

PROFESSIONAL SERVICES AGREEMENT

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

I. PARTIES

A. **Address**

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

<u>City</u>	<u>Contractor</u>
City of Houston	_____
Director, _____	_____
Attention: _____	_____
_____	_____
Houston, Texas _____	_____

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- Exhibit A – Scope of Services/Specifications
- Exhibit B – Fee Schedule and Rate Card for Additional Professional Services
- Exhibit C – Drug Policy Compliance Agreement
- Exhibit D – Certification of No Safety Impact Positions in Performance of a City Contract
- Exhibit E – Drug Policy Compliance Declaration
- Exhibit F – Federal Provisions

C. **Parts Incorporated**

The above described exhibits are incorporated into this Agreement.

D. **Controlling Parts**

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

E. **Signatures**

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

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

[CONTRACTOR]

By: _____
Name:
Title:

By: _____
Name:
Title:
Tax ID:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director of _____

City Controller

Chief Procurement Officer

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Assistant City Attorney II
L.D. File No.

II. DEFINITIONS

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

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

B. “City” is defined in the preamble of this Agreement and includes its successors and assigns.

C. “City Attorney” means the City Attorney of the City of Houston or the person he/she designates.

D. “City Information” or “Information” is defined in Section III.O of this Agreement.

E. “Chief Procurement Officer” (CPO) is the Chief Procurement Officer for the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.

F. “Contractor” is defined in the preamble of this Agreement and includes its successors and assigns.

G. “Countersignature Date” means the date shown as the date countersigned by the City Controller on the signature page of this Agreement.

H. “Director” means the Director of the Department of the Houston Airport System, or the person he or she designates.

I. “Documents” or “Contract Documents” mean the scope, specifications, notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, documentation, how-to guides, user guides, help files, instructions, and other work products in any format, including paper, electronic, or digital format (and any modifications, enhancements, or improvements to them) that Contractor prepares or provides under this Agreement or in connection with this Agreement.

J. “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.

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

L. “Parties” mean all the entities set out in the Preamble who are bound by this Agreement and includes the terms “Consultant” and “Contractor”.

M. “Reimbursable Expenses” means (i) upon prior written approval of the Director, the ordinary and reasonable costs of travel to and from the City of Houston by Contractor’s employees

or subcontractors, not to exceed the amount established under the City's then-current travel reimbursement policy for its employees, including automobile mileage reimbursement, common carrier coach or economy fares, ground transportation expenses, and, for overnight trips, the cost of lodging and meals if such travel is reasonably necessary to accomplish a task directly related to the project, and reservations are made as far in advance as feasible; and (ii) sales tax related to Contractor's services under this Agreement which it is legally required to pay

N. "Software" means the parking reservation system as further described in Exhibit "A" of this Agreement, including without limitation, any associated databases, user interfaces, software components or modules, and any documentation and user guides created or owned by Contractor.

O. "Upgrades" means newer versions, new releases, improvements, software fixes, maintenance item, refreshes, updates, upgrades, modifications, customizations, enhancements, corrections, installation of patches, or other changes that have been made by the developer, seller, manufacturer, or licensor to the Software. The exterior form of the Upgrades may be reflected by changes to the version numbers

P. "Works" means as defined in Section III.P of this Agreement.

Scope of Services

The Scope of Services is set out in Exhibit "A" (Scope/Specifications). Contractor shall provide to City services in accordance with this Agreement, Exhibit "A" and any other City signed and authorized statements of work, LOAs, project plans, and like writings (collectively, "Services"). Contractor shall provide all labor, materials, and supervision necessary to perform the services under this Agreement.

III. DUTIES OF CONTRACTOR

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

(2) Consultant shall provide all Upgrades with respect to the Software, hosting, maintenance, support, training, or professional services and as specified under this Agreement. Contractor shall maintain the Software so that remote access and use by the City (and its end users) is available at all times. Contractor shall implement commercially reasonable procedures regarding application management, load balancing, back-up, recovery, and file and disk space utilization management, to ensure that the City can access the most recent Upgrades of the Software or that the Software may be reinstalled without undue delay. The Contractor Software shall be capable of continuous operation ninety-nine point nine-nine percent (99.99%) of the time, other than for scheduled interruption due to service maintenance and upgrades, such scheduled interruption due to service maintenance and upgrades performed only during non-business hours of _____. Contractor shall ensure the availability of qualified personnel at any and all times, ready to intervene to address any problems or inoperability of the Software, Equipment, documentation, and Documents, should the need arise.

(3) Contractor shall not lock, suspend, or disable the Software or the City's local copy or database (if applicable); interfere with, cancel, or restrict the City's (and its end users) access to and continuous use of the Software, or make the City's local copy or database inaccessible to the City and its end users (if applicable).

(4) The City may duplicate the Software or any part thereof for the purposes of system backup, testing, maintenance, or recovery. The City may duplicate the Documents and documentation for any use, including but not limited to, internal training.

(5) During the Term of this Agreement and any subsequent renewals or extensions, if Contractor replaces any of the Software, services, or Equipment named in this Agreement or the corresponding Exhibits and offers products performing the same functions, but using improved technology, then the newer product may be substituted upon written request by the Director. These substitutions may also be noted in any subsequent agreement renewal documents without necessitating an additional process, provided, however, that this clause shall not be construed to allow inclusion of any equipment model, product, software, or service that changes the scope of the intent, technical specifications, or applications described in this Agreement or the corresponding Exhibits.

(6) If adequate funds are available under Section ____ (Limit of Appropriations) and if the Director provides Contractor with specific, written authorization, including but not limited to a LOA, Contractor shall provide additional services ("Additional Service(s)"). Contractor shall work with City to give the City the best pricing, which shall not exceed current list pricing that is offered to others. The total charges for additions and deletions to this Agreement may not exceed 25% of the original Agreement amount unless the Additional Services are exempt from competitive bidding or proposal requirements set forth in Chapter 252 of the Local Government Code, or the City acquires the Additional Services from Contractor through competitive bids or proposals.

F. Coordinate Performance and Contractor's Personnel

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

G. **Reports and Meetings**

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

H. **Schedule of Performance**

Consultant shall begin and complete its obligations in accordance with the project schedule as specified in this Agreement or a detailed project schedule developed after the City and Contractor begins performance (whichever the Director desires) 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.

I. **Time Extensions**

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

F. **Pay or Play**

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

G. **Prompt Payment of Subcontractors**

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

H. **Personnel of Contractor**

Consultant 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 services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens or City personnel, he or she shall direct Contractor to take all remedial steps to conform to these standards. Contractor shall replace any of its personnel or subcontractors assigned to the project whose work product is deemed unsatisfactory by the Director.

I. **RELEASE AND INDEMNIFICATION**

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

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

- (a) CONTRACTOR’S AND/OR ITS AGENTS’, EMPLOYEES’, OFFICERS’, DIRECTORS’, CONTRACTORS’, OR SUBCONTRACTORS’ (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, “CONTRACTOR”) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (b) THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (c) THE CITY’S AND CONTRACTOR’S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

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

(3) CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY’S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, DOCUMENTATION, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, DOCUMENTATION, AND DOCUMENTS WITHOUT THE CITY’S PRIOR WRITTEN CONSENT. WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, DOCUMENTATION, AND DOCUMENTS OR, (2) IF BOTH PARTIES

AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, DOCUMENTATION, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.

J. INDEMNIFICATION - SUBCONTRACTOR'S INDEMNITY

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

K. INDEMNIFICATION PROCEDURES

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

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

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

(2) Defense of Claims

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

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

L. Insurance

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

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

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

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

(4) Required Coverage. The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to

claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion.

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

M. Intellectual Property Warranties

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

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

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

- (4) With respect to any parts and goods it furnishes, Contractor warrants:
- (a) that all items are free of defects in title, design, material, and workmanship,
 - (b) 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,
 - (c) 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
 - (d) that no item or its use infringes any patent, copyright, or proprietary right.

(5) All Services shall undergo inspection and Acceptance by the Director (or his/her designee). Acceptance means the act of an authorized representative of the City by which the City assumes for itself, approval of specific services or delivery of specific products, as partial or complete performance of the Agreement, project, LOA, work plans, or any other like document. City may submit written notification of defects or Non-Conformities at least up to one year after Acceptance of a specific Services provided.

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

N. Data Security and Liability for Loss or Corruption of Data

(1) Consultant shall maintain the security of all City data, including but not limited to, all City-specific data, user data, and any other data that is provided to Contractor by City or by any user, or that Contractor generates, creates, or analyzes for the City. 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 data security, and privacy laws. Contractor shall be responsible and liable for the acts and omissions of Contractor's personnel, temporary employees, agents, and subcontractors in connection with the provision of the services required under this Agreement, as if such acts or omissions were Contractor's acts or omissions. With respect to 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 in so far as it relates to Contractor's performance of this Agreement, Contractor shall:

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

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

(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 outside of the continental United States. At all times, Contractor shall provide support calls from within the boundaries of the continental United States.

(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.

(4) Data Breach. If Contractor learns that any person (including Contractor personnel and third parties) has gained unauthorized access to City data, or any person has gained unauthorized access to Contractor’s network and/or data storage facilities such that any City data is obtained by an outside party, or the City data 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.

(5) 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.

(6) 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.

O. Confidentiality - Protection of City’s Interest

Consultant, its agents, employees, consultants, and subcontractors shall hold all City information, user information, data, materials, processes, and documents (collectively, the “Information”) that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, consultants, 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, consultants, 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.

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:

- (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;
- (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) destroy physical media using secure methods;
- (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
- (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.

P. Information, Data, Work Products, and Ownership

(1) The City expressly acknowledges that all copies of off-the-shelf software (expressly excluding any customized or custom software or work product) 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 and except as provided, authorized, or acquired in or under this Agreement.

(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, documentation, 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-Consultant 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 and City-specific data for any other purposes other than what is expressly specified in this Agreement.

(3) Subject to Section III.P.(1), 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").

(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.

(5) Consultant 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. If Contractor's assistance is requested and rendered under this Section, the City shall reimburse Contractor for all out-of-pocket expenses it incurs in rendering assistance, **SUBJECT TO THE APPROPRIATION OF FUNDS**. 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.

(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.

(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.

(8) Consultant 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 unless otherwise already bound automatically as employees of Contractor.

(9) Consultant 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.

Q. Acceptance and Rejection

1. Consultant shall not be entitled to payment and the City shall have no duty to pay Contractor unless the Director has Accepted the Services and other Deliverables as set forth in Exhibit “A”.
2. Contractor shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in Exhibit A. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Contractor stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.
3. Notwithstanding anything to the contrary in Exhibit A or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in Exhibit “A”.
4. If the Director rejects any Services or other Deliverables, Contractor shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Agreement, at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Contractor shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.
5. Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Contractor, the Director may, in his sole discretion, issue a final rejection notice to Contractor for all Services and other Deliverables (whether or not previously Accepted), the City shall return all Equipment and Software to Contractor at no cost to the City, the City shall have no obligation to pay any amount whatsoever

under this Agreement, Contractor shall immediately refund any and all amounts paid by City under this Agreement, and this Agreement shall immediately terminate.

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

Q. Licenses and Permits

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

S. Compliance with Laws

Consultant shall comply with all applicable state and federal laws and regulations, including without limitation all export laws and regulations, and the City Charter and Code of Ordinances.

T. Compliance with Equal Opportunity Ordinance

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

U. Minority and Women Business Enterprises

MWBE COMPLIANCE

3.29.1. 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.

3.29.2. Consultant shall maintain records showing:

3.29.2.1. Subcontracts and supply agreements with Minority Business Enterprises,

3.29.2.2. Subcontracts and supply agreements with Women's Business Enterprises, and

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

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

3.29.4. Consultant shall require written subcontracts with all MWBE subcontractors and suppliers.

V. **Drug Abuse Detection and Deterrence**

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

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

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

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

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

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

W. **Environmental Laws**

Consultant 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.

X. **Conflicts of Interest**

If a potential or actual conflict of interests arises between the City's interests and the interests of other clients Contractor represents, Contractor shall immediately notify the City Attorney and Mayor by fax transmission or telephone and request consent. The City shall be deemed to consent to the conflict unless the Mayor or City Attorney sends a written notice that the City declines to consent within 3 business days after the City receives the notice. If the City does not consent, Contractor shall immediately take steps to resolve the conflict.

Y. **Pay or Play**

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

IV. DUTIES OF CITY

A. **Payment Terms**

Upon City's Acceptance and approval of the Service(s) provided under this Agreement, project, or LOA, the City shall pay to Contractor and Contractor shall accept the pricing and rates as set forth and in accordance with Exhibit "B, Fee Schedule and Rate Card for Additional Professional Services, subject to the Limit of Appropriations provision set out in this Agreement.

B. **Expenses and Reimbursement**

Unless otherwise expressly provided in a prior writing under a LOA (and in accordance with the paragraph below), any expenses related to travel will be the responsibility of the Contractor and City shall not reimburse Contractor for any travel-related expenses.

If the Director has agreed to in advance in writing to reimburse certain travel expenses, Contractor shall propose a maximum amount for each Reimbursable Expense at the time that services requiring such expenses are requested by the Director. The Director must approve Reimbursable Expenses before Contractor incurs them. The compensation for Reimbursable Expenses shall never exceed this agreed-upon maximum amount. Reimbursable Expenses are the actual expenditures Contractor and its subcontractors make while performing services for the Project requested by the Director. They include travel costs outside the City and its extraterritorial jurisdiction (not to exceed the amounts established under the City's then-current travel reimbursement policy for its employees), if reasonably necessary to accomplish a task in connection with the project, plus living expenses in connection with out-of-town travel, long distance communications, and fees paid for securing approval of authorities having jurisdiction over the project.

C. **Taxes**

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

D. **Method of Payment**

(1) The City shall pay fees to Contractor as specified herein for all products and services provided and rendered by Contractor in accordance with the terms and conditions of this Agreement and the prices and schedule as set out in Exhibit "B". **SUCH PAYMENT SHALL ONLY BE MADE FROM ALLOCATED FUNDS, as provided below.** The City shall pay invoices submitted by Contractor and approved by the Director or his or her designee, showing the services performed and the attendant fee, if applicable. The City shall pay Contractor within 30 days of the approval of the invoices.

(2) Consultant shall perform or provide Additional 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. Prior to Contractor commencing any work, performing any services, or providing products under any LOA, the Director and Contractor shall mutually agree, in writing, upon a payment method, partial payment amounts, if any, and a payment schedule.

(a) Fixed Lump Sum Services.

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

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

(3) Disputed Payments: 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.

E. Limit of Appropriation

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

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

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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

F. Suspension of Performance

The Director may suspend Contractor's performance under this Agreement (including any 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 or any project or LOA.

G. Changes

At any time during the Contract Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Contract.

Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Contract plus any special provisions, specifications, or special instructions issued to execute the extra work. Any Change to the scope of activities identified in Exhibit “A” shall be mutually agreed to prior to the issuance of a Change Order.

H. **Access to Site**

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

I. **Access to Data**

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

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

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

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

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

K. **Early Payment**

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

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

(2) If the City fails to make a payment according to the early payment schedule above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a

SAMPLE AGREEMENT – SUBJECT TO CHANGE

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.

SAMPLE

III. TERM AND TERMINATION

A. **Contract Term**

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

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

B. **Renewals**

Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for ___ additional one-year option years on the same terms and conditions. If the Director or the City chooses to not renew this Agreement, the Director shall notify Contractor of non-renewal at least 15 days before the expiration of the then-current term.

C. **Termination for Convenience by City**

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

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

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

D. Termination for Cause by City

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

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

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

E. Termination for Cause by Contractor

(1) This Agreement and the License granted under this Agreement remain in full force until Contractor terminates its performance as provided below:

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

F. Effect of Termination

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

IV. MISCELLANEOUS

A. Independent Contractor

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

B. Force Majeure

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

(2) This relief is not applicable unless the affected party does the following:

- (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- (b) provides the other party with prompt written notice of the cause and its anticipated effect.

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

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

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

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

C. **Severability**

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

D. **Entire Agreement**

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

E. **Written Amendment**

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.

F. **Applicable Laws**

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Agreement is Harris County, Texas.

G. **Notices**

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

H. **Captions**

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

I. **Non-Waiver**

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

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

J. **Inspections and Audits**

City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 5 years after this Agreement terminates. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

K. **Enforcement**

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

L. **Ambiguities**

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

M. **Survival**

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

N. **Publicity**

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

O. **Risk of Loss**

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

P. **Parties In Interest**

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

Q. **Successors and Assigns**

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

R. **Business Structure and Assignments**

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

S. **Dispute Resolution**

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

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

T. **Remedies Cumulative**

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

U. **CONSULTANT DEBT**

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

V. **Anti-Boycott of Israel**

Consultant 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.

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

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

X. **PERFORMANCE BOND**

Consultant shall furnish a performance bond for [\$-----] conditioned on Contractor's full and timely performance of the Agreement. The bond must be in a form as Exhibit J and approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000 the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury

Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

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SAMPLE

EXHIBIT “A”
SCOPE/SPECIFICATIONS

SAMPLE

**EXHIBIT “B”
FEE SCHEDULE AND RATE CARD FOR ADDITIONAL PROFESSIONAL SERVICES**

SAMPLE

EXHIBIT C

DRUG POLICY COMPLIANCE AGREEMENT

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

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Engineer 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 Engineers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

Date

Contractor Name

Signature

Title

EXHIBIT D

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

_____, _____
(Name) (Title)

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

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

in performing _____.
(Project)

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

(Date) (Typed or Printed Name)

(Signature)

(Title)

**EXHIBIT E
DRUG POLICY COMPLIANCE DECLARATION**

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

(Contractor)

(Name of Company)

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

This reporting period covers the preceding 6 months from _____ to _____, 20____.

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

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

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

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

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

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

SAMPLE

SAMPLE

EXHIBIT _F

FEDERAL CONTRACT PROVISIONS

NON-AIP FUNDED PROFESSIONAL SERVICES AGREEMENT

As used in this Exhibit, the term "contractor" or "Contractor" shall refer to Contractor. Contractor shall include the provisions of set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto.

I. GENERAL CIVIL RIGHTS PROVISIONS

Consultant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors/consultants from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

II. TITLE VI CLAUSES COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- 1. Compliance with Regulations:** The contractor (hereinafter includes Contractors) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the

SAMPLE AGREEMENT – SUBJECT TO CHANGE

Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

III. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include

SAMPLE AGREEMENT – SUBJECT TO CHANGE

all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

IV. FEDERAL FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

Consultant has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor — Wage and Hour Division.

V. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor — Occupational Safety and Health Administration.

VII. CLEAN AIR AND WATER POLLUTION CONTROL

Consultant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Contractor agrees to report any violation to the City immediately upon discovery. The City

SAMPLE AGREEMENT – SUBJECT TO CHANGE

assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceeds \$150,000.

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