

**AGREEMENT FOR CYBER SECURITY CONSULTING SERVICES**

**THIS AGREEMENT FOR CYBER SECURITY CONSULTING SERVICES** is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **[CONTRACTOR NAME]** (the "Contractor"), located at **[CONTRACTOR ADDRESS]**, and doing business in Texas.

**I. PARTIES**

A. **Address**

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

**City**

Attn: Director  
Houston Information Technology Services  
City of Houston  
611 Walker Street, 8<sup>th</sup> Floor  
Houston, Texas 77002

**Contractor**

Attn: **[CONTRACTOR NAME]**  
**[CONTRACTOR ADDRESS]**

The Parties agree as follows:

**[THE REST OF THE PAGE IS BLANK]**

**B. Table of Contents**

This Agreement consists of the following sections:

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**EXHIBITS**

Exhibit A – Scope of Services

Exhibit B – Maximum Hourly Base Rates & Fees; Try and Hire Program

Exhibit C – Drug Policy Compliance Agreement

Exhibit D – Certification of No Safety Impact Positions in Performance of a City Contract

Exhibit E – Drug Policy Compliance Declaration

Exhibit F – Pay or Play Program Acknowledgement Form

Exhibit G – Pay or Play Certification of Compliance

C. **Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

D. **Controlling Parts**

If a conflict among the Sections and Exhibits arises, the Sections control over the Exhibits.

**[THE REST OF THE PAGE IS BLANK]**

**E. Signatures**

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

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

**[CONTRACTOR]**

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

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

**ATTEST/SEAL:**

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

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

\_\_\_\_\_  
Mayor

**APPROVED:**

**COUNTERSIGNED BY:**

\_\_\_\_\_  
Director,  
Houston Information Technology Services

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

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

**APPROVED AS TO FORM:**

**DATE COUNTERSIGNED:**

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

\_\_\_\_\_

## II. DEFINITIONS

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

- A. “Acceptance” is defined in Section III.M.(4).
- B. “Agreement” or “Contract” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- C. “Base Rate(s)” means the maximum, all-inclusive hourly base rates set forth in Exhibit B for each job category of personnel providing services under this Agreement or an LOA.
- D. “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- E. “City Attorney” means the City Attorney of the City of Houston or the person he or she designates.
- F. “City Information” or “Information” means any and all City information or data, including but not limited to, City-specific information, user information, data, materials, processes, documents, citizen information, and any other information, materials, or data Program Administrator receives from the City or City Information to which City grants Program Administrator access to, in any form whatsoever including oral, written, and machine-readable form, video, audio, phonorecord, recorded media, drawings, schematics, samples, devices, software, formulas, services, processes, procedures, protocols, trade secrets, intellectual property, and business or strategic plans.
- G. “Chief Information Security Officer” or “CISO” means the City’s Chief Information Security Officer, or the person he or she designates to perform one or more of the CISO’s duties under this Agreement.
- H. “Chief Procurement Officer” (CPO) is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- I. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.
- J. “Countersignature Date” means the date shown as the date countersigned by the City Controller on the signature page of this Agreement.
- K. “Director” means the Director of the Houston Information Technology Services or the person he or she designates.
- L. “Documents” mean any materials, items, notes, manuals, notebooks, plans, computations, databases, reports, charts, analyses, maps, letters, tabulations, exhibits, reports, data, models, forms, photographs, the original tracings of all drawings and plans, inventions, underlying data, documentation, how-to guides, user guides, help files, instructions, and all other work products, in any format, including paper, electronic, or digital format (and any modifications,

enhancements, or improvements to them) obtained by, modified by, created by, or prepared by Contractor pursuant to or connected with this Agreement, statement of work in connection with this Agreement, or an LOA.

M. “FAA” means the Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.

N. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

O. “HITECH” means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, codified as Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, as amended from time to time.

P. “HL7” means the Health Level Seven International organization, which develops approved and accredited standards and frameworks relating to the exchange, integration, sharing, and retrieval of electronic health information.

Q. “Laws” means, collectively, applicable federal, state, and local laws, statutes, ordinances, rules, standards, directives, regulations and other types of local, state, national and foreign government authority (including without limitation the laws and regulations or standards governing the goods or services provided under this Agreement, including applicable Laws relating to data privacy, data protection, PCI Security Standards, HIPAA, HITECH, HL7, Red Flag Rules and Guidelines, Texas Public Information Act, false advertising, Federal Information Security Management Act of 2002 (FISMA) codified at 44 U.S.C. Section 3541 *et seq.*), as they may be amended or revised from time to time.

R. “Letter of Authorization” or “LOA” means the fully executed document the Director sends to Contractor authorizing certain services to be performed by Contractor or products to be provided to City in accordance with this Agreement. Unless otherwise specified in this Agreement, all references to LOA in this Agreement shall mean an LOA issued in accordance with and pursuant to this Agreement.

S. “Notice to Proceed” means a written communication from the Director that authorizes Contractor to begin performance of work.

T. “Parties” mean all the entities set out in the Preamble who are bound by this Agreement.

U. “Red Flag Rules and Guidelines” means the rules and guidelines on identity theft implementing sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003, codified at 16 C.F.R. Section 681.1 and in C.F.R.’s Appendix A to Part 681, as amended from time to time.

V. “Reimbursable Expenses” means (i) upon prior written approval of the Director, the ordinary and reasonable costs of travel to and from the City of Houston by Contractor’s employees or subcontractors, not to exceed the amount established under the City’s then-current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost

of lodging and meals if such travel is expressly pre-authorized by the Director and reasonably necessary to accomplish a task directly related to a project, LOA, or statement of work authorized and signed by the Director (or his/her designee), and reservations are made as far in advance as feasible; and (ii) sales tax related to Contractor's services under this Agreement which it is legally required to pay.

W. "Subject Matter Expertise" or "SMEs" means senior level subject matter experts with expertise in the subject matter about which they are asked to or are providing services under this Agreement or an LOA.

X. "Staffing Schedule" means Contractor's organizational structure, Subject Matter Experts, and staffing assignments for key positions in accordance with this Agreement and for projects.

Y. "Texas Public Information Act" or "Open Records Act" or "TPIA" are used interchangeably and means Chapter 552 of the Texas Government Code, as amended from time to time.

Z. "TSA" means the Transportation Security Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.

AA. "Works" or "Work Products" shall have the meaning defined in Section III.P.

### III. DUTIES OF CONTRACTOR

#### A. Scope of Services

(1) For and in consideration of the payments specified in this Agreement, Contractor shall provide all labor, material and supervision necessary to perform the consulting services as set out in this Agreement, the attached Scope of Services, as specifically described in individual LOAs, and the IT staff augmentation services further described below (collectively, "Services"). Contractor shall provide IT staff augmentation services as set out in the attached Scope of Services, and the City may elect to employ staff that Contractor has provided on a project in accordance with the City's employment policies and procedures and subject to a "Try and Hire" Program, as set out in **Exhibit B**. Time is of the essence in the performance of this Agreement and the individual LOAs.

(2) "Services" includes but is not limited to the following:

1. Provide services in the task areas as detailed in **Exhibit A**, Scope of Services, and individual LOAs;

2. Coordinate its performance with the Director and CISO, City consultants, and all governmental entities having jurisdiction over the project as requested by the Director or CISO;



3. Make and submit periodic written reports, meeting notes, and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Contractor relating to its Services under this Agreement;

4. Attend meetings with representatives of the City and other persons acting on behalf of or on the direction of the City, the Director or CISO, local, state and federal agencies, and contractors as requested by the Director or CISO.

5. Provide a copy of Documents and Works prepared by it or made available to it under this Agreement;

6. Verify the professional quality, technical accuracy and coordination of all Documents, Works, and Services;

7. Correct or revise all errors and deficiencies in Documents, Works, and Services as directed by the Director or CISO. No compensation will be paid for corrections or revisions resulting from errors or omissions made by Contractor.

8. Provide other services requested, in writing, by the Director or CISO to the extent the services are mutually agreeable, for which funds are available subject to Section IV.E., and the requested services are consistent with this Agreement or any LOA.

(2) Contractor represents and warrants that it has all the necessary rights, title, and interest to the Documents and Works to fully and legally comply with its obligations under this Agreement. In the event there are third-party components in the Documents or Work, Contractor represents and warrants that these third-party components have been fully licensed or purchased by Contractor for City's use for all purposes and therefore, City will not be subject to any other further licensing requirements, restrictions, or additional fees.

(3) The City may duplicate, use, perform, make derivative works, transmit, and otherwise utilize the Documents and Works for any use.

**B. Coordinate Performance and Contractor's Personnel**

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

**C. Reports and Meetings**

Contractor shall submit all reports and progress updates required by the Director and CISO and as specified under this Agreement. Contractor shall attend all meetings scheduled or required by the Director and as specified under this Agreement.

D. **Schedule of Performance**

Contractor shall begin and complete its obligations in accordance with the Director's or CISO's schedule, specifications, and requirements. Contractor shall perform its obligations under this Agreement diligently.

E. **Time Extensions**

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

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

F. **Pay or Play**

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions, and shall complete and return to the City the forms as set forth in Exhibit F (Pay or Play Program Acknowledgement Form) and Exhibit G (Pay or Play Certification of Compliance).

G. **Prompt Payment of Subcontractors**

In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT, OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.** Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement.

H. **Personnel of Contractor**

Contractor shall make City personnel satisfaction a priority in providing services under this Agreement. Contractor shall train its employees and personnel to be customer service-oriented and to positively and politely interact with City personnel when performing services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering

the highest quality of service to the public. If, in the Director's or CISO's opinion, Contractor is not interacting in a positive and polite manner with City personnel, he or she shall direct Contractor to take all remedial steps to conform to these standards. Contractor shall replace any of its personnel or subcontractors assigned to the project whose work product is deemed unsatisfactory by the Director.

**I. RELEASE AND INDEMNIFICATION**

(1) **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**

(2) **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:**

- (a) **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTOR' (COLLECTIVELY IN LETTERED PARAGRAPHS (a)-(c), "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (b) **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (c) **THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES.**

(3) **CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE,**

PROCESS, WORK PRODUCT, DOCUMENTATION, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, WORK PRODUCT, DOCUMENTATION, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT. WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, WORK PRODUCT, DOCUMENTATION, 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, WORK PRODUCT, DOCUMENTATION, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

**J. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY**

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

**K. INDEMNIFICATION PROCEDURES**

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

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

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

(2) Defense of Claims

- (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Contractor shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request,

Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

L. **Insurance**

(1) Risks and Limits of Liability. Contractor shall maintain the following insurance coverages in the following amounts:

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

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

(3) Form of insurance. The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

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

(5) Notice. **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

M. Warranties

(1) Contractor warrants that it is the sole owner and/or has all necessary intellectual property rights in the entire right, title, and interests in and to the Services, Work Products, documentation, and Documents provided by Contractor to City under this Agreement. Contractor further warrants that any Services, Work Products, Documents, and related documentation provided to City does not infringe upon any patent, copyright, trade secret, or any other rightful claim, proprietary or intellectual property right of any third party.

(2) Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement. Upon the Director's or CISO's request, Contractor shall promptly re-perform and/or provide, at no charge to the City, any Services which fail to reasonably conform to the warranty contained in this section, any statement of work, project plan, task order, or LOA issued under this Agreement.

(3) If the Services do not perform as warranted (a "Non-Conformity"), Contractor shall correct the Non-Conformity in accordance with this paragraph within a reasonable period of time not to exceed three (3) days from the date Contractor discovers the Non-Conformity or receives notice from the City of the Non-Conformity, whichever is earlier. Contractor acknowledges that

time is of the essence. Contractor shall undertake to correct or repair at no cost to City such Non-Conformity in the Services, or if correction or repair is not reasonably possible and the Director or CISO approves, Contractor shall replace, free of charge, the applicable Services. If neither of the foregoing is commercially practicable, the Director may terminate this Agreement and within thirty (30) days of termination, Contractor shall provide the City with a refund of the entire fee paid. City may submit written notification of a Non-Conformity at least up to one year (or longer if provided for under a LOA, statement of work, project plan, task order, or similar document issued under this Agreement) after Acceptance of a specific Services provided under this Agreement, project, LOA, statement of work, task order, work plans, or any other like document.

(4) All Services, as applicable, shall undergo inspection and Acceptance by the Director or CISO (or his/her designee). "Acceptance" means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services or delivery of specific products, as partial or complete performance of the Agreement, project, LOA, work plans, or any other like document.

(5) Any Services corrected or re-performed by the Contractor shall be subject to this Section M. (Warranties) to the same extent as Services initially provided. If the Contractor fails to or refuses to correct or re-perform to Director's or CISO's satisfaction, the City may in its sole discretion, by contract or otherwise, correct or replace with similar services or products and charge to the Contractor the cost to the City for the correction or replacement.

N. **Data Security and Liability**

Contractor shall maintain the security of any and all City data it receives or has access to, including but not limited to, all City Information and any other data or information that is provided to Contractor by City or by any user, or that Contractor generates, creates, or analyzes for the City. Contractor shall be responsible and liable for the acts and omissions of Contractor's personnel, temporary employees, agents, and subcontractors in connection with the provision of the services required under this Agreement, as if such acts or omissions were Contractor's acts or omissions. With respect to Contractor's personnel with access to the City's physical property or premises, Contractor shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas. Pursuant to this Agreement, Contractor shall be responsible for any fraudulent or dishonest acts committed by Contractor's employees, personnel, temporary employees, agents, subcontractors, directors, or officers.

O. **Confidentiality - Protection of City's Interest**

Contractor, its agents, employees, contractors, and subcontractors shall hold all City Information that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the City Information unless the Director or CISO authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section. The placement of a copyright notice on any City Information will not be construed to mean that such information has been published and will not release Contractor from its obligation of confidentiality hereunder. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any reason.

Upon request by the Director or CISO at any time during the Term and upon expiration or termination of this Agreement, Contractor shall retain, migrate, or dispose of the City Information as directed by the Director. Within two (2) days of Contractor's receipt of the Director's written request to retain, migrate, or dispose of the City Information, Contractor shall notify the Director and CISO in writing of the estimated storage size and types of data to be retained, migrated, or disposed of. Within thirty (30) days of Contractor's receipt of the Director's or CISO's written request to retain, migrate, or dispose of the City Information, Contractor shall perform the following to the extent applicable unless otherwise directed by the Director:

- (1) deliver the City Information (in whole or in part, as directed by the Director or CISO) and physical media owned or provided by the City to the Director or CISO, in the format and on the media requested by the Director or CISO;
- (2) destroy the City Information (in whole or in part, as directed by the Director or CISO) and provide a notarized statement of destruction to the Director or CISO;
- (3) destroy physical media using secure methods;
- (4) remove the City Information (in whole or in part, as directed by the Director or CISO) from the hosted database, storage device, or other repository or storage means; or
- (5) retain the City Information (in whole or in part, as directed by the Director or CISO) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.

P. **Work Products and Information Ownership**

(1) Contractor shall and hereby does irrevocably convey, transfer, and assign to the City its entire interest and full ownership worldwide in and to any work, invention, and all Documents, and the copyrights, patents, trademarks, trade secrets, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, or produce under this Agreement or under or in connection with any LOA (collectively "Works" or "Work Product").

(2) The Authors shall not claim or exercise any Proprietary Rights related to the Works unless agreed and specified in the LOA under which the Works are developed. If requested by the Director, CISO, or the City Attorney, Contractor shall place a conspicuous notation on any Works, which states that the City owns the Proprietary Rights.

(3) Contractor shall execute all documents required by the Director, CISO, or City Attorney to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, creating, and enforcing Proprietary Rights arising under this Agreement. On termination or expiration of this Agreement, or if requested by the Director, CISO, or the City Attorney, Contractor shall deliver all Works to the Director, CISO, or the City Attorney. Contractor shall obtain written agreements from the Authors that bind the Authors to the terms in this Section III.P.



(4) All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, shall be deemed to be “works made for hire” under 17 U.S.C. §§101 and 201, as amended from time to time. Contractor acknowledges and agrees that all Information, Documents, and Works performed under or pursuant to an LOA in connection with this Agreement shall be deemed “works made for hire.” In the event Contractor has any rights in the Works which cannot be assigned, Contractor shall and does hereby waive enforcement worldwide of the rights against City, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to City with the right to sublicense. These rights are assignable by the City.

(5) Contractor may retain copies of the Works for its archives. Contractor shall not otherwise use, sell, license, distribute, reproduce, publish, or market the Works without the express written permission of the City. If such permission is agreed to by the Handling COH Director, such express written permission shall be given by the City in a separate agreement between the City and Contractor.

(6) The City is, will be, and shall remain at all times the owner of all of the City Information. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in the City Information and Contractor shall not possess or assert any lien or other right against the City Information. The City is, will be, and shall remain the owner of all City data, including City-specific data created or generated by either party, pursuant to this Agreement. The City may use this City data, including data provided by Contractor, for any purpose. At all times, including during or after the termination or expiration of this Agreement or any license Contractor grants to the City, the City retains the right to reveal or extract the City Information and all City data and City-specific data from the Contractor provided Software, hardware, documentation, and Documents, and the right to use the City data, City-specific data, and the City Information for the City’s own use, for use with other non-Contractor software, equipment, or hardware, or to load elsewhere. Contractor shall provide a data export tool that is requested or approved by the Director that returns City data and City-specific data on demand. Contractor shall not use City data, City Information, and City-specific data for any other purposes other than what is expressly specified in this Agreement.

Q. **Licenses and Permits**

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

R. **Compliance with Laws and Criminal Justice Information Systems Requirements**

(1) Contractor shall comply with all Laws, and the City Charter and Code of Ordinances. Such Laws may include to the extent applicable, any grant requirements and flow down terms of any applicable grant program and other federal, state, and local grant programs or funding sources.

- (2) Contractor understands that in certain situations access to information or systems may be restricted by law. Contractor represents and warrants that it has read the Criminal Justice Information Systems (CJIS) process and related documents located at <http://www.houstontx.gov/police/cjis/hpdvendorcertification.htm> and shall comply with the terms and requirements therein.

**S. Compliance with Equal Opportunity Ordinance**

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

**T. Minority and Women Business Enterprises**

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated into this Agreement. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least \_\_\_\_% of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing

- (1) subcontracts and supply agreements with Minority Business Enterprises,
- (2) subcontracts and supply agreements with Women's Business Enterprises, and
- (3) specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the Office of Business Opportunity ("OBO") Director in the form and at the times he or she prescribes.

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers will permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

1. \_\_\_\_\_ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("the Director").
2. \_\_\_\_\_ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the

- end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
  4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

**U. Drug Abuse Detection and Deterrence**

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

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

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit C**, together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit D**.

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit E**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

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

V. **Airport Security**

As applicable, Contractor shall comply with all Houston Airport System, TSA, FAA and any other governmental agency security Laws, directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for Contractor's non-compliance with the provisions of 49 C.F.R §§ 1540 and 1542, as amended from time to time, or by other agencies for noncompliance with Laws applicable to Contractor's operations. Within 10 days of notification in writing, Contractor shall reimburse the City for any fine or penalty assessed against the City because of Contractor's non-compliance with 49 C.F.R. §§ 1540 and 1542 or other applicable Laws.

IV. DUTIES OF CITY

A. **Payment Terms**

Subject to the terms and conditions of this Agreement, upon City's Acceptance or approval of the Service(s) provided under this Agreement by Contractor, the City shall pay to Contractor and Contractor shall accept the pricing, rates, and payment schedule as set forth and in accordance with **Exhibit B**, subject to the Limit of Appropriations provision set out in this Agreement.

B. **Expenses and Reimbursement**

(1) Unless otherwise agreed to in writing and signed by the Director, or his or her designee, any expenses related to travel shall be the responsibility of the Contractor and City shall not reimburse Contractor for any travel-related expenses under this Agreement, which includes LOAs.

(2) In the event travel reimbursement is provided under a LOA, authorized and signed by the Director, the City shall pay Contractor for Reimbursable Expenses on receipt of Contractor's itemized invoice subject to the following below.

(3) Contractor shall propose a maximum amount for each Reimbursable Expense at the time that Services requiring such expenses are requested by the Director. The Director must approve Reimbursable Expenses before Contractor incurs them. The compensation for Reimbursable Expenses shall never exceed this agreed-upon maximum amount. Reimbursable Expenses are the actual expenditures Contractor and its subcontractors make while performing Services for the project requested by the Director. Reimbursable Expenses include travel costs outside the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees), if reasonably necessary to accomplish a task in connection with the LOA, plus living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction over the project. **ALL TRAVEL EXPENSES MUST BE PRE-APPROVED BY THE DIRECTOR OR DESIGNEE. TRAVEL THAT IS NOT PRE-APPROVED BY THE DIRECTOR OR DESIGNEE WILL NOT BE ELIGIBLE FOR REIMBURSEMENT AND CITY SHALL HAVE NO OBLIGATION WHATSOEVER TO PROVIDE REIMBURSEMENT TO CONTRACTOR FOR TRAVEL RELATED EXPENSES.**

C. **Taxes**

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

D. **Method of Payment**

(1) The City shall pay fees to Contractor as specified herein for Services provided and rendered by Contractor in accordance with the terms and conditions of this Agreement and the prices and fees as set out in **Exhibit B** of this Agreement. **SUCH PAYMENT SHALL ONLY BE MADE FROM ALLOCATED FUNDS, as provided below.** The City shall pay invoices submitted by Contractor and approved by the Director or his or her designee, showing the Services performed. The City shall pay Contractor within 30 days of an approved invoice. Contractor shall perform Services only in response to an LOA signed by Contractor and the Director. The method of payment will be specified in each LOA and may be either (a) Time and Materials Based or (b) a Fixed Lump Sum with a Not To Exceed amount. The amount of partial payment due for Services performed during the period covered by the invoice may be either: (a) a percentage of the Fixed Lump Sum fee equal to the percentage of Services performed on each LOA or (b) milestone or deliverables based payment amounts as set forth in a payment schedule attached to or incorporated in the individual LOA. Prior to Contractor commencing any work, performing any Services, or providing products under any LOA, the Director and Contractor shall mutually agree, in writing, upon a payment method, partial payment amounts, if any, and a payment schedule.

(a) Fixed Lump Sum Services.

The City shall make partial payment of the Fixed Lump Sum fees for lump sum services on the basis of monthly invoices submitted by Contractor and approved by the Director. The invoices based on Fixed Lump Sum fees for lump sum services must include all of the following:

- a. The purchase order and purchase requisition number for the applicable City department to whom the invoice is submitted;
- b. The percentage of the total services completed for each LOA in the preceding month;
- c. A summary of the services performed, deliverables provided, and milestones reached for each LOA during the period covered by the invoice;
- d. The amount due for the services;
- e. The amount of any applicable credits or refunds; and
- f. Any other information or supporting documentation required by the Director.

(b) Time and Materials Based Services.

In invoices for Time and Materials Based services, Contractor shall compute the charge for Contractor's services for each employee or personnel who performs services by multiplying the number of hours each employee performs services by the hourly billing rate applicable to that personnel's or employee's job category. The invoices for Time and Materials Based services must include all of the following:

- a. The purchase order and purchase requisition number for the applicable City department to whom the invoice is submitted;

- b. A detailed description of the work performed;
- c. The billing rate and number of hours worked, delineated by labor category, for each of Contractor's employees or personnel who worked on each LOA during the invoice period. The supporting documentation must include each personnel's or employee's name, labor category, billing rate, and hours expended. At the Director's sole discretion, supporting documentation may also include copies of original detailed timecards and hourly reports that Contractor certifies are true and accurate copies;
- d. Subcontract cost, including a copy of the subcontractor's actual invoice.
- e. The amount due for the services;
- f. The amount of any applicable credits or refunds; and
- g. Any other information or supporting documentation required by the Director.

(2) **Disputed Payments:** If the City disputes any items in an invoice Contractor submits for any reason, including but not limited to lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include any proper amounts on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

**E. Limit of Appropriation**

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

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

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

**NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS**

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

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

(4) The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

F. **Suspension of Performance**

The Director may suspend Contractor's performance under this Agreement (including any LOA), with or without cause, by notifying Contractor in writing. Contractor shall resume work when directed to do so by the Director. The Parties may negotiate and mutually agree in writing to a plan to reduce Contractor's stand-by costs during the suspension period. The City shall not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Contractor or its subcontractors with any requirement of this Agreement or any project or LOA.

G. **Changes**

(1) At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of Service(s) (including adding or deleting like or similar equipment, supplies, and/or services to the list of equipment, supplies, and/or services provided under this Agreement) or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the Service(s) 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.

(2) The Director will issue the Change Order in substantially the following form:

**CHANGE ORDER**

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

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

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

Signed:  
[Signature of Director]

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

- (a) Council expressly authorizes the Director to approve a Change Order up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
- (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
- (c) The Total of all Change Orders issued under this section may not increase the original Agreement amount by more than 25% unless: (1) the additions are exempt from the competitive bidding or proposal requirements, set forth in Texas Local Government Code Chapter 252; or (2) the City acquires the additions from Contractor through a competitive bid or competitive proposal.

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

(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.

- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

H. **Access to Site**

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

I. **Access to Data**

(1) The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that is reasonably necessary for Contractor to perform under this Agreement. Any documents accessed by Contractor under this provision is deemed Confidential Information of the City and subject to the confidentiality obligations set forth in this Agreement.

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



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

J. **Re-appropriation of Budget Items**

The City may reduce the funds allocated and the services required under this Agreement at its discretion. The Director shall notify Contractor in writing of this reduction. Contractor shall not perform any services subtracted from the Agreement. The de-obligation of funds does not require any formal amendment of this Agreement but shall be evidenced by a revised budget approved by the Director, a copy of which must be furnished to the City Controller.

K. **Early Payment**

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

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

(2) 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.

**V. TERM AND TERMINATION**

A. **Contract Term**

This Agreement is effective on the Countersignature Date (the "Effective Date") and expires 3 years after the Effective Date, unless sooner terminated under this Agreement ("Initial Term").

The Director may issue an LOA, signed by the Director, at any time during the Initial Term of this Agreement or subsequent renewals or extensions to it. After expiration or termination of this Agreement, no additional LOAs may be issued; however, for any LOA issued prior to the expiration or termination of this Agreement, Contractor shall complete the work or services thereunder and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the LOA to continue until its own expiration or termination, unless Contractor is otherwise notified in writing by the Director.

B. **Renewals**

Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for 2 successive one-year terms on the same terms and conditions. If the Director or the City chooses to not renew this Agreement, the

Director shall notify Contractor of non-renewal at least 15 days before the expiration of the then-current term.

**C. Termination for Convenience by City**

(1) The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

(2) On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section IV.D (Method of Payment) unless the fees exceed the allocated funds remaining under this Agreement.

(3) TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

**D. Termination for Cause by City**

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

- (1) Contractor fails to perform any of its duties under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City. To effect final termination, the Director must notify Contractor in writing with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise,

immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

**E. Termination for Cause by Contractor**

(1) This Agreement and any licenses granted under this Agreement, if any, remain in full force until Contractor terminates its performance as provided below:

- (a) Contractor may terminate this Agreement if the City (i) becomes insolvent or assigns its assets for the benefit of creditors; or (ii) if a receiver, trustee or, similar officer is appointed to take charge of the City's operations or properties; or
- (b) Contractor may terminate this Agreement if the City fails to comply with any material obligation required under this Agreement after receiving written notice of its non-compliance and the opportunity to cure the non-compliance.

**F. Effect of Termination**

In the event of termination or expiration, whichever is earlier, Contractor shall transfer all City Information and City data, including but not limited to, City-specific data, user data, and any other data received under this Agreement by Contractor, in Contractor's possession to City within two days of the expiration or termination effective date, unless otherwise extended in writing by the Director.

**II. MISCELLANEOUS**

**A. Independent Contractor**

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

**B. Force Majeure**

(1) Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, pandemics, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the

affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra payment.

- (2) This relief is not applicable unless the affected party does the following:
  - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect.

- (3) The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final.

- (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.

- (5) If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

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

C. **Severability**

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

D. **Entire Agreement**

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

E. **Written Amendment; Acceptance and Approvals**

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

Any acceptance or approval by the City, or its agents, or employees shall not constitute nor be deemed to be a release of responsibility and liability of Contractor, its employees, agents, subcontractors, or suppliers for the accuracy, competency, and completeness for any Documents or Works prepared or services performed pursuant to the terms and conditions of this Agreement or any LOA, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error, or omission in any Documents or Works prepared or services performed by Contractor, its employees, agents, subcontractors, personnel, or suppliers pursuant to this Agreement.

F. **Applicable Laws**

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

G. **Notices**

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I 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.

H. **Captions**

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

I. **Non-Waiver**

(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.

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

J. **Inspections and Audits**

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 5 years after this Agreement terminates. If the books and records are located outside of Harris

County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

K. **Enforcement**

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement.

L. **Ambiguities**

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.

M. **Survival**

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

N. **Publicity**

Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director. Contractor shall not use the name, seal, trademarks, or other marks or logos of City without the advance written consent of the Director.

O. **Risk of Loss**

Unless otherwise specified elsewhere in this Agreement, and subject to all Warranties, risk of loss or damage for each product passes from Contractor to the City upon delivery to and Acceptance by the City.

P. **Parties In Interest**

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

Q. **Successors and Assigns**

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.

R. **Business Structure and Assignments**

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

S. **Dispute Resolution**

For purposes of this Section "Project Administrator" means the person the Director or CISO designates to monitor the progress of all Parties' performance under this Agreement. Except as may otherwise be provided by law, a dispute that (1) does not involve a question of law; (2) arises during the performance of this Agreement; and (3) is not resolved between the Project Administrator and Contractor must be handled as described below:

- (a) The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.
- (b) If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

T. **Remedies Cumulative**

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

U. **CONTRACTOR DEBT**

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

V. **Compliance with Certain State Law Requirements**

- (1) *Anti-Boycott of Israel*. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- (2) *Anti-Boycott of Energy Companies*. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- (3) *Anti-Boycott of Firearm Entities or Firearm Trade Associations*. Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- (4) *Certification of No Business with Foreign Terrorist Organizations*. For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization

W **Zero Tolerance Policy for Human Trafficking and Related Activities**

The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's Effective Date. Contractor shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Contractor or its subcontractors providing services or goods under this Agreement within 7 days of Contractor becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

X. **Preservation of Contracting Information**

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter



7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

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

Y. **No Quantity Guarantees and Non-Exclusivity**

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

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 Contractor through this Agreement or any LOA; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any LOA.

**[THE REST OF THE PAGE IS BLANK]**

**EXHIBIT “A”  
SCOPE OF SERVICES**

**[REMAINDER OF THE PAGE IS BLANK. SCOPE OF SERVICES STARTS ON THE NEXT  
PAGE]**

**TO BE NEGOTIATED.**

SAMPLE

**EXHIBIT B  
MAXIMUM HOURLY BASE RATES & FEES; TRY AND HIRE PROGRAM**

**MAXIMUM HOURLY BASE RATES & FEES**

Contractor shall provide Services in accordance with the rates and fees as outlined below:

**TO BE NEGOTIATED.**

**Labor Rate Inclusions and Exclusions**

a) Inclusions. The hourly base rates set forth above are for services only and are based on the specified job functions, responsibilities, education, and experience within specific geographic regions. These hourly Base Rates also include labor rate buildups, salary cost, labor overhead, general and administrative overhead and profit.

b) Exclusions. The hourly Base Rates set forth above do not include hardware, software, and other direct costs, unless otherwise agreed to in a LOA.

If the services requested by City is not identified in the rates and fees above, Contractor shall work with Director to give City the best rate, which shall not exceed the Contractor's then-current rates for such related services and the rate will be added as an addendum to the rate card without the need of further approval from City Council. Contractor shall work with Director in selecting the personnel appropriate for the services prior to initiating performance of any services or invoicing City for such services.

**TRY AND HIRE PROGRAM**

**TO BE NEGOTIATED.**

Notwithstanding anything herein, including the Try and Hire Program, this Agreement does not and shall not restrict a Party from hiring any employee of the other where the employee responds to regular employment solicitation efforts or media advertisement, including but not limited to, newspaper advertisements, online job postings, employment agencies, open hours or job fair events or widely distributed announcements of job openings. The City has no obligations to the Contractor and does not owe any fees for resources that the City hires through regular employment solicitation efforts such as those described in the preceding sentence.

**EXHIBIT C  
DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an officer or officer of  
(Name) (Print/Type) (Title)  
\_\_\_\_\_  
(Name of Company) (Contractor)

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT D  
CERTIFICATION OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT**

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

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

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

in performing \_\_\_\_\_.  
(Project)

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

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

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

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

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

**EXHIBIT E  
DRUG POLICY COMPLIANCE DECLARATION**

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

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Name of Company)

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

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

S

EXHIBIT F



**City of Houston  
Pay or Play Program  
Acknowledgement Form**



It has been determined that the project currently open for bidding meets the criteria of the City of Houston Pay or Play program. This form acknowledges your awareness of the Pay or Play program which is authorized by Ordinance 2007-534. Your signature below affirms that you will comply with the requirements of the program upon contract award and ensure the same on behalf of your subcontractors that may be subject to the Pay or Play Program.

I declare under penalty of perjury under the laws of the State of Texas that if awarded this contract which meets the criteria for the City of Houston's Pay or Play Program, I will comply with all requirements of the Pay or Play Program in accordance with Executive Order 1-7.

**Fill out all information below and submit this form with your bid/proposal packet.**

\_\_\_\_\_  
Solicitation Number

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
City Vendor ID

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

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

For more information about the Pay or Play program please visit  
<http://www.houstontx.gov/obo/popforms.html>.

Questions about the Pay or Play Program should be referred to the Department POP Liaison; an updated contact list is available on the Office of Business Opportunity website or call the POP Contract Administrator at 832-393-0633.

EXHIBIT G



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



Prime Contractor: \_\_\_\_\_ Subcontractor: \_\_\_\_\_

Address: \_\_\_\_\_

Outline Number: \_\_\_\_\_ Contract Amount: \$ \_\_\_\_\_

Project Name: [Legal Project Name] \_\_\_\_\_

Contracting Department: \_\_\_\_\_

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

The Prime/Subcontractor will comply with all provisions of the Pay or Play Program Requirements and will furnish all information and reports requested to determine compliance of the Pay or Play Program (See Executive Order 1-7 for the terms of the Pay or Play program).

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

The Prime/Subcontractor may agree to **"Play"** by providing health benefits to each covered employee. The health benefits must meet the following criteria:

- The employer contributes no less than 75% of the total premium costs per covered employee per month toward the total premium cost.
- The covered employee contributes, if any amount, no greater than 25% of the total monthly premium costs.

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

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

**Note: The contractor is responsible to the City for compliance of covered employees of covered subcontractors.**

Please indicate the estimated number of:	PRIME	SUB
Total Employees on City Job		
Covered Employees		
Non-Covered Employees		
Exempt Employees		

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

\_\_\_\_\_  
Please Sign \_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name & Title