defense of Claims

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

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

3.12. **INSURANCE**

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

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

3.12.2. **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Consultant shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Consultant shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Consultant shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Consultant shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The

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

- 3.12.3. **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. Consultant waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Consultant's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Consultant shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Consultant 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. CONSULTANT SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Consultant shall provide other suitable policies in order to maintain the required coverage. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.
- 3.12.6. **Other Insurance.** If requested by the Director, Consultant shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Consultant's operations under this Agreement.

3.13. **WARRANTIES**

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

3.14. **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. Consultant 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, Consultant Data, and Work Products.
- 3.15.2. Consultant warrants that it owns the copyright to Consultant Data.
- 3.15.3. Consultant conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.
- 3.15.4. Consultant shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Consultant shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.
- 3.15.5. Consultant's assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City.
- 3.15.6. Consultant shall execute all documents required by the Director to further evidence Consultant's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Consultant shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.
- 3.15.7. All Work Products are "works made for hire."

- 3.15.8. Consultant shall deliver to the Director all or any part of the original City Data, Consultant Data, Work Products, and/or all other files and materials that Consultant produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.
- 3.15.9. Consultant may retain copies of the Work Products for its archives. Consultant 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. Consultant expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Consultant shall not possess or assert any lien or other right against any City Documents or Work Products.

3.16. **LICENSES AND PERMITS**

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

3.17. **COMPLIANCE WITH LAWS**

- 3.17.1. Consultant shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.
- 3.17.2. Consultant acknowledges that FEMA financial assistance will be used to fund this Agreement.
- 3.17.3. Consultant shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.
- 3.17.4. Consultant acknowledges that 31 U.S.C. Chap. 38 (“Administrative Remedies for False Claims and Statements”) applies to Consultant’s actions pertaining to this Agreement.
- 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, Consultant or any other party pertaining to any matter resulting from the Agreement.
- 3.17.6. Consultant 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. Consultant 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. Consultant shall comply with the applicable Equal Opportunity Clause required by the United States of America, including but not limited to the provisions of 41 CFR § 60-1.4(b). These provisions are inclusive of any amendments which may be made to such regulations. Further, Consultant shall include the summary of the provisions of 41 CFR § 60-1.4(b), as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in Exhibit J.

3.19. **NON-DISCRIMINATION**

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

3.20. **MWBE COMPLIANCE**

- 3.20.1. In its performance under this Agreement, Consultant shall comply with the City’s Minority and Women Business Enterprise (“MWBE”) programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least % of the value of this Agreement to MWBEs. Consultant acknowledges that it has reviewed the requirements for good faith efforts on file with the City’s Office of Business Opportunities (“OBO”) and will comply with them.
- 3.20.2. Consultant shall also adhere to and comply with 2 CFR 200.321 if subcontracts are to be let under this Agreement. Consultant, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women’s business enterprises, and labor surplus area firms are used when possible, 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) Consultant 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. Consultant 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. Consultant 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. Consultant 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 Consultants while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for 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, Consultant shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):

3.21.2.1. a copy of its drug-free workplace policy;

3.21.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit 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 Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the

performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to Exhibit G. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each 6-month period of performance and within thirty (30) days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.

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

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

3.22. **CONFLICTS OF INTEREST**

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

3.23. **PAY OR PLAY**

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

3.24. **CONSULTANT'S PERFORMANCE**

3.24.1. Consultant shall make citizen satisfaction a priority in providing services under this Agreement. Consultant shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Consultant's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Consultant is not interacting in a positive and polite manner with citizens, he or she shall direct Consultant to take all remedial steps to conform to these standards

3.25. **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 Consultant. 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 Consultant’s normal and customary charges or rates for the equipment, supplies, services, or locations classified in the Exhibit C.

- 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 Consultant in writing. The notice takes effect immediately on its receipt by Consultant. More than one notice may be given. When a notice is received, Consultant 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 Consultant 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. Consultant shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

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

<u>CHANGE ORDER</u>	
TO:	[Name of Consultant]

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

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

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

Signed:
[Signature of 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 Consultant is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Consultant.
 - 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 Consultant receives a Change Order, Consultant shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Consultant shall complete the work within the time prescribed. If no time for completion is prescribed, Consultant shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Consultant is required to perform under this Agreement, Consultant may request a time extension for the completion of the work. The 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. Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

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

3.29. **DEBARMENT AND SUSPENSION**

3.29.1. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

3.29.2. The Consultant 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 Consultant 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. Consultant 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. Consultant 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, Consultant shall file with the City a Certification Regarding Lobbying substantially in the form set out in Exhibit I.
- 3.30.2. Consultant 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. Consultant 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. Consultant 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”). Consultant shall promptly reimburse the City for any fines or penalties levied against the City because of Consultant’s failure to comply with Environmental Laws.

- 3.32.2. Consultant 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. Consultant 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. Consultant 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. Consultant 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. Consultant 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. Consultant shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201 et seq.).

3.33. **USE OF PRODUCTS**

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

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 Consultant agrees that this Agreement can be terminated if the Consultant 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), Consultant 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, Consultant shall provide any Contracting Information related to this Agreement that is in the custody or possession of Consultant. Upon the expiration or termination of this Agreement, Consultant 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 Consultant, 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 Consultant 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 Consultant and may terminate this Agreement. To effect final termination, the Director must notify Consultant in writing with a copy of the notice to the CPO. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

3.35. **ACCEPTANCE AND REJECTION**

- 3.35.1. Consultant shall not be entitled to payment and the City shall have no duty to pay Consultant unless the Director has Accepted the Services and other Deliverables as set forth in **Exhibit A**.
- 3.35.2. Consultant shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in **Exhibit A**. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Consultant stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.
- 3.35.3. Notwithstanding anything to the contrary in **Exhibit A** or elsewhere, the Director may, in his or her sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibit A**.
- 3.35.4. If the Director rejects any Services or other Deliverables, Consultant shall have 10

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

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

3.35.6. The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

ARTICLE 4. DUTIES OF CITY

4.01. PAYMENT TERMS

4.01.1. As full compensation for all Services rendered and Deliverables furnished by Consultant and approved by the Director under this Agreement and any Task Order issued in accordance with this Agreement, the City shall pay, and Consultant shall accept the Hourly Rates specified in Exhibit C and subject to the allocation of funds.

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. Consultant's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Consultant if requested.

4.03. METHOD OF PAYMENT

4.03.1. The City shall pay Consultant on the basis of invoices submitted by Consultant and approved by the Director in such detail clearly identifying, at a minimum, the Task Order number, the number hours worked by each of Consultant's personnel, a

description of the work performed, the dates the work was performed, and the attendant fee. The City shall make payments to Consultant at its address for notices within thirty (30) days of receipt of an approved invoice. To receive payment for services, Consultant must submit invoices showing the corresponding services performed and not previously invoiced. Contractor shall ensure each invoice includes itemization supporting the Consultant's hours worked in the preceding month and any other documentation requested by the Director. Each invoice must include a summary of progress report of hours worked by each level of professional for the period covered by the invoice, including subcontractors. The invoices shall clearly indicate the corresponding PW and a separate breakdown of DAC by PW.

- 4.03.2. If the Director disputes an invoice Consultant submits for any reason, including lack of supporting documentation (as may be required by the Director in his or her sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Consultant of the dispute and request remedial action. After the dispute is settled, Consultant shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.
- 4.03.3. Early Payment Discount. The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Consultant as follows:

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

- 4.03.4. 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.

4.04. **LIMIT OF APPROPRIATION**

- 4.04.1. The City's duty to pay money to Consultant under this Agreement is limited in its entirety by the provisions of this Section.
- 4.04.2. 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 **\$0.00** 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 Consultant a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the 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. Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Consultant’s only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.05. **NO QUANTITY GUARANTEE**

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

4.06. **ACCESS TO DATA**

- 4.06.1. The City shall, to the extent permitted by law, allow Consultant to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Consultant to perform under this Agreement.
- 4.6.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Consultant's use.
- 4.6.3. For any raw data created, assembled, used, maintained, collected, or stored by the Consultant for or on behalf of the City, Consultant shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

ARTICLE 5. TERM AND TERMINATION

5.01. **TERM**

- 5.01.1. This Agreement is effective on the Effective Date and expires upon the completion of the last Task Order issued within three (3) years of the Effective Date, unless sooner terminated under this Agreement (the "Initial Term").

5.02. **NOTICE TO PROCEED**

- 5.02.1. Consultant 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 Consultant 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 Consultant, with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.
- 5.04.2. On receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Consultant shall submit an invoice

showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Consultant 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 CONSULTANT'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONSULTANT WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.05. **TERMINATION FOR CAUSE BY CITY**

- 5.05.1. If Consultant defaults under this Agreement, the Director may terminate this Agreement after providing Consultant written notice and an opportunity to cure the default as provided below. The City's right to terminate this Agreement for Consultant's default is cumulative of all rights and remedies that exist now or in the future. Default by Consultant occurs if:
 - 5.05.1.1. Consultant fails to perform any of its material duties under this Agreement;
 - 5.05.1.2. Consultant becomes insolvent;
 - 5.05.1.3. all or a substantial part of Consultant's assets are assigned for the benefit of its creditors; or
 - 5.05.1.4. a receiver or trustee is appointed for Consultant.
- 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 Consultant 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 Consultant receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Consultant cures the default before the proposed termination date, then the proposed termination is ineffective. If Consultant does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.
- 5.05.3. To effect final termination, the Director must notify Consultant in writing, with a copy of the notice to the CPO. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.06. **TERMINATION FOR CAUSE BY CONSULTANT**

5.06.1. Consultant may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Consultant wishes to terminate the Agreement, then Consultant must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Consultant, 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 Consultant may terminate its performance under this Agreement on the termination date.

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

5.07.1. Upon expiration or termination of this Agreement, Consultant is permitted 10 days within which to remove Consultant-owned material and equipment from the City's premises. This City shall make such material and equipment readily available to Consultant. 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. Consultant 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 Consultant. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Consultant, riots, 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 Consultant 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 Consultant 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 Consultant. This termination is not a default or breach of this Agreement. **CONSULTANT WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

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

6.06. **APPLICABLE LAWS**

6.06.1. This Agreement is subject to the laws of the State of Texas, the City Charter and Code of Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

6.06.2. Venue for any litigation relating to this Agreement is 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 or digital signature service such as DocuSign. 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 Consultant's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10. **INSPECTIONS AND AUDITS**

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

applicable statute of limitations.

- 6.10.2. Upon reasonable written notice, not less than twenty-four (24) hours, City representatives have the right to perform or have performed audits and inspections.
- 6.10.3 Audits of Consultant's books, documents, papers, and records, including electronic versions, pertaining to services provided under this Agreement, may include, but are not limited to:
 - a. payroll and personnel records, such as salaries, benefits and bonuses;
 - b. subcontractor agreements, records and invoices;
 - c. any accounting or management systems, or computers or servers on which City information is stored; and
 - d. all documents or files evidencing costs and underlying expenses relating to Consultant's performance.
- 6.10.4 Consultant shall provide the Director, the Texas Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making copies, audits, examinations, excerpts, and transcriptions. Consultant shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 6.10.5 Consultant shall provide the Director and the FEMA Administrator or his authorized representatives access to work sites pertaining to the work being completed under this Agreement.
- 6.10.6 If City determines through an audit or in reviewing invoices or other supporting documentation that Consultant has expended any portion of the funds for purposes inconsistent with or not permitted by the terms of this Agreement or the applicable laws and regulations (e.g. FEMA laws, rules and regulations), or has otherwise overpaid third parties, Consultant shall immediately return to the City the applicable portion of the funds within thirty (30) days of the date on which it receives written notice from the Director of the amount due and owing to the City and the reason that the funds must be returned.
- 6.10.7 In compliance with the Disaster Recovery Act of 2018, the City and Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

6.11. **ENFORCEMENT**

- 6.11.1. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Consultant shall provide to the City Attorney all documents and records that the City Attorney requests to assist in

determining Consultant's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12. **AMBIGUITIES**

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

6.13. **SURVIVAL**

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

6.14. **PUBLICITY**

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

6.15. **PARTIES IN INTEREST**

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

6.16. **SUCCESSORS AND ASSIGNS**

6.16.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets 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. Consultant shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Consultant 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. Consultant 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. **CONSULTANT DEBT**

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

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EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
POLICY ON ENGAGEMENT OF OUTSIDE COUNSEL
(ATTACHED)

EXHIBIT C
MAXIMUM HOURLY RATES

EXHIBIT D
SAMPLE TASK ORDER
(ATTACHED)

TASK ORDER

**TO AGREEMENT FOR PROFESSIONAL SERVICES
FOR DISASTER RECOVERY AND CONSULTING SERVICES**

**Between
THE CITY OF HOUSTON, TEXAS
AND
CONSULTANT**

(Contract Number XXXXXXXX)

Date: Month Date, 20XX

Task Order No. XX-001-20XX-FIN, Hurricane XXX

This Task Order (TO Number # **XX-001-20XX-FIN**) is entered between the **City of Houston, Texas** ("City") and _____ ("Contractor") as provided in the Contract for Professional Services for Disaster Recovery and Consulting Services (the "Contract") between the Parties, effective **Month Date, 20XX**.

1. The terms and conditions of the Agreement are incorporated into this Task Order as though set forth herein in their entirety, except as expressly modified by this Task Order, including any revisions and amendments by the Parties in the attached "Attachment 1 - Scope of Task Order" attached hereto and incorporated herein for all purposes. Unless expressly provided herein, the Task Order or any attachments, exhibits or additional documents are not intended to and shall not change, add, delete, or modify terms in the Agreement.
2. Scope of Services. Contractor shall provide all labor, material, and supervision necessary to perform the Task Order described in the attached "Attachment 1" excluding specialized equipment.
3. The City hereby assigns to Contractor the Tasks as described in the attached "Attachment 1". Compensation the City shall pay and other financial terms are specified in Attachment 1, which is incorporated herein for all purposes, upon the same terms and conditions, subject to allocation of funding by the City in accordance with the terms of Agreement, including but not limited to Exhibit A-1.
4. Task Order Instructions are set out in "Attachment 2".
5. The termination provisions of this Task Order shall be in accordance with the termination sections of Section V of the Agreement.

Please signify your acceptance of this engagement and your agreement to this Task Order by Signing below where indicated.

XYZ, COMPANY

CITY OF HOUSTON

Signature

Name: _____

Title: _____

Date: _____

Signature

Name: _____

Title: Chief Business Office/Director of Finance

Date: _____

“Attachment” 1

SCOPE OF TASK ORDER

Provide description of Scope of work, Deliverables, personnel assigned, fees paid for this Task Order.

See Attachment “A”

Finance Department Director Initials: _____

Date: _____

Contractor Initials: _____

Date: _____

"Attachment 2"

TASK ORDER INSTRUCTIONS

Steps:

1. Finance Department's Project Administrator completes general information on Task Order Form, which includes:
 - a. City Department Name
 - b. Task Order Description
 - c. Contract No.
 - d. Purchase Order No.
 - e. Project or Task Start and End Dates
 - f. Task Order Cost and applicable hourly fee
2. Task Order Approval Form is sent to Contractor.
3. Contractor provides detailed proposal to Finance Director including tasks to be performed, deliverables, personnel to be assigned, schedule for performance of services, price proposal.
4. Contractor completes the Task Order Approval Form:
 - a. Project Start and End Dates
 - b. Estimated Task Order Cost and corresponding hourly fees, as set out in Exhibit A-1 of the Agreement.
 - c. Scope of Services
 - d. Personnel Assigned and number of hours worked
5. Contractor signs Task Order and returns it with a proposal to Finance Director.
6. Finance Department reviews and accepts or rejects proposal
7. If the proposal is accepted, the Finance Director or his representative provides a copy of the accepted Task Order to the Contractor to commence Task
8. City will make payment to Contractor upon completion of the project or task, or based on the milestones agreed to by both parties and accepted by the Finance Director or designee

**PROFESSIONAL SERVICES
FOR DISASTER COST RECOVERY AND CONSULTING SERVICES**

TASK ORDER APPROVAL FORM

City Department Name: FINANCE

Task Order Description: _____

Contract No: _____ PO No.: _____ Task Order No. **XX-001-20XX-FIN**

Project Start Date: Month XX, 20XX Project End Date: Month XX, 20XX

Funding: TBD

Estimated Cost for **XX-001-20XX-FIN** (include hourly fees): Total (MAXIMUM) Fee TBD

Scope of Services: (attach details, as necessary)

See Attachment A

City Project Manager Date

Contractor's Representative Date

Task Proposal accepted by: _____
Date

The purpose of the Task Order is to further specify project details covered under the original Scope of services approved by the Finance Director of the City of Houston. Such details may include, but are not limited to, deliverables, personnel assigned, hourly fees, costs, and Tasks to be performed by Contractor.

ATTACHMENT 'A'
Task Order# XX-001-20XX-FIN

I. Introduction

II. Scope of Work

III. Costs and Cost Estimates

IV. Deliverables/Milestones

EXHIBIT E

DRUG POLICY COMPLIANCE AGREEMENT

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

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

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Consultant that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for 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 Consultant that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

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

Date

Consultant 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 _____ (Consultant)
(Name of Company)

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

Consultant 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 _____ (Consultant)
 (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 Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Consultant is required to confirm that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

- 1) By signing this Agreement, the Consultant, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Consultant to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Agreement 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 Agreement 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 Consultant certifies, to the best of his or her knowledge, that:

- 1) No Federal appropriated funds appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any City agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including 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 Consultant, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Consultant understands and agrees that the provisions of 31 USC § 3801 et seq., apply to this certification and disclosure, if any.

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

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 Consultant agrees as follows:

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

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

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

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

- (5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Consultant will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this 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 Consultant 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 Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

The applicant 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.

EXHIBIT K

TITLE VI: NON-DISCRIMINATION

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

1. Compliance with Regulations - The Consultant shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the 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 Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Consultant 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 Consultant 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 Consultant of the Consultant’s obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
 4. Information and Reports - The Consultant shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or FEMA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the 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 Consultant’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 Consultant under the Agreement until the Consultant complies, and/or
 - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
- Incorporation of Provisions - The Consultant 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Consultant may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Consultant may request the United States of America to enter into such litigation to protect the interests of the United States.