Exhibit X

SAMPLE AGREEMENT

TERMS SUBJECT TO CHANGE

AGREEMENT FOR DISASTER DEBRIS REMOVAL SERVICES

ARTICLE 1. PARTIES

THIS AGREEMENT FOR DISASTER DEBRIS REMOVAL SERVICES (this "Agreement") is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas principally situated in Harris County, and _____ ("Contractor"), a _____ _____ doing business in Texas.

1.01 **ADDRESS**:

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

City	**Contractor**
Director or Designee Solid Waste Management Department City of Houston P. O. Box 1562 Houston, Texas 77251	_____ _____ _____ _____ Attention: _____

The Parties agree as follows:

1.02 **TABLE OF CONTENTS**

1.02.1 This Agreement consists of the following sections:

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EXHIBITS

1.03 **PARTS INCORPORATED**

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

1.04 **CONTROLLING PARTS**

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

1.05 **SIGNATURES**

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

CONTRACTOR:

_____

By: _____
Name:
Title:
Federal Tax ID Number: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

_____
City Secretary

_____
Mayor

APPROVED:

COUNTERSIGNED BY:

_____
Director, Solid Waste Management Department

_____
City Controller

APPROVED:

COUNTERSIGNATURE DATE:

_____
Chief Procurement Officer

_____

APPROVED AS TO FORM:

_____
Sr. Assistant City Attorney
L.D. File No. _____

ARTICLE 2. DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

1. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

2. "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).

3. "Chief Procurement Officer" ("CPO") means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.

4. "City" is defined in the preamble of this Agreement and includes its successors and permitted assigns.

5. "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

6. "Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

7. "Director" means the Director of the City of Houston Solid Waste Management Department or such other person as he or she designates.

8. "Disposal Site" means the location(s), as identified in the City's Debris Management Plan, attached hereto and incorporated herein for all purposes, where the Contractor is to dispose of the disaster debris.

9. "Documents" mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

10. "Effective Date" means the date this Agreement is countersigned by the City Controller.

11. "Notice to Proceed" means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.

12. "Party" or "Parties" means one or all of the entities set out in the Preamble who are bound by this Agreement.

ARTICLE 3. DUTIES OF CONTRACTOR

3.01 **SCOPE OF SERVICES**

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

3.02 **COORDINATE PERFORMANCE**

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

3.03 **TIME EXTENSIONS**

3.03.1 If Contractor requests an extension of time to complete its performance, then the Director, in consultation with the CPO, may, in his or her sole discretion, extend the time so long as the extension does not exceed **180 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).

3.03.2 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 **180 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).

3.04. **REPORTS**

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

3.05 SUBCONTRACTORS

3.05.1 Contractor shall provide the Director with an updated list of all subcontractors including phone numbers of contact personnel.

3.05.2 Prior to the Director assigning any work, the Contractor shall provide the Director with an affidavit from each subcontractor stating that there is a signed contract between the Contractor and subcontractor.

3.05.3 The Director may, at its discretion, limit the number of subcontract firms working under the Contractor or its subcontractors at the Director's sole discretion to ensure safety and quality of work provided.

3.06 PAYMENT OF SUBCONTRACTORS

3.06.1 **IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY 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.

3.06.3 Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement, for which Contractor and its surety shall be liable on Contractor's performance bond, if any, if Contractor fails to cure the default as provided under this Agreement.

3.07 CONTRACTOR'S PERSONNEL

3.07.1 In selecting the Contractor for this Agreement, the City relied on the qualifications and experience of those persons identified by the Contractor by name as performing the Services ("Key Personnel") as listed in Exhibit B. Contractor must not reassign or replace Key Personnel without the Director's prior written approval. Upon the Director's approval, the Director shall update Exhibit C, which does not require an amendment to this Agreement, to reflect the new Key Personnel.

3.07.2 Contractor shall replace any of its personnel, including Key Personnel, or subcontractors whose performance, work, or work product is deemed unsatisfactory at the Director's discretion.

3.08 RELEASE

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

3.09 INDEMNIFICATION

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

3.09.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 3.09.1.1 THROUGH 3.09.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

3.09.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO $500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.10 SUBCONTRACTOR'S INDEMNITY

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

3.11 INDEMNIFICATION PROCEDURES

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

3.11.1.1 a description of the indemnification event in reasonable detail;

3.11.1.2 the basis on which indemnification may be due; and

3.11.1.3 the anticipated amount of the indemnified loss.

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

3.11.2 Defense of Claims

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

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

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

3.12 INSURANCE

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

COVERAGE	LIMIT OF LIABILITY
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	• Bodily Injury by Accident $500,000 (each accident) • Bodily Injury by Disease $500,000 (policy limit) • Bodily Injury by Disease $500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of $1,000,000 each Occurrence, and $2,000,000 aggregate
Automobile Liability	$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

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

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

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

3.12.4 **Required Coverage**. The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

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

3.12.6 **Other Insurance**. If requested by the Director, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

3.13 WARRANTIES

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

3.14 CONFIDENTIALITY

3.14.1 Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, the "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 Information unless the Director 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.

3.15. USE OF WORK PRODUCTS

3.15.1 The City may use all Documents that Contractor prepares or obtains under this Agreement. In addition, Contractor shall provide the Director with supporting schedules, flow charts or other analysis necessary to understand the reported findings and recommendations. Generally, this information is attached as exhibits to the final report; however, if requested by the Director, Contractor shall provide this information from its work paper files.

3.15.2 Contractor warrants that it owns the copyright to the Documents.

3.15.3 Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

3.16 LICENSES AND PERMITS

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

3.17 COMPLIANCE WITH LAWS

3.17.1 Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.

3.17.2 n anticipation of the City's potential use or application for reimbursement of restricted federal funds to pay for the services provided under this Agreement and any change orders, Exhibits "G", "H" and "I" are incorporated into this Agreement.

3.18 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE

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

3.19 MINORITY AND WOMEN BUSINESS ENTERPRISE COMPLIANCE

3.19.1 Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least **_____%** of the value of this Agreement to MWBEs ("Stated MWBE goal"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Contractor acknowledges that it

has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

3.19.2 For purposes of this paragraph, "Contract Year" means a twelve (12) month period during the term of the contract commencing on the Effective Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Contractor's MWBE participation level in a Contract Year is less than the Stated MWBE goal, then within 30 calendar days of the end of each Contract Year Contractor must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Contractor's MWBE participation level and the Stated MWBE goal, (2) the reason for the discrepancy, and (3) Contractor's good faith efforts (in accordance with the City's policy) towards achieving the Stated MWBE goal. As part of the good faith efforts assessment, the OBO Director may consider Contractor's failure to timely submit the notice or explanation required by this provision and the OBO Director may impose sanctions or other penalties on Contractor for said failures in accordance with Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.

3.19.3 Contractor shall maintain records showing:

3.19.3.1 Subcontracts and supply agreements with Minority Business Enterprises;

3.19.3.2 Subcontracts and supply agreements with Women Business Enterprises; Subcontracts and supply agreements with Small Business Enterprises (if any);

3.19.3.3 Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and

3.19.3.4 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 OBO Director in the form and at the times he or she prescribes.

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

3.19.4.1 [Name of 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.

3.19.4.2 Within five (5) business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO 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, mailing address, phone number, and email address of such agent.

3.19.4.3 After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.20. **DRUG ABUSE DETECTION AND DETERRENCE**

3.20.1 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 (the "Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

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

3.20.2.1 a copy of its drug-free workplace policy;

3.20.2.2 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

3.20.2.3 if applicable (*e.g.*, no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".

3.20.3 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.

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

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

3.21 **CONFLICTS OF INTEREST**

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

3.22. **PAY OR PLAY**

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

3.23. **CONTRACTOR'S PERFORMANCE**

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

3.24. **ADDITIONS AND DELETIONS**

3.24.1 Additional Products and Services. Subject to the allocation of funds, the CPO may add similar equipment, supplies, services, or locations, within the scope of this Agreement, to the list of equipment, supplies, services, or locations to be performed or provided by giving written notification to Contractor. For purposes of this Section, the "Effective Date" means the date specified in the notification from the CPO. As of the Effective Date, each item added is subject to this Agreement, as if it had originally been a part, but the charge for each item starts to accrue only on the Effective Date. In the event the additional equipment, supplies, services, or locations are not identical to the items(s) already under this Agreement, the charges therefor will then be Contractor's normal and customary charges or rates for the equipment, supplies, services, or locations classified in the Fees and Costs (Exhibit "E").

3.24.2 Exclusion of Products and Services. If a deliverable or service that is subject to this Agreement is deleted, lost, stolen, destroyed, damaged, sold, replaced, or otherwise disposed of, the CPO may exclude it from the operation of this Agreement by notifying Contractor in writing. The notice takes effect immediately on its receipt by Contractor. More than one notice may be given. When a notice is received, Contractor shall delete the charge for the excluded deliverable or service from the sum(s) otherwise due under this Agreement.

3.24.3 The total charges for additions and deletions to this Agreement must never exceed 25% of the original contract amount unless:

3.24.3.1 The additions are exempt from the competitive bidding or proposal requirements set forth in Tex. Local Govt. Code Chapter 252; or

3.24.3.2 The City acquires the additions from Contractor through a competitive bid or competitive proposal.

3.25. **CHANGES**

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

3.25.2 The CPO 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 equipment or services and the Change Order Charges applicable to each.]

Signed:
[Signature of CPO]

3.25.3 The CPO may issue more than one Change Order, subject to the following limitations:

3.25.3.1 The City Council expressly authorizes the CPO to approve one or more Change Orders, provided each Change Order cannot exceed $50,000. A Change Order of more than $50,000 must be approved by the City Council.

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

3.25.3.3 The total of all Change Orders issued under this section may not increase the original contract amount by more than 25%.

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

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

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

3.26 **ENVIRONMENTAL LAWS**

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

3.26.2 Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance

with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

3.27 COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS

3.27.1 *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.

3.27.2 *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.

3.27.3 *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.

3.27.4 *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.

3.28 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

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

3.29 PRESERVATION OF CONTRACTING INFORMATION

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

set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

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

ARTICLE 4. DUTIES OF CITY

4.01 PAYMENT TERMS

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

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

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

If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following Business Day.

4.02 TAXES

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

4.03 **METHOD OF PAYMENT**

4.03.1 The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director showing the services performed and the attendant fee. The City shall make payment to Contractor within 30 days of the receipt and approval by the City of such invoices.

4.03.2 Disputed Payments. If, for any reason, the City disputes all or part of any Contractor invoice, the Director or CPO shall not authorize payment of the disputed part of the invoice, and may, in the sole discretion of the Director or CPO, elect to pay any undisputed portion of the invoice. The Director or CPO shall 1) promptly notify Contractor that the City disputes all or part of the Contractor's invoice, and 2) request that the Contractor correct the invoice or otherwise respond to the City's concerns. The Director or CPO and/or the City Attorney are authorized to settle disputes and pay disputed invoices without approval by City Council if the amount paid by the City to the Contractor to resolve the dispute does not cause the total of all payments by the City to Contractor under this Agreement to exceed the maximum contract amount approved by City Council for this Agreement.

4.04 **LIMIT OF APPROPRIATION**

4.04.1 Contractor understands that the City's obligation for payment under this Agreement, if any, is limited in its entirety by the provisions of this Section, and to the grant funds received by the City from the federal government, including but not limited to the Federal Emergency Management Agency ("FEMA") for the performance of services under this Agreement; unless adequate funds are received, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds. Payments shall be made by the City to Contractor for services performed under this Agreement including all allowable , non - cancelable expenses, provided there are federal grant funds available to pay for them.

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

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

charged to such appropriation.
$ _____

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

4.05 ACCESS TO SITE

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

4.06 ACCESS TO DATA

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

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

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

4.07 LIQUIDATED DAMAGES

4.07.1 The City will assess liquidated damages for late or untimely performance and may, at the Director's sole option, elect to allow Contractor to continue with the work under this Agreement, or may declare Contractor to be in breach and default of the Contract and order Contractor to remove all equipment and personnel from the work site. The amount of actual damages resulting from Contractor's late or untimely performance may be difficult to ascertain and both Parties agree that the liquidated damaged assessed are reasonable and are not a penalty.

4.07.2 All remedies for Contractor's late performance shall be nonexclusive and cumulative without waiver of any other remedy, and the Director's election of one shall not preclude the City from pursuing any other remedy.

4.07.3 Should Contractor fail to complete requirements set forth in Exhibit A, the City will suffer damage, including but not limited to unsafe and unsanitary conditions caused by the presence of disaster-generated debris, which constitutes a danger to the health and safety of the general

public. Contractor shall pay the City, as liquidated damages, the following:

- $5,000.00 per calendar day of delay to mobilize in the City with the required resources and equipment set forth in Exhibit "A" to begin debris removal operations within 72 hours of the Notice to Proceed.

- $2500.00 per calendar day for failure to maintain at least 85% of loading devices and hauling available for the Exigency Period as defined herein.

- $ 1000.00 per day for failure to collect and haul to the debris disposal site at least ____cubic yards of disaster debris per day. Weather related incidents will be considered.

- $1,000.00 per load of disaster debris collected in the City that is not disposed within 30 days at a City approved DMS or City approved Final Disposal Site. Application of liquidated damaged does not release the Contractor of all liability associated with hauling and depositing material to an unauthorized location.

- $500.00 per incident where the Contractor fails to repair damages that are caused by the Contractor or subcontractor(s). Application of liquidated damages does not release the Contractor from the responsibility of resolving or repairing damages.

- $500.00 per calendar day of delay to complete the project by the agreed upon project completion date.

- $500.00 per calendar day of delay to remediate each DMS to the original condition based on the completion date set forth by the City and Contractor per DMS.

- $100.00 per incident where the Contractor fails provide sufficient documentation to the City to support FEMA eligibility of the work performed. Additionally, no payment will be made for the work performed. This liquidated damage will only apply when the contract is activated for a FEMA eligible disaster.

- $10,000.00 per calendar day until final completion of Services, by either Contractor, City, or any third Party, where Contractor abandons Services or fails to complete the requirements of this Agreement.

4.07.4 The amounts specified above are mutually agreed upon as reasonable and proper amount of damage the City should suffer by failure of the Contractor to complete requirements set forth in the scope of work.

4.07.5 If the Contractor fails to achieve final completion within the time fixed by the Director, Contractor shall pay the City the sum set forth above as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of Services. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the Director reasonably believes that final completion will be inexcusably delayed, the Director shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the

City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Liquidated damages shall be deducted first from any earned sums due to the Contractor.

ARTICLE 5. TERM AND TERMINATION

5.01. **AGREEMENT TERM**

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

5.02. **RENEWALS**

5.02.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive 1-year terms on the same terms and conditions. If the Director chooses not to renew this Agreement, he or she shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

5.03 **NOTICE TO PROCEED**

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

5.04. **TERMINATION FOR CONVENIENCE BY CITY**

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

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

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

5.05. **TERMINATION FOR CAUSE BY CITY**

5.05.1 If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies that exist now or in the future. Default by Contractor occurs if:

5.05.1.1 Contractor fails to perform any of its material duties under this Agreement;

5.05.1.2 Contractor becomes insolvent;

5.05.1.3 all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

5.05.1.4 a receiver or trustee is appointed for Contractor.

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

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

5.06 TERMINATION FOR CAUSE BY CONTRACTOR

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

5.07. REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS

5.07.1 Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove contractor-owned material and equipment from the City's

premises. This City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

ARTICLE 6. MISCELLANEOUS

6.01 INDEPENDENT CONTRACTOR

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

6.02 FORCE MAJEURE

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

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

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

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

6.02.3 The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Director is final. If Contractor disagrees with the Director's decision, then the Contractor is permitted to pursue any alleged breach of this Agreement in accordance with its remedies available at law.

6.02.4 The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

6.02.5 If the Force Majeure continues for more than 7 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice

to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**

6.03 **SEVERABILITY**

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

6.04 **ENTIRE AGREEMENT**

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

6.05 **WRITTEN AMENDMENT**

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

6.06 **GOVERNING LAW AND VENUE**

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

6.07 **NOTICES**

6.07.1 All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS, or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Article 1 of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

6.08 **CAPTIONS**

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

6.09 **NON-WAIVER**

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

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

6.10 INSPECTIONS AND AUDITS

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

6.11 ENFORCEMENT

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

6.12 AMBIGUITIES

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

6.13 SURVIVAL

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

6.14 PUBLICITY

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

6.15 PARTIES IN INTEREST

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

6.16 SUCCESSORS AND ASSIGNS

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

6.17 BUSINESS STRUCTURE AND ASSIGNMENTS

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

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

6.18 REMEDIES CUMULATIVE

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

6.19 CONTRACTOR DEBT

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

EXHIBIT A
SCOPE OF WORK

A.1 DEBRIS REMOVAL

PART 1 – GENERAL

1.01 DESCRIPTION

a. Scope of Work: Work under this section consists of post-hurricane/disaster debris removal from public property and the public rights of way within the City limits and proper disposal of the debris. The work consists of loading and hauling debris from the public rights-of-way to Debris Management Sites (DMS) (previously called Temporary Debris Storage and Reduction sites) and/or approved landfills.

b. Preparedness: Key Personnel, set out in Exhibit B, must participate in the City's annual hurricane preparedness training activities, a maximum of two (2) days each year at no cost to the City if requested by the Director.

c. Prepositioning: Upon notification from the Director, the Contractor must provide a two-person management team on-site to participate in advance recovery preparations. The expected time frame is 24-36 hours prior to project hurricane landfall. The purpose is to initiate actions necessary to ensure that Contractor resources shall be able to begin recovery operations within 24-48 hours of receiving the Notice to Proceed from the City. The Contractor's resources are to be available within 24-48 hours and include at least 20 loading devices, such as cherry-pickers, grapplers, or rear-steers, and 30-50 cavities with at least a 20-cubic yard capacity. Please note that self-loading equipment and double or tandem axle dump trailers are preferred. In addition, please note that bobcats, skid-steers, and excavators are not acceptable loading devices but may be used if a special exception is granted by the city debris manager or by his/her designee.

d. Inspection of Debris: As soon as possible after the hurricane/disaster event has subsided, the Contractor must make a detailed and thorough on-site inspection of debris to be removed, and consider (1) amounts and types of debris; (2) working conditions such as traffic, street/road width, and land use; (3) means of ingress and egress to work areas; and (4) all other factors affecting the removal and disposal work.

e. Coordination: Debris removal is limited to that which is determined by the Director to be in the best public interest and that which is considered essential to the economic recovery of the affected area. The Director shall determine priorities for debris removal. The Contractor must coordinate with other contractors, city officials, and designated personnel as directed by the Director.

f. City Limits: Work is limited to areas within the boundaries of the City of Houston.

g. Quality Assurance: Work shall be closely monitored by City personnel and/or designated representatives. The Contractor must cooperate with all monitors representing the City.

h. Authorized Subcontractors: Upon request, the Contractor shall provide the Director and Office of Business Opportunity a quarterly list by the 5th of each month updated list of authorized subcontractors' points of contact, email, and contact telephone numbers.

PART 2 – EXECUTION

2.01 DEBRIS REMOVAL

a. General: The goal of the debris removal work is to load and haul disaster-related debris from public property and the public rights-of-way to assigned DMS and/or approved landfills. In general, but not exclusively, this consists of curbside debris removal on City property only. The types of debris to be removed include, but are not limited to trees, woody debris, brush, building wreckage, construction and demolition debris (C&D), and personal property and household goods on public property or in public rights-of-way. Debris removal operations also include the removal of tree stumps, cutting and removing partially uprooted or split trees and tree stumps, collection of debris-laden sand, and backfilling of stump craters. Debris is to be removed without regard to whether or not it was deposited in those areas as a result of the disaster or placed there by a local citizen after the disaster. Hazardous materials are not covered by this scope of work.

b. Preparations/Submittal: Prior to commencing any removal work, the beds of all hauling vehicles must be measured to determine their fully loaded capacities in cubic yards. The vehicles must be marked externally with the owner/operator's name, the contract number, vehicle ID number, and the fully loaded capacity. Those markings must be clearly visible on both sides of the vehicle and on the front wall of the bed. All markings must be certified by the Contractor. A list of all vehicles, with the owner/operator's name, vehicle ID number, and hauling capacity must be submitted to the Director before the vehicles are placed in service. The City shall provide (4) multi-part load tickets for each vehicle at each loading site. The tickets must be signed by the vehicle driver and then presented to the City's monitor at the designated disposal site.

c. Hazardous Materials: Hazardous and toxic wastes shall be loaded, hauled, and disposed of by others and are excluded from this work. The City shall execute a separate hazardous materials removal and disposal contract; however, collection schedules may not necessarily coincide with the debris removal work. Hazardous materials include chemicals, petroleum products, paint products, asbestos, power transformers, oxygen bottles, propane tanks, batteries, industrial and agricultural chemicals, cleaning agents, and similar hazardous, dangerous, or toxic materials. Some preliminary curbside separations shall be attempted, but the Contractor must be aware that hazardous materials might be commingled with debris. The contractor shall take every precaution to avoid loading and hauling hazardous materials. Notwithstanding, Contractor forces must be aware of the appropriate safety precautions. Further, the Contractor shall be responsible for safe and proper handling of any hazardous materials inadvertently loaded by Contractor forces. Contractor forces must notify the Director of locations where hazardous materials are encountered.

d. Other Non-Collection Items: The following items must not be removed or hauled to the designated disposal sites:

- Regular household waste (e.g., bagged garbage, discarded food, paper, packaging)
- Electric company transformer, poles, and other equipment and materials
- Telephone company transformers, poles, and other equipment and materials
- Traffic signs, signals, and appurtenances
- Debris on private property
- Vehicles

Curbside collection of regular household waste shall be handled by the usual public and private haulers. Household garbage must not be mixed with storm debris. All utility equipment, traffic signs, and signals that are encountered must be moved to a visible, accessible location at or near the curbside for disposition by utility companies for the City. Debris on private property may be removed only upon receipt of authorization from the Director to do so and only if it poses an immediate threat to public health and safety, interferes with prescribed removal operations, or is necessary to allow Contractor to perform assigned tasks. In such cases, authorization to enter onto the private property must be obtained from the Director. Vehicles that are in the way of debris removal operations may not be moved. Instead, the Contractor shall report the locations of such vehicles to the Director.

e. Debris Removal: Debris shall be removed from all parts of City as well as the DMS. During debris removal operations, extreme caution must be exercised by the Contractor to ensure that no damage is done to public or private properties. All crawler or tracked vehicles operated on public streets must have pads to prevent damage to hard-surfaced streets.

f. Loading: All loose debris, such as tree limbs, must be reasonably compacted in the hauling vehicles during loading. All debris extending beyond the vehicle in any horizontal direction must be cut off or otherwise removed.

g. Hauling: All vehicles utilized in hauling debris must be equipped with adequate means for containing the load, including canvas covering while transporting the debris to the DMS and/or approved landfills. Covering must effectively prevent debris from being blown or bounced off the vehicles. Sideboards or other extensions to the bed shall be permitted provided they meet state and local requirements, cover the front and two sides, and are substantially constructed. Sideboards must be constructed of 2” x 6” boards or greater and may not extend more than 2 feet above the metal bedsides. Vehicles must be equipped with a tailgate or other devices that shall effectively contain the debris on the vehicle while hauling, and also permit the vehicle to be loaded to capacity.

h. Dumping: All debris must be hauled to assigned DMS and/or approved landfills. All trees, woody debris, and brush shall be accepted at DMS and may be accepted at other sites specifically approved by the City. Construction and demolition debris must be similarly transported.

i. Equipment Storage: The Contractor is responsible for locating areas where its equipment may be stored, serviced, and repaired. Such areas must not be located within rights-of-way or in any areas that would impact traffic flow or produce a safety hazard. This does not preclude parking equipment for short periods of time, including overnight, in rights-of-way areas where work is in progress; on-site refueling and

operating checks including daily maintenance shall be allowed. Properly prepared areas within the DMS may be used for this purpose.

2.02 SCHEDULE

a. Removal operations must begin within 24-48 hours of receiving the Notice-to-Proceed and be functioning at 100% of capacity within 5 days. These operations are to be fully integrated with the DMS operations. Removal may begin earlier if adequate disposal sites are available and properly prepared. The Director reserves the right to increase or decrease the scope of the removal activity as he/she deems necessary to ensure effective management of the overall debris removal/disposal operations.

b. Working Hours: Unless otherwise permitted by the City, working hours for removal operations shall be limited to daylight hours.

2.03 EXTRA WORK

At the Director's option, the scope of work may be expanded to include public parks, other recreational areas, drainage structures and channels, and reservoirs.

3.01 COMPENSATION FOR DEBRIS CLEARANCE AND HAULING

a. Contractor shall be compensated by the **cubic yard** for those activities shown below to be measured by volume. Where a range of miles distant to the disposal site is shown, compensation shall be by cubic yard within the applicable range of miles to the disposal site. Those activities designated with a different unit of measure shall be compensated on a per-unit basis. All measurements and units listed in this section are subject to change in accordance with the most current FEMA guidelines.

Group 1 **Rights-of-Way Vegetative Collection Rate**

Vegetative debris collected from public or private rights-of-way (ROW) and improved public lands, hauled to and dumped at the debris management site(s). This includes the removal, collection, hauling, and disposal of all stumps less than 24 inches in diameter and any stumps not originating in the ROW (including stumps removed by third parties and placed in the ROW).

Miles to disposal site
0-15 miles
16-30 miles
31-60 miles

Group 2. **Private Property Vegetative Collection Rate**

Vegetative debris collected from private property, hauled to, and dumped at the debris management site(s). This includes the removal, collection, hauling and disposal of all stumps less than 24 inches in diameter.

Miles to disposal site
0-15 miles
16-30 miles
31-60 miles

Group 3. **Rights of Way Construction and Demolition Collection Rate**

Construction and demolition debris collection from designated work zone, hauled to, and dumped at the debris management site(s) or other designated location.

Miles to disposal site
0-15 miles
16-30 miles
31-60 miles

Group 4. **Cutting Partially Uprooted or Split Trees (Leaners)**

Falling partially uprooted or split trees from the ROW or the overhanging portion of the ROW and placing the debris in the ROW for haul-off. Split Trees in this Group must measure 6 inches in diameter or greater at 4.5 feet above ground level, or measure in accordance with current FEMA guidelines.

Partially Uprooted Leaner (50% or more of the root ball exposed; price is inclusive of excavating the root ball and placing it in the ROW).

Diameter of tree at 2 feet from base:

Less than 24 inches

24-36 inches

Greater than 36 inches

Split Leaner (less than 50% of the root ball exposed; price is inclusive of flush cutting the tree trunk.)

Diameter of tree at 2 feet from base:

Less than 24 inches

24-36 inches

Greater than 36 inches

Group 5. **Removal of Dangerous Hanging Limbs (Hangers)**

Removing hanging or partially broken limbs from trees in the ROW or limbs hanging over the ROW and placing the debris in the ROW for haul-off. Broken limbs or branches in this Group must measure 2 inches or larger in diameter, measured at the point of break.

Group 6. **Demolition and Collection Rate**

Demolish identified structures in designated work zone. Remove C&D debris from designated work zone, haul to, and dump at the DMS or other designated location.

Group 7. **Hazardous Stump Removal and Collection Rate**

Removal and collection of stumps partially uprooted in the ROW (50 percent or more of root ball exposed). Price is inclusive of excavating the root ball and placing it in the ROW. Stumps shall be identified and certified in the ROW by the City or its

representative. Stumps shall be hauled to and dumped at a debris management site(s) or other designated location.

Diameter of Stump at 2 feet from base

24-36 inches

36-48 inches

Greater than 48 inches

Group 8. **Other Stump Removal and Collection Rate**

Removal and collection of stumps less than 2 feet in diameter as measured 2 feet above the ground or stumps brought to the ROW. Stumps shall be hauled to and dumped at a debris management site(s) or other designated location.

On a cubic yard basis; volume calculated according to FEMA guidelines for conversion of stumps to cubic yards.

Group 9. **Sand Collection (Public Property) and Screening Rate**

Removal and collection of debris-laden sand from public property. Debris-laden sand shall be hauled to a designated location, screened, and stockpiled at a debris management site(s). Debris generated from screened rejects shall be hauled to a debris management site(s) or other designated location.

Group 10. **Sand Collection (Private Property) and Screening Rate**

Removal and collection of debris-laden sand from public property. Debris-laden sand shall be hauled to a designated location, screened, and stockpiled at a debris management site(s). Debris generated from screened rejects shall be hauled to a debris management site(s) or other designated location.

Group 11. **Backfill**

Supply and replacement of clean fill dirt into holes created by stump removal in the ROW.

Group 12. **Waterways**

Removal and collections of debris, wreckage, and sunken vessels from publicly and privately- owned waters to eliminate immediate threat of lives, public health and safety, or ensure economic recovery of the affected community.

A.2 DEBRIS MANAGEMENT SITE OPERATION

PART 1 – GENERAL

1.01 DESCRIPTION

a. Scope of Work: Work under this section consists of preparation, operation, and closure of Debris Management Site (DMS) for the project. At these sites the Contractor must accept, temporarily store, segregate, reduce, recycle as appropriate, and dispose of debris generated by the hurricane/disaster event and brought to the site by trucks under Contractor's control, or by other carriers specifically designated

by the City.

b. The Contractor shall, upon the commencement of this contract, identify properties within the Houston area and enter into separate agreements with the property owners to prepare and use the property as Debris Management Sites (DMS). The Contractor shall conduct environmental surveys, prepare the property as needed, acquire state permits as required and effect all other arrangements so as to be able to use the property on short notice as a DMS. The Contractor shall notify the Director of any such agreements upon their notification by all parties.

c. At each DMS the Contractor must be fully prepared to:

Accept materials collected during debris removal operations.

Segregate materials into waste streams that can either by recycled, picked up by other Contractors (as in the case of HAZMAT waste), treated in a common manner (i.e. mechanical reduction) or taken to a common disposal point such as an approved landfill.

Reduce materials through mechanical reduction (chipping, grinding), incineration (if specially authorized by the Director, and recycling onsite or post-collection resale for recycling or other purposes.

Conduct on-site air curtain burning of certain materials as may be directed by the City. Contractor should identify equipment and operator resources; however, no burning may take place without specific City direction.

Dispose of segregated or reduced debris through resale of materials or disposition of processing wastes in a properly permitted landfill or other disposal site.

d. City Limits: The source of debris is limited to areas within the boundaries of the City of Houston.

e. Preparedness: A representative of the Contractor or Subcontractor who shall operate the DMS must participate in the City's annual hurricane exercise at no cost to the City if requested by the Director.

f. Pre-positioning: In order to expedite the implementation of DMS operations the Contractor must provide personnel on-site prior to a projected hurricane/disaster event to carry out any activities necessary to assure that the DMS shall be ready when needed. Actual preparation of the DMS must begin within 24-48 hours of receipt of the Notice-to-Proceed and the sites must be fully operational not more than 5 days thereafter.

g. Existing Conditions: The Contractor must, as part of the site preparation actions, photo-document the site conditions using both a video camera and still photographs. The Contractor should keep one copy of the videotape and photographs for its records. The Contractor must provide one copy of the videotape and the still photographs to the Director.

h. The Contractor must be aware of, and abide by, the conditions of any permits under which he/she must operate. The Contractor is responsible for knowing the

applicability and requirements of all applicable environmental laws and regulations that could pertain to the operation of DMS.

The Contractor shall be responsible for paying any and all costs associated with violations of law or regulation relative to his/her activities. Such costs might include but are not limited to: site cleanup and/or remediation; fines, administrative or civil penalties; and third-party claims imposed on the City by any regulatory agency or by any third party as a result of noncompliance with Federal, State, or Local environmental laws and regulations or nuisance statutes by Contractor, his/her Subcontractors, or any other persons, corporations or legal entities retained by the Contractor under this contract.

i. Meetings: The Contractor must attend any and all meetings required by the Director or his/her designee to evaluate the operations of the DMS.

j. Quality Assurance: The work shall be closely monitored by City monitors and/or designated representatives of the City. The Contractor shall cooperate with all monitors.

PART 2 – EXECUTION

2.01 DEBRIS MANAGEMENT SITE (DMS) PREPARATION

a. Site Setup: Unless specifically directed otherwise by the Director, site setup must commence as soon as possible after the hurricane/disaster event has subsided, but no later than 24-48 hours from the time that the Notice-to-Proceed is issued by the Director. All DMS must be fully operational within 5 days of receipt of the Notice-to-Proceed. The Contractor must prepare each site for operation by installing the following features:

- Perimeter fencing.
- Construction entrances including gates.
- Built-up aggregate access roads.
- Drainage and stormwater retention features (where applicable).
- Erosion and sediment control fencing.
- Inspection tower.
- Operations trailer.
- All other site improvements necessary for the safe, efficient, economical and environmentally acceptable operation of the sites.

The Contractor must construct berms or provide suitable secondary containment around all non-truck mounted fuel storage tanks, hazardous wastes, and stockpiled ash to prevent runoff of these materials into adjacent ditches and surface waters.

b. Baseline Sampling and Testing: The Contractor must collect and test soil and groundwater samples at each DMS in areas designated for stormwater retention, ash storage, vehicle maintenance fuel dispensing operations, and any areas where hazardous substances and petroleum products are or might be generated, stored or used. Samples must be tested for Total Petroleum Hydrocarbons (TPH) and Resource Conservation and Recovery Act (RCRA) metals. The Contractor must secure independent laboratory analytical tests for the referenced substances tested and provide the results to the Director prior to the commencement of operations at the

DMS.

c. Protection: Within the limits of or adjacent to the DMS, there may be existing underground electric, telephone, and television cables and conduits, gas, water, and sewer utility lines that cannot be located from existing data. It is the responsibility of the Contractor to determine their exact location and to carry out his/her work carefully and skillfully so as to avoid damage to them. The City may elect to provide this information to the Contractor in advance. In any case, the Contractor shall ensure the locations of such utility installations are adequately marked.

d. Temporary Utilities: All temporary utilities including sewage disposal and potable water must be provided by the Contractor.

e. Signage: The Contractor must provide signs at each of the DMS in accordance with City of Houston specifications and contain the following information:

- Contractor's superintendent's name, local address, and local 24-hour telephone number.
- Name of the DMS facility.
- Name, address, and telephone number of the City representative to contact in case of an emergency.

f. Plans: The Contractor must develop and provide to the Director the following materials prior to start-up:

- Site layout plan
- Proposed operating procedures
- Site/operations safety plan

g. Start-up: When all DMS preparations are completed, the Contractor must notify the Director who shall inspect the site and approve the site for commencement of DMS operations.

2.02 DEBRIS MANAGEMENT SITE (DMS) OPERATIONS

a. General Operations: The Contractor shall operate each DMS in an effective and efficient manner for such time as the Director deems necessary. DMS may operate on a 24-hour, 7-day basis unless otherwise directed by the Director.

The Contractor must operate such equipment as is necessary to efficiently reduce by mechanical means or incineration all materials deposited at the DMS that require reduction before final disposal. The Contractor must segregate all debris in accordance with the method of processing and potential for recycling. The Contractor must separate and contain all hazardous wastes for pick up and disposal by the City's hazardous waste Contractor. Comestible garbage shall be separated and contained for pick-up by the City's designated hauler.

2.02 DEBRIS MANAGEMENT SITE (DMS) OPERATIONS (CONTINUED)

The Contractor must staff the DMS with sufficient personnel to ensure the waste stream segregation and processing operation does not reduce the capacity to remove debris from City streets in a timely manner. The operation of each DMS must conform

to these specifications and any permits issued for the DMS. The Contractor is responsible for all site and worker safety issues.

b. Control of Material: The Contractor must make every effort to control the nature of the material allowed into the DMS, with the objective being to have only C&D materials, clean woody debris, household debris (other than regular household waste and hazardous materials) and similar materials brought to and deposited in the DMS. All materials brought to the DMS by vehicles under the Contractor's control but not accepted at the DMS must be disposed of by the Contractor at an approved landfill or by other legal means of disposal.

c. Environmental Controls: The contractor is responsible for monitoring the temperature of stockpiled mulch at least **twice** daily to detect hot spots resulting from natural microbial decomposition. Upon finding a hot spot, the Contractor must mechanically mix the affected mulch to cool it down and avoid creating a fire hazard. The Contractor must secure the services of an independent laboratory to sample and test any ash generated from burning prior to its lawful disposal. Copies of all documents pertaining to the disposition of the ash (e.g. analytical results, shipping manifests, certificates of destruction) must be submitted to the Director.

   The Contractor must, to the extent practicable, separate hazardous waste and asbestos from all woody and structural debris that is to be further processed, reduced, recycled, or burned. Segregation of asbestos from curbside debris planned for direct disposal at a landfill shall not be required.

d. Control of Rodents, Vermin, Insects, Birds, and Wildlife: The Contractor must operate the DMS in such a manner as to minimize the possibility of infestation by rodents, and other vermin, and insects and to minimize the potential for attracting birds and wildlife. The Contractor shall be responsible for the proper and safe application of rodenticide and insecticide as a precautionary tactic to minimize the potential for infestation. Additional applications of such materials shall be made as necessary to eradicate infestations. All sites and work areas shall be subject to inspection and monitoring by City health and safety personnel.

e. Debris Ownership and Disposal: The Contractor must remove or arrange for the removal and final disposal of all debris brought to the DMS. Options include but are not limited to sending the material to an authorized and properly permitted disposal area, recycling facility, or resale entity. The Contractor must maintain records for all materials, including processed debris, residue, and hazardous materials, being transported from the DMS to disposal or recycling facilities. The Contractor must secure an EPA Identification Number prior to the lawful disposal of any ash determined to be hazardous based on analytical results. Copies of this documentation must be provided to the Director for review. The Contractor shall be considered the owner of all debris brought to the DMS.

2.03 DMS CLOSURE

a. Restoration: The Contractor must restore all DMS to their original condition to the extent feasible or to the satisfaction of the Director. Unless otherwise directed by the

City, all improvements (e.g., fencing, haul roads, trailer) must be removed. The Contractor must reestablish grades (i.e. roads, and ditches) throughout each DMS. The Contractor must request and participate in site inspections by the Director for final approval of all site closure and restoration activities.

b. Sampling and Testing: The Contractor must complete soil and groundwater closure sampling and testing in the areas described in the baseline sampling information. The same tests must be completed as were performed prior to commencing with DMS operations (TPH and RCRA metals). The analytical results must be provided to the Director of prior to the closure of each DMS. Areas found to be contaminated above the baseline values must be remediated by the Contractor. The Contractor is regarded as the generator of such contaminants for the purposes of federal environmental statutes.

3.01 COMPENSATION

a. Debris Management Site (DMS) preparation, permitting operation, environmental assessment, and closure **shall be included in the fee per cubic yard** for the various activities listed below.

b. Contractor may bill and the City shall pay by the cubic yard for:

1. Reduction of vegetative debris by burning of the DMS.
2. Reduction of vegetative debris by grinding at the DMS.
3. Reduction of C&D debris at the DMS.
4. Loading and transport of reduced vegetative debris to the final disposal site.
5. Loading and transport of C&D debris to the final disposal site

c. The City shall pay the costs of final disposal incurred by the Contractor at a City-approved Final Disposal Site that meets federal, state, and local regulations for disposal. The payment for disposal costs will be reimbursed by the city as a pass-through cost. Prior to reimbursement by the City, the Contractor must furnish the City or its designee an invoice in hard copy and electronic format matching scale/weigh ticket numbers with load ticket or haul out ticket numbers and any other applicable information.

4.0 WARRANTY OF SERVICES:

4.1 “Acceptance” as used in this clause, means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services, as a partial or complete performance of the Contract.

4.2 “Correction” as used in this clause, means the elimination of a defect.

4.3 Notwithstanding inspection and acceptance by the City or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. **The City shall give written notice of any defect or nonconformance to the Contractor within a one-year period from the date of acceptance by the City.**

This notice shall state either (1) that the Contractor shall correct or re-perform any defective or non-conforming services at no additional cost to the City, or (2) that the City does not require correction or re-performance.

4.4 If the Contractor is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the City may, by contract or otherwise correct or replace with similar services and charge to the Contractor the cost occasioned to the City thereby, or make an equitable adjustment in the Contract price.

4.5 If the City does not require correction or re-performance, the City shall make an equitable adjustment in the contract price.

5.0 ESTIMATED QUANTITIES NOT GUARANTEED:

5.1 The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of services during the term of this Contract. The quantities may vary depending upon the actual needs of the Department. The quantities specified herein are good faith estimates of usage during the term of this Contract. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing all the quantities specified herein.

6.0 INTERLOCAL AGREEMENT:

6.1 Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products/services provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

EXHIBIT “B”

KEY PERSONNEL

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

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

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).

2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.

3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.

4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

_____
Date

_____
Contractor Name

_____
Signature

_____
Title

EXHIBIT "D"

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

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

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

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

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

_____ _____
(Date) (Typed or Printed Name)

_____
(Signature)

_____
(Title)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

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

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

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

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

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

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

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

	Random	Reasonable Suspicion	Post Accident	Total
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

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

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

_____

(Date)

_____

(Typed or Printed Name)

___

(Signature)

___

(Title)

EXHIBIT “F”

FEES AND COSTS

EXHIBIT "G"
FEDERAL PROVISIONS

Version 09/20/2022

GENERAL FEDERAL REQUIREMENTS APPLICABLE TO AGREEMENTS, ADDENDA, AND PURCHASE ORDERS INVOLVING FEDERAL FUNDS ("GENERAL FEDERAL REQUIREMENTS")

Contractor must comply with the following federal provisions, as applicable, as a condition of this City of Houston ("City") Agreement. For purposes of this **Exhibit,** the following terms have the meanings set forth in this Exhibit.

- "Agreement" means the Agreement, Addendum, or Purchase Order to which this **Exhibit** is attached.
- "Contractor" means Contractor or Vendor as defined in the Agreement to which this **Exhibit** is attached.
- "Federal Agency" means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Exhibit** is attached as a source of funding.

Contractor also acknowledges that the City is using federal funds attached to a federal program ("Program") for all or a portion of this Agreement. Contractor therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions or websites required by the CPO, and any specific terms and conditions set forth in the grant as specified by the CPO ("Funding Law, Regulations and Guidelines").

Contractor also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this **Exhibit** in any agreements it enters into with other parties relating to the federal funds.

1. Contractor acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:

    a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

    b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference

c. Generally applicable federal environmental laws and regulations

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

3. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

4. Use of Funds. Contractor understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.

5. Award Amount. The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.

6. Period of Performance. The Period of Performance of this Agreement will begin on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Contractor signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement.

7. Contractor shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.

8. Access to Records. The following access to records requirements apply to this Agreement:

   a. Contractor agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.

   b. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

   c. Contractor agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed

under this Agreement.

d. In compliance with the Disaster Recovery Act of 2018, the City and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.

e. Within ten days of written request by the City, Contractor agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.

9. Environmental Compliance – Applicable only to Agreements over $150,000.

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

b. Contractor shall report all violations to the City's Chief Procurement Officer/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.

c. Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

10. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over $100,000.

a. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty

hours without payment of the overtime wages required by the clause set forth in subparagraph (a) of this section.

c. Withholding for unpaid wages and liquidated damages. The federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) of this section.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (a) through (d) of this section.

11. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:

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

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

b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to

instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

d. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. Contractor will include the portion of the sentence immediately preceding subparagraph (a) and the provisions of subparagraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

k. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the Federal Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

12. Procurement of Recovered Materials.

a. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

i. Competitively within a timeframe providing for compliance with the Agreement performance schedule;

ii. Meeting Agreement performance requirements; or

iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

c. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

13. Domestic Preference Requirements

a. Domestic Preference Requirement – 2 C.F.R. §200.322

i. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:

1. ''Produced in the United States'' means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. ''Manufactured products'' means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

b. Domestic Content Procurement Preference Requirement for Infrastructure Projects

i. For all infrastructure projects funded by Federal financial assistance, except for those funded by FEMA, Contractor shall comply with the domestic content procurement preference requirement and purchase, acquire, or use products meeting the domestic content procurement preference requirement. For purposes of this paragraph:

1. "Domestic Content Procurement Preference" means that (A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United States; or (C) the construction materials used in the project are produced in the United States. The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement.

2. ‘‘Infrastructure’’ includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.

3. “Produced in the United States’’ means—

   a. in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

   b. in the case of manufactured products, that— (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

   c. in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

4. ‘‘Project’’ means the construction, alteration, maintenance, or repair of infrastructure in the United States.

14. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

   a. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

   b. Prohibitions

      i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit

the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

ii. Unless an exception in this paragraph applies, Contractor and its Subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:

1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. Exceptions

i. This paragraph does not prohibit contractors, such as Contractor, from providing—

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

ii. By necessary implication and regulation, the prohibitions also do not apply to:

1. Covered telecommunications equipment or services that:

a. Are not used as a substantial or essential component of any system; and

b. Are not used as critical technology of any system.

2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

3. That which 2 C.F.R. Section 200.216 does not apply.

d. Reporting requirement

i. In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.

ii. Contractor shall report the following information pursuant to subparagraph (e):

1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

e. Subcontracts. Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

15. Remedies. If any work performed and/or goods delivered by Contractor fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:

a. elect to have Contractor re-perform or cause to be re-performed, at Contractor's sole expense, any of the work which failed to meet the requirements of the contract;

b. in the case of goods, reject the goods and require Contractor to provide replacement

goods that meet the needs of the City and the terms of the Agreement;

c. hire another contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Contractor; or

d. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

16. Suspension and Debarment.

a. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

b. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

c. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

d. This certification, found in Exhibit G, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

e. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this purchase order. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

17. Byrd Anti-Lobbying Amendment.

a. A contractor who applies or bids for an award or receives a Contract/Purchase Order of $100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Exhibit H of this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

18. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

a. If Contractor intends to subcontract any portion of the work covered by this Agreement, Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

19. Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work in excess of $2,000.00 and not funded by FEMA-PA Program.

a. All transactions regarding this Contract/Purchase Order shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, Contractor is required to pay wages not less than once a week.

20. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of $2,000.0 and when the Davis-Bacon Act also applies.

a. Contractor. Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.

b. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.

21. Changes. The Director may modify the scope of services or quantity and type of goods by giving written notification to Contractor, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Contractor.

22. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

i. A member of Congress or a representative of a committee of Congress;

ii. An Inspector General;

iii. The Government Accountability Office;

iv. A Treasury employee responsible for contract or grant oversight or management;

v. An authorized official of the Department of Justice or other law enforcement agency;

vi. A court or grand jury; or

vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

23. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Contractor-owned, rented, or personally-owned vehicles.

24. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.

25. Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.
Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.

26. Debts Owed to the City.

a. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Contractor shall constitute a debt to the City and to the Federal government.

b. Any debts determined to be owed the City must be paid promptly by Contractor for repayment to the federal government.

c. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.

27. Disclaimer. The United States expressly disclaims any and all responsibility or liability to Recipient and Contractor or third persons for the actions of Recipient, Contractor, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Contractor does not in any way establish an agency relationship between the United States and Recipient or Contractor.

28. Contractor understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

EXHIBIT "H"

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

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension) and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

INSTRUCTIONS FOR CERTIFICATION

1) By signing this Agreement, Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.

2) The inability of a contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default. T

4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

6) The prospective primary participant agrees by signing the Agreement that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.

7) The prospective primary participant further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

CERTIFICATION

1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Company Name

_____

Name and Title

_____

Signature

_____

Date

EXHIBIT "I"
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31.U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Name of Contractor	RFP, ITB, EPO or PO No., or Project Name
Signature	Printed Name
Title	Date