AGREEMENT FOR CRIMINAL VIOLENCE INTERVENTION

THIS AGREEMENT FOR CRIMINAL VIOLENCE INTERVENTION ("Agreement") is made on the Countersignature Date by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and __________________________ ("Contractor"), a __________{fill in type of entity, e.g., Texas corporation, Texas limited liability company} with a business address of ________________.

1. PARTIES

1.1. Address

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

City	Contractor
Director of Houston Health Dept. or Designee City of Houston 8000 N. Stadium Drive Houston, TX 77054	

The Parties agree as follows:

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1.2. Table of Contents

1.2.1. This Agreement consists of the following sections:

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1.3. Parts Incorporated

1.3.1. The above-described exhibits are incorporated into this Agreement.

1.4. Controlling Parts

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

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1.5. Signatures

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

CONTRACTOR

By:________________________________
Name:
Title:
Tax Id. No.

ATTEST/SEAL:

____
City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

____
Mayor

APPROVED:

____
Director, Houston Health Department
Technology Services

COUNTERSIGNED BY:

____
City Controller

____
Chief Procurement Officer

APPROVED AS TO FORM:

____
Assistant City Attorney
L.D. File No. ______________________

DATE COUNTERSIGNED:

____

2. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

2.1. "Acceptance" means the act of the Director by which the City assumes for itself, approval of specific services or delivery of specific products, as partial or complete performance of the Agreement, Project, LOA, work plans, or any other like document.

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

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

2.4. "Chief Procurement Officer" or "CPO" is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.

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

2.6. "City's Information" or "City Information" means all data, Documents, information, electronically stored information, agendas, reports, notes, meeting minutes, records, or documents provided to, entered in, posted, transmitted, stored, hosted, received, collected, or processed by Contractor on behalf of the City or any software, databases, or applications developed by Contractor for the City and provided by Contractor, and any Documents that Contractor may have access to in connection with this Agreement.

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

2.8. "Countersignature Date" means the date the City Controller countersigns this Agreement.

2.9. "Department" means Houston Information Technology Services.

2.10. "Director" means the Director of Houston Information Technology Services, or the person he or she designates.

2.11. "Documents" means any analyses, audio and video recordings, charts, computations, computer programs, correspondence, data or data compilations, databases and diskettes, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, inventions, items, letters, manuals, maps, materials, models, notebooks, notes, operating manuals, original tracings of all drawings and plans, photographs, plans, policies, procedures, records, reports, social media communications, software, sound

recordings, specifications, tabulations, underlying data, writings, and other work products (and any modifications or improvements to them) that Contractor prepares, obtains, modified, creates, or provides to or for the City pursuant to or in a LOA or in connection with this Agreement.

2.12. "HITS" means Houston Information Technology Services.

2.13. "Include" and "including," and words of similar import, shall be deemed to be followed by the words "without limitation."

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

2.15. "Not to Exceed" or "NTE" means the maximum amount for which Contractor has agreed to provide services in connection with a Project or LOA.

2.16. "Parties" means all the entities set out in the Preamble who are bound by this Agreement.

2.17. "Project" means the services to be performed by Contractor or products to be provided to City as authorized by individual Letters of Authorization in accordance with this Agreement. The work or purchase of products described in each Letter of Authorization is an individual Project.

2.18. "Service(s)" is defined in Section 3.1 of this Agreement.

2.19. "Writing" or "written" shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

3. DUTIES OF CONTRACTOR

3.1. Scope of Services

3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide to City all software licenses, hardware, support, maintenance, and all labor, material, and supervision necessary to perform the professional services described in **Exhibit A** (collectively "Services" or singularly, "Service") in accordance with this Agreement and any other City signed and authorized statements of work, LOAs, project plans, and like writings.

3.1.2. If adequate funds are available under 4.1 and if the Director provides Contractor with specific, written authorization, including but not limited to a LOA, Contractor shall provide the Services set forth and in accordance with **Exhibit A**. The City

shall pay Contractor for the Services at the prices set out in **Exhibit B** in accordance with Section 4.3.

3.2. Access

3.2.1. At all times, during and after the Term of this Agreement, Contractor shall not lock, suspend, or disable any software, hardware, storage means, or City's local copy or database; interfere with, cancel, or restrict the City's access to and continuous use of the software, hardware, storage means, or make the City's local copy or database inaccessible to the City.

3.3. Software Restrictions

3.3.1. The City may duplicate any software or any part thereof for the purposes of system backup, testing, maintenance, or recovery. The City may duplicate the Documents for internal use.

3.4. Coordinate Performance

3.4.1. Contractor shall coordinate its performance with the Director and other persons that the Director designates.

3.4.2. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.5. Schedule of Performance

3.5.1. Time of Performance.

3.5.1.1. Contractor shall begin and complete its obligation in accordance with the detailed project schedule developed after the Countersignature Date and/or in accordance with any City signed and authorized statements of work, LOAs, project plans, and like writings under this Agreement. Contractor shall perform its obligations under this Agreement diligently.

3.5.2. Extension.

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

3.5.2.2. 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 90 calendar days. The

extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.6. Reports

3.6.1. Contractor shall submit all reports and progress updates required by the Director.

3.7. Prompt Payment of Subcontractors

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

3.8. Personnel of Contractor

3.8.1. Contractor shall make citizen and City personnel satisfaction a priority in providing services under this Agreement. Contractor shall train its employees and personnel to be customer service-oriented and to positively and politely interact with citizens and City personnel 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, if the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens and City personnel, the Director shall direct Contractor to take all remedial steps to conform to these standards. Contractor shall replace any of its personnel or subcontractors assigned to a Project whose work product is deemed unsatisfactory by the Director.

3.9. RELEASE

3.9.1. 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.

3.10. <u>INDEMNIFICATION</u>

3.10.1. 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:

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

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

(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.

3.11. <u>INTELLECTUAL PROPERTY INDEMNIFICATION</u>

3.11.1. **CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER**

DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

3.11.3. **WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE CITY FOR THE PURCHASE PRICE OF THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS AS AGREED UPON UNDER THIS AGREEMENT, INCLUDING ANY LOA ISSUED UNDER THE AGREEMENT.**

3.12. <u>SUBCONTRACTOR'S INDEMNITY</u>

3.12.1. . 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.

3.13. <u>INDEMNIFICATION PROCEDURES</u>

3.13.1. *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:

3.13.1.1. a description of the indemnification event in reasonable detail,

3.13.1.2. the basis on which indemnification may be due, an

3.13.1.3. 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.

3.13.2. *Defense of Claims*

3.13.2.1. 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. Contractor shall then control the defense and any negotiations to settle the claim. 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.

3.13.2.2. Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel, at the City's sole expense, to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, and (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.14. Insurance

3.14.1. *Risks and Limits of Liability*. Contractor shall maintain the following coverage and limits of liability:

Commercial General Liability insurance including Contractual Liability insurance	$1,000,000.00 per occurrence; $2,000,000.00 aggregate
Worker's Compensation including Broad Form All States endorsement	Statutory amount
Professional Liability	$1,000,000.00 per claim/aggregate
Automobile Liability insurance	$1,000,000.00 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Employer's Liability	Bodily Injury by Accident $500,000.00 (each accident); Bodily Injury by Disease $500,000.00 (policy limit); Bodily Injury by Disease $500,000.00 (each employee)
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	$1,000,000.00
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.14.2. 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 (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed $100,000.00 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 $500,000.00 per claim.

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

3.14.4. *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. Contactor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies, except professional liability, must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this 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.

3.14.5. *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.

3.14.6. *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.

3.15. <u>Warranties</u>

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

3.15.2. Contractor's performance shall conform to industry standards with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement. Upon the Director's request, Contractor shall promptly re-perform or re-provide, at no charge to the City, any services or products that fail to reasonably conform to the warranty contained in this section.

3.15.3. If the Services do not perform as warrantied (a "Non-Conformity"), Contractor shall correct the Non-Conformity in accordance with this paragraph within a reasonable period of time not to exceed three (3) days from the date Contractor discovers the Non-Conformity or receives notice from the City of the Non-Conformity, whichever is earlier. Contractor acknowledges that time is of the essence. Contractor shall undertake to correct or repair at no cost to City such Non-Conformity in the Services, or if correction or repair is not reasonably possible and the Director approves, Contractor shall replace, free of charge, the applicable Services. If neither of the foregoing is commercially practicable, the Director may terminate this Agreement and within thirty (30) days of termination, Contractor shall provide the City with a refund of the entire dollar amount paid by the City to Contractor.

3.15.4. With respect to any parts and goods it furnishes, Contractor warrants:

(1) that all items are free of defects in title, design, material, and workmanship,

(2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

(3) that each replacement item is new, in accordance with original equipment

manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

(4) that no item or its use infringes any patent, copyright, or proprietary right.

3.15.5. All Services shall undergo inspection and Acceptance by the Director. City may submit written notification of defects or Non-Conformities at least up to one year after Acceptance of a specific Service(s) provided under a LOA (or longer if provided under a LOA issued under this Agreement).

3.15.6. Any Services corrected or re-performed by the Contractor shall be subject to this Section 3.15 (Warranties) to the same extent as Services initially provided. If the Contractor fails to or refuses to correct or re-perform to Director's satisfaction, the City may in its sole discretion, by contract or otherwise, correct or replace with similar services or products and charge to the Contractor the cost to the City for the correction or replacement.

3.15.7. *[Other warranties to be negotiated and inserted.]*

3.16. Confidentiality, Data Security and Liability for Loss or Corruption of Data

3.16.1. *Confidentiality.*

3.16.1.1. Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, user information, data, materials, processes, and documents that they receive, or to which they have access (collectively, the "Information"), 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. The placement of a copyright notice on any Information will not be construed to mean that such information has been published and will not release Contractor from its obligation of confidentiality hereunder. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any reason.

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

to the extent applicable unless otherwise directed by the Director:

3.16.1.2.1. deliver the City's Information (in whole or in part, as directed by the Director) and physical media owned or provided by the City to the Director, in the format and on the media requested by the Director;

3.16.1.2.2. destroy the City's Information (in whole or in part, as directed by the Director) and provide a notarized statement of destruction to the Director;

3.16.1.2.3. destroy physical media using secure methods;

3.16.1.2.4. remove the City's Information (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository or storage means; or

3.16.1.2.5. retain the City's Information (in whole or in part, as directed by the Director) and migrate the designated information to a mutually agreed upon, secure location, database, or storage device for storage and retention of City Information.

3.16.2. *Data Security*.

3.16.2.1. Contractor will maintain the security of all City Information, including but not limited to all City-specific data, employee data, user data, and any other data that was provided to Contractor or that Contractor generates, creates, or analyzes for the City. Contractor shall continuously audit its controls designed to (i) protect the security of City Information and City data and (ii) record and monitor any software or hardware provided to City. Contractor shall regularly test and audit the systems, controls, and procedures outlined in this Section 3.17, which tests and audits shall occur at least once per calendar month. Contractor shall implement and maintain reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) protect and safeguard the privacy, security, integrity, and confidentiality of the City's Information and City data, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City's Information and city data, and (iii) ensure that the city's Information is not accessed, processed, stored, transmitted, transferred, copied, disposed of, archived or disclosed contrary to the provisions of this Agreement or applicable laws concerning information technology security, network or date security, and privacy laws. At a minimum, Contractor shall develop, implement, and maintain a reasonable written security program that includes appropriate administrative, technical, organization, and physical safeguards and security measures that (i) maintain user identification and access controls

designed to limit access to authorized users, (ii) protect the city's information from authorized activity, (iii) use encryption technology, and (iv) comply with any specifications as requested by the City. Contractor shall be responsible and liable for the acts and omissions of contractor's personnel, temporary employees, agents, and subcontractors in connection with the provisions of the services required under this Agreement, as if such acts or omissions were contractor's acts or missions. With respect to any of Contractor's personnel, temporary employees, agents, and subcontractors who process, store, transmit, access, dispose of, or have access to the City's Information, City data, or the software or hardware in so far as it relates to Contractor's performance of this Agreement, Contractor shall:

3.16.2.1.1. Advise these persons of and require that they comply with the provisions of this Agreement applicable to each person, including without limitation, the provisions relating to the privacy, security, integrity, and confidentiality of the City's Information and City data;

3.16.2.1.2. Require these persons to execute and deliver to Contractor written agreements that are a direct flow-down of, or substantially similar to (or no less restrictive than) the terms of this Agreement, including without limitation, with respect to privacy, security, integrity, and confidentiality of the City's Information and City data; and

3.16.2.1.3. With respect to Contractor's personnel with access to the City's physical property or premises, Contractor shall advise these persons of applicable visitor policies and require that they comply with them and only access authorized areas.

3.16.2.1.4. Pursuant to this Agreement, Contractor shall be responsible for any fraudulent or dishonest acts committed by Contractor's employees, personnel, temporary employees, agents, subcontractors, directors, or officers

3.16.2.2. United States Restriction. Contractor shall ensure that, at all times, all of the City data shall remain in networks, systems, facilities, data centers, gateways, hosting facilities, and cloud facilities physically located solely in the continental United States. Contractor shall not transmit, disclose, have access to, or process City data or City Information outside of the continental United States. At all times, Contractor shall provide support calls from within the boundaries of the continental United States.

3.16.2.3. SSAE 18 Compliance. Contractor shall maintain an information security program that provides for the security and protection of the City data, including, but not limited to, processes and procedures to respond to security incidents. Contractor will operate in conformance with the physical, technical, operational and administrative measures and

protocols regarding data security as set forth in its then current Standards for Attestation Engagements ("SSAE") No. 18 SOC2 Report (or equivalent report), received from its third-party auditors. Contractor will, upon written request, provide City with copies of then-current SSAE No. 18 report issued by its third party independent auditors in relation to the data security policies and procedures designed to meet the requirements set forth in this Agreement.

3.16.2.4. <u>Data Breach.</u> If Contractor learns that any person (including Contractor personnel and third parties) has gained unauthorized access to City data or City Information, or any person has gained unauthorized access to Contractor's network and/or data storage facilities such that any City data or City Information is obtained by an outside party, or the City data or City Information has otherwise been disclosed to unauthorized parties in connection with this Agreement (other than in the proper performance of those services or support therefor), (each an "Incident"), then Contractor shall promptly (within 48 hours) (i) notify the City Attorney and Director in writing of the nature and extent of the Incident; (ii) conduct an investigation to determine when and, if possible, how the Incident occurred, and then (iii) reasonably assist the City in investigating and assessing the extent and nature of the Incident; (iv) use all reasonable endeavors to promptly remedy the Incident and prevent the occurrence of any similar Incident; and (v) inform the City upon request as to the current status of such endeavors. Contractor shall be liable for such data breach or unauthorized access, including but not limited to, any related costs or expense and any notification required by law or regulation.

3.16.3. *Liability for Loss or Corruption of Data*.

3.16.3.1. If as a result of Contractor's negligence, any City data is lost or corrupted, Contractor shall restore the data to the previous day's uncorrupted state. Loss or corrupted data means data that is inaccessible, and not merely one that contains inaccurate data due to service defects or other reasons.

3.16.3.2. Contractor shall maintain and implement disaster recovery and avoiding procedures to ensure that the Services provided by Contractor are not interrupted during any disaster and the City's Information or City data (including but not limited to user data) is not lost or destroyed during any disaster. For any of the City's Information or City data (including but not limited to user data) that is managed, maintained, stored, or hosted by or on behalf of Contractor, Contractor shall execute nightly database or systems backups to a backup server

3.17. <u>Work Products and Ownership</u>

3.17.1. The City expressly acknowledges that all copies of off-the-shelf software (expressly excluding any customized or custom software or work product) and

Documents in any form provided by Contractor to the City under this Agreement are the sole property of Contractor and/or its suppliers, and that the City shall not have any right, title, or interest to any such Software (expressly excluding any customized or custom software or work product and expressly excluding Equipment) and except as provided, authorized, or acquired in or under this Agreement.

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

3.17.3. Subject to Section 3.17.3, Contractor hereby irrevocably transfers, conveys and assigns to the City and its successors, licensees, and assigns, its entire right, title, interest and full ownership worldwide in and to any work, invention, creation, data, discovery, and all documents, and the copyrights, patents, trademarks, trade secrets, service marks, moral rights, all contract and licensing rights, and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known, and any other proprietary rights therein (collectively "Proprietary Rights") that Contractor, its agents, employees, contractors, and subcontractors (collectively "Authors") develop, write, create, invent, discover, compile, or produce under this Agreement or under or in connection with any LOA or Project (collectively "Works").

3.17.4. In the event Contractor has any rights in the Works which cannot be assigned, Contractor shall and does hereby waive enforcement worldwide of the rights against City, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to City with the right to sublicense. These rights are assignable by the City. The Authors shall not claim or exercise any Proprietary Rights related to the Works unless agreed and specified in the LOA under which the Works are developed. If requested by the Director or the City Attorney, Contractor shall place a conspicuous notation on any Works, which states that the City owns the Proprietary Rights.

3.17.5. Contractor shall execute (and cause Authors to execute) all documents and perform all necessary steps required by the Director City Attorney to allow the Director and City Attorney to establish and demonstrate ownership of the Works and to further evidence this assignment and ownership. Contractor shall cooperate with the City in registering, prosecuting, creating, and enforcing Proprietary Rights arising under this Agreement. On termination or expiration of this Agreement, or if requested by the Director or the City Attorney, Contractor shall deliver all Works to the Director or the City Attorney at the Contractor's expense. Contractor shall obtain written agreements from the Authors that bind the Authors to the terms in this Section, including without limitation, the assignment of all Works by Contractor (and Authors) to City which are created under, for, or in connection to this Agreement, LOA, or Project.

3.17.6. The Works and all rights are being sold in their entirety to the City and do not constitute a mere license or franchise to the City. On termination of this Agreement, and without regard to whether the Works are completed, Contractor shall deliver all Works to the City.

3.17.7. All Works developed, written, or produced under this Agreement for use as a contribution to a collective work; a part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; or an atlas, shall be deemed to be "works made for hire" under 17 U.S.C. §§101 and 201, as amended from time to time. Contractor acknowledges and agrees that all Information, Documents, and Works performed under or pursuant to an LOA in connection with this Agreement shall be deemed "works made for hire." To the extent that title to the Works or any portion of the Works may not, by operation of law, vest in the City or the Works or any portion of the Works may not be considered "works made for hire", Contractor hereby irrevocably assigns, conveys, and transfers to City and its successors, licensees, and assigns, all rights, title, and interest worldwide in and to the Works and all Proprietary Rights.

3.17.8. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors performing work under this Agreement which bind them to the terms in this Section.

3.17.9. Contractor may retain copies of the Works for its archival purposes only. Contractor shall not otherwise use, sell, license, distribute, reproduce, publish, commercialize, or market the Works without the express written permission of the City. If such permission is agreed to by the Director, such express written permission shall be given by the City in a separate agreement between the City and Contractor.

3.18. <u>Licenses and Permits</u>

3.18.1. Contractor shall obtain, maintain, and pay for all licenses, approvals, consents,

permits, and certificates required to provide the Services, including all professional licenses required by any statute, ordinance, rule, or regulation (collectively "Licenses"). Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against its Licenses.

3.19. Compliance with Laws

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

3.19.2. In anticipation of the City's potential use or application for reimbursement of restricted federal funds to pay for some or all of the services provided under this Agreement and any change orders, Exhibits F, G and H are incorporated into this Agreement. The parties agree to take such action as is necessary to amend this this Agreement, if the Director determines that any state or federal laws and regulations and grant requirements in connection with federal funding to be used to pay for some or all of the services provided under this Agreement and any change orders. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the applicable state and federal laws and regulations and grant requirements.

3.19.3. Contractor understands that in certain situations access to information or systems may be restricted by law. Contractor represents and warrants that it has read the Criminal Justice Information Systems ("CJIS") process and related documents located at http://www.housotntx.gov/poic/cjis/hpdvendorcertification.htm and shall comply with the terms and requirements in these documents and with all applicable state and federal laws.

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

3.20. Compliance with Equal Opportunity Ordinance

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

3.21. Drug Abuse Detection and Deterrence

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

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

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

3.21.2.2. the Drug Policy Compliance Agreement substantially in the form set forth in **Exhibit C**, together with a written designation of all safety impact positions and,

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

3.21.3. 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.

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

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

3.22. Minority and Women Business Enterprises

3.22.1. In its performance under this Agreement, Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall

make good faith efforts to award subcontracts or supply agreements in at least **0 %** of the value of this Agreement to MWBEs. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunities ("OBO") and will comply with them.

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

3.22.2.1. ____________________________ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("the Director").

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

3.22.2.3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

3.22.2.4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.23. Conflicts of Interest

3.23.1. If an actual or potential conflict arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director by email or telephone. If the Director consents to Contractor's continued representation of the other clients, the Director 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.

3.24. Pay or Play

3.24.1. 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.

3.25. Compliance with Certain State Law Requirements

3.25.1. *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.

3.25.2. *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.

3.25.3. *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.

3.25.4. *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.

3.25.5. *Certification of No Business with Foreign-Owned Companies in Connection with Critical Infrastructure*. For purposes of Section 2274.0102 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 is owned by or the majority of stock or other ownership interest of the company is held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this section, “designated country” means a country designated bv the Governor of the State of Texas under Section 2774.0103 of the Texas Government Code.

3.26. Zero Tolerance Policy for Human Trafficking and Related Activities

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

3.27. Preservation of Contracting Information

3.27.1. 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.

3.27.2. 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.

3.28. Quantities Not Guaranteed

3.28.1. Contractor understands, acknowledges, and agrees that the City does not guarantee any particular quantity of Services during the Term of this Agreement. The quantities may vary depending on the actual needs to the City and City shall not be liable for any third party obligations Contractor enters into regarding this Agreement.

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

3.28.3. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of Services will be procured or purchased from Contractor through this Agreement or any LOA; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any LOA.

4. DUTIES OF THE CITY

4.1. Payment Terms

4.1.1. Upon Acceptance and approval of the Service(s) provided under a Project or LOA, the City shall pay Contractor and Contractor shall accept the pricing and rates set out and in accordance with **Exhibit B** (Pricing and Rate Card), subject to allocation of funds set out in Section 4.5.

4.1.2. Unless otherwise provided under a LOA, any expenses related to travel will be the responsibility of the Contractor and City shall not reimburse Contractor for any travel-related expenses. In the event a LOA requires travel, Director must approve all travel costs before Contractor incurs them. The compensation for travel shall not exceed the amounts established under the City's then-current travel reimbursement policy for its employees and must be reasonably necessary to accomplish a task in connection with the LOA. The compensation for travel shall never exceed this agreed-upon maximum amount. Travel costs are the actual expenditures Contractor and its subcontractors make while performing services for the project requested by the Director.

4.2. Taxes

4.2.1. 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.

4.3. Method of Payment

4.3.1. The City shall pay fees to Contractor as specified in this Agreement for all products and services provided and rendered by Contractor in accordance with the terms and conditions of this Agreement and the prices and rates set out in **Exhibit B** (Pricing and Rate Card) of this Agreement **ALL PAYMENTS SHALL ONLY BE MADE FROM ALLOCATED FUNDS, AS PROVIDED IN SECTION 4.5** The City shall pay invoices submitted by Contractor and approved by the Director, showing the services performed or products provided. The City shall pay within 30 days of the approval of the invoices.

4.3.2. Contractor shall perform or provide Services in response to an LOA signed by Contractor and the Director. The method of payment will be specified in each LOA and may be (a) Time and Materials Based or (b) a Fixed Lump Sum with a Not to Exceed amount. The amount of partial payment due for services performed during the period covered by the invoice may be either: (a) a percentage of the Fixed Lump Sum fee equal to the percentage of Services performed on each LOA or (b) milestone or deliverables based payment amounts as set forth in a payment schedule attached to or incorporated in the individual LOA. Before Contractor commences any work, performs any Services, or provides products under any LOA, the Director and Contractor shall mutually agree, in writing, upon a payment method, partial payment amounts, if any, and a payment schedule.

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

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

4.3.3.2. The percentage of the total services completed for each LOA in the preceding month;

4.3.3.3. A summary of the services performed, deliverables provided, and milestones reached for each LOA during the period covered by the invoice;

4.3.3.4. The amount due for the services;

4.3.3.5. The amount of any applicable credits or refunds; and

4.3.3.6. Any other information or supporting documentation required by the Director.

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

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

4.3.4.2. A detailed description of the work performed;

4.3.4.3. The billing rate and number of hours worked, delineated by labor category, for each of Contractor's employees or personnel who worked on each LOA during the invoice period. The supporting documentation must include each personnel's or employee's name, labor category, billing rate, and hours expended. At the Director's sole discretion, supporting documentation may also include copies of original detailed timecards and hourly reports that Contractor certifies are true and accurate copies;

4.3.4.4. Itemized Reimbursable Expenses with receipts and the supporting documentation required by this Agreement, an LOA, or as requested by the Director;

4.3.4.5. Subcontract cost, including a copy of the subcontractor's actual invoice and supporting documentation for subcontractor's itemized Reimbursable Expenses.

4.3.4.6. The amount due for the services;

4.3.4.7. The amount of any applicable credits or refunds; and

4.3.4.8. Any other information or supporting documentation required by the Director.

4.4. Disputed Payments

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

4.5. Limit of Appropriation

4.5.1. The City's duty to pay money to Contractor for any purpose under this Contract is limited in its entirety by the provisions of this Section.

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

4.5.3. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

$ _____________

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

4.6. Suspension of Performance

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

4.7. Changes

4.7.1. At any time during the Agreement Term, the Director and Contractor may agree to and the Director may issue change orders to increase or decrease the scope of Service(s), including adding or deleting like or similar equipment, supplies, locations and/or services to the list of equipment, supplies, locations, and/or services provided under this Agreement or change plans and specifications, asthe Director may find necessary to accomplish the general purposes of this Agreement (collectively "Change Orders" or singularly, "Change Order"). Contractor shall furnish the Service(s) or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.

4.7.2. The Director will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

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

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

Signed:

[Signature of Director]

4.7.3. The Director may issue more than one Change Order, subject to the following limitations:

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

4.7.3.2. 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.

4.7.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25% unless: (1) the additions are exempt from the competitive bidding or proposal requirements, set forth in Texas Local Government Code Chapter 252; or (2) the City acquires the additions from Contractor through a competitive bid or competitive proposal.

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

4.7.5. 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 Agreement as if it had originally been a part of the Agreement, including without limitation, at the pricing and rates provided **Exhibit B** of this Agreement.

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

4.8. Access to Data

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

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

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

4.9. Access to Site

4.9.1. 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 services and any installations together with all

facilities, equipment, improvements, and services provided in connection with the premises for common use. This excludes parking for Contractor's personnel. Contractor shall repair any damage caused by it or its employees as a result of its use of the common areas.

4.10. Re-appropriation of Budget Items

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

4.11. Early Payment

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

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

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

5. TERM AND TERMINATION

5.1. Term

5.1.1. This Agreement is effective on Countersignature Date, and shall remain in effect for two (2) years from the Countersignature Date ("Initial Term"), unless sooner terminated under the provisions of this Agreement.

5.2. Renewal

5.2.1. Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for three (3) one (1) year terms on the same terms and conditions. If the Director or the City chooses not to renew this Agreement, the Director shall notify Contractor and the CPO of non-renewal at least 30 days before the expiration of the then-current term.

5.3. <u>Termination for Convenience by the City</u>

5.3.1. The Director may terminate this Agreement or any LOA executed under this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this Agreement or any LOA executed under this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement or any LOA executed under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement or any LOA executed under 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 or any LOA executed under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section 4.3 unless the fees exceed the allocated funds remaining under this Agreement or any LOA executed under this Agreement.

5.3.3. RECEIPT OF PAYMENT FOR SERVICES RENDERED IS CONTRACTOR'S ONLY REMEDY FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT OR ANY LOA EXECUTED UNDER 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.

5.4. <u>Termination for Cause by City</u>

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

5.4.1.1. Contractor fails to perform any of its duties under this Contract;
5.4.1.2. Contractor becomes insolvent;
5.4.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
5.4.1.4. a receiver or trustee is appointed for Contractor.

5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his or her sole option, may extend the termination date to a later date. If the Director

allows Contractor to cure the default and Contractor does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement or any LOA executed under this Agreement on the termination date, at no further obligation of the City.

5.4.3. To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement or any LOA executed under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement or any LOA executed under this Agreement.

5.4.4. In the event of termination or expiration, whichever is earlier, Contractor shall transfer all City information, all City data, including but not limited to City-specific data Works, and any other Work product created under this Agreement or any LOA executed under this Agreement to the City within ninety days.

6. MISCELLANEOUS

6.1. Independent Contractor

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

6.2. Force Majeure

6.2.1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or 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.

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

6.2.3. 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.

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

6.2.5. If the Force Majeure continues for more than 14 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.**

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

6.3. Severability

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

6.4. Entire Agreement

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

6.5. Written Amendment

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

6.6. Governing Law and Venue

6.6.1. This Agreement 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.

6.7. Notices

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

6.8. Captions

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

6.9. Non-Waiver

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

6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of 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, (1) audits of Contractor's books and records that are related to any aspect of this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least five years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.10.2. During the Term of this Agreement, the City or its designee is permitted to perform audits of Contractor's environment and the locations where the City's Information is stored, hosted, or resides, as it relates to the receipt, maintenance, use, retention,

and protection of the City's Information. Within reasonable timeframes, Contractor shall comply with all reasonable recommendations that request from such inspections, test, and audits.

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, data security and liability, and confidentiality 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. Risk of Loss

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

6.16. Acceptance and Approvals

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

6.17. Parties in Interest

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

6.18. Successors and Assigns

6.18.1. 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.

6.19. Business Structure and Assignments

6.19.1. 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, which shall not be unreasonably withheld. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

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

6.20. Dispute Resolution

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

6.20.1.1. The Project Administrator shall put its decision in working and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director

6.20.1.2. If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 7 working days following receipt of the Project Administrator's original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

6.21. Remedies Cumulative

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

6.22. CONTRACTOR DEBT

6.22.1. 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, THE CITY CONTROLLER SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

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EXHIBIT A
SCOPE OF SERVICES

{To be negotiated and inserted separately]

EXHIBIT B
PRICING AND RATE CARD

{To be negotiated and inserted separately]

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

EXHIBIT C
DRUG POLICY COMPLIANCE AGREEMENT

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

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

______________ ________________________
(Date) (Typed or Printed Name)

____
(Signature)

____
(Title)

EXHIBIT E
DRUG POLICY COMPLIANCE DECLARATION

I, ________________________________ as an owner or officer of
(Name) (Print/Type) (Title)
____ (Contractor)
(Name of Company)

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

This reporting period covers the preceding 6 months from ___________ to _____________.

_______ 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, 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__________________________.

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

	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
FEDERAL PROVISIONS

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 2 C.F.R. part 200, 45 C.F.R. part 75, the HHS Grants Policy Statement found at http://www.ahrq.gov/fund/hhspolicy.htm, the CDC's General Terms and Conditions found at https://www.cdc.gov/grants/documents/General-Terms-and-Conditions-Non-Research-Awards.pdf, the HHS laboratory guidance found at https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance, any specific terms and condition, guidances, or websites required by the Director, and any specific terms and conditions set forth in the grant as specified by the Director("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, including but not limited to 2 C.F.R. Part 200 and 45 C.F.R. Part 75. 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, 45 C.F.R. Part 75, and other 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, (2 C.F.R. Part 200, Subpart F and 45 C.F.R. Part 75, Subpart F) shall apply to this award.

b. Universal Identifier and System for Award Management (SAM), 45 C.F.R. §75.300 and 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, LOA, 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.

6. 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 Purchasing Agent/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.

7. 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 paragraph (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 paragraph (b) of this section.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (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 paragraphs (a) through (d) of this section.

8. 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

paragraph (a) and the provisions of paragraphs (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.

9. 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.

10. 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.

11. 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 paragraph (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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of $2,000.00 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY AMERICAN RESCUE PLAN ACT FUNDS:

In addition to the General Federal Requirements listed above, if this Agreement is funded using Coronavirus Local Fiscal Recovery Funds (“CLFRF Fund”), which were established by the American Rescue Plan Act of 2021, Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the American Rescue Plan Act of 2021,

including but not limited to the requirements listed below, and these requirements will flow down to any agreements Contractor enters into with other parties relating to these funds.

1. Civil Rights Compliance. Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:

   - Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part l, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
   - Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
   - Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
   - Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
   - The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
   - Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
   - "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.
   - The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
   - By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS:

In addition to the General Federal Requirements listed above, if this Agreement is funded using funds from the U.S. Department of Housing and Urban Development ("HUD"), Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the respective HUD program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and these requirements will flow down to any agreements Contractor enters into with other parties relating to these funds.

1. Civil Rights Compliance. Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:

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

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

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

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

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

   f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and

g. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.

h. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);

i. By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system

2. National Flood Insurance Program.

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

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

3. Displacement, Relocation, Acquisition and Replacement of Housing

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

4. Section 3 of the Housing and Urban Development Act of 1968

a. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90–448, 82 Stat. 476 (codified as amended at 12 U.S.C. 1701u) and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon any Contractors, subrecipients, and

subcontractors. Failure to fulfill these requirements shall subject any Contractors, subrecipients, and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which Federal assistance is provided.

b. Contractors agree to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is subject to the requirements of Section 3 of the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 75 apply to the Agreement. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations")."

c. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").

d. Contractor agrees to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Contract, the Contractor certifies that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.

e. Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.

f. Contractor will include or have included a Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontractor in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.

g. The Contractor will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the Agreements executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under Section 3 Regulations

h. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

5. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.

6. Uniform Administrative Requirements, Cost Principles and Audit Requirements. Contractor shall comply with "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as set forth under 2 C.F.R. Part 200, as applicable.

7. Conflict of Interest

a. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.

b. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).

i. No persons described in paragraph (ii) (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a

personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.

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

8. Eligibility of Aliens Not Lawfully Present in U.S. Contractor understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.

9. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 10119.6, for general type buildings).

10. Records for Audit Purposes. Without limitation to any other provision of the foregoing Agreement/Contract, Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 C.F.R. §200.333. Contractor shall maintain records required by 24 C.F.R. §135.92 for the period required under 2 C.F.R. §200.333. Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.

11. Audit Requirements.

a. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than $750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as

described hereinabove at Section 17. Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than $750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.

b. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend $750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements. Once the Agreement is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

12. Rights to Inventions made under a Contract or Agreement. If the Federal award meets the definition of ‘‘funding agreement’’ under 37 C.F.R. §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ‘‘funding agreement,’’ the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, ‘‘Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,’’ and any implementing regulations issued by the awarding agency.

13. Energy Policy and Conservation Act. Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

14. Procurement of Recovered Materials. See 2 C.F.R. §200.322.

15. Contractor shall not use HUD seal(s), logos, crests, or reproductions of flags or likenesses of HUD agency officials without specific the HUD’s written pre-approval.

SIGNATURE. Contractor executes this Exhibit to confirm compliance with the above requirements.

____

Company Name

____

Name and Title

____

Signature

____

Date

EXHIBIT G
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 H
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