

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

4600015127
2018-0894

OUTREACH, INTAKE AND CASE MANAGEMENT SERVICES AGREEMENT

The City and Contractor agree as follows:

1. PREAMBLE

1.1 Parties

1.1.1 This **OUTREACH, INTAKE AND CASE MANAGEMENT SERVICES AGREEMENT** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city, and **ICF INCORPORATED, L.L.C.** ("Contractor"). City and Contractor may be collectively referred to as the "Parties" and individually as a "Party".

1.2 Addresses

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

City
City of Houston
Housing and Community
Development Department
P.O. Box 1562
Houston, Texas 77251

Contractor
ICF Incorporated, L.L.C.
9300 Lee Highway
Fairfax, VA 22031
Email: Kevin.Berry@icf.com

1.3 Table of Contents.

1.3.1 This Agreement consists of the following sections:

	<u>Page</u>
1. PREAMBLE	1
1.1 Parties	1
1.2 Addresses.....	1
1.3 Table of Contents.....	2
1.4 Parts Incorporated.....	5
1.5 Controlling Parts.	5
1.6 Signatures.	6
2. DEFINITIONS	7
3. DUTIES OF CONTRACTOR	9
3.1 Scope of Services.....	9
3.2 Notice to Proceed.....	9
3.3 Reports.....	10
3.4 Time of Performance	10
3.5 Payment of Subcontractors	10
3.6 Release.....	10
3.7 Indemnification.....	11
3.8 Indemnification – Patent, Copyright, Trademark, and Trade Secret Infringement	11
3.9 Subcontractor’s Indemnification	12
3.10 Indemnification Procedures and Notice of Claims.....	12
3.11 Insurance.....	13
3.12 Performance Standards	15
3.13 Data Security and Data Return	15
3.14 Confidentiality.....	16
3.15 Conflicts of Interest	17
3.16 Work Products and Ownership.....	17
3.17 Licenses and Permits	18
3.18 Compliance with Laws	18
3.19 Compliance with Equal Opportunity Ordinance	18
3.20 MWSBE Compliance	18
3.21 Drug Abuse Detection and Deterrence.....	20

3.22	Section 3 Regulations	20
4.	DUTIES OF THE CITY	20
4.1	Payment Terms	20
4.2	Method of Payment	21
4.3	Acceptance and Rejection	22
4.4	Taxes.....	23
4.5	Limit of Appropriation; Limitation of City's Duties.....	23
4.6	Access to Data	24
4.7	Changes	24
5.	TERM AND TERMINATION	26
5.1	Term and Renewal Options	26
5.2	Termination for Convenience by the City	26
5.3	Termination for Cause by the City	26
5.4	Effect of Termination	27
5.5	Suspension of Services	28
6.	MISCELLANEOUS PROVISIONS	29
6.1	Independent Contractor	29
6.2	Force Majeure.....	29
6.3	Entire Agreement.....	30
6.4	Written Amendment	30
6.5	Applicable Laws	30
6.6	Notices	30
6.7	Interpretation	31
6.8	Non-Waiver	31
6.9	Acceptance and Approvals.....	31
6.10	Inspections and Audits.....	31
6.11	Enforcement.....	32
6.12	Survival.....	33
6.13	Publicity.....	33
6.14	Parties in Interest	33
6.15	No Quantity Guarantee.....	33
6.16	Successors, Assignments and Delegation.....	33
6.17	Remedies Cumulative.....	34

6.18	Dispute Resolution	34
6.19	Pay or Play	34
6.20	Non-Discrimination	34
6.21	HUD Requirements	34
6.22	Contractor Debt	35
6.23	Zero Tolerance Policy for Human Trafficking and Related Activities	35
6.24	Anti-Boycott of Israel	35
6.25	Flow-through Provisions	35
6.26	Limitation of Liability	36
6.27	Contract Work Hours and Safety Standards	36
6.28	Energy Efficiency	37

EXHIBITS

- Exhibit “A” – Scope of Services
- Exhibit “A-1” – Fee Schedule
- Exhibit “A-2” – City Attorney’s Policy on Engagement of Outside Counsel
- Exhibit “B” – Drug Policy Compliance Agreement
- Exhibit “B-1” – Drug Policy Compliance Declaration
- Exhibit “C” – Certification of No Safety Impact Positions in Performance of a City Contract
- Exhibit “D” – CDBG Program Requirements
- Exhibit “E” – Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Exhibit “F” – Anti-Lobbying Certification
- Exhibit “G” – Equal Opportunity Clause
- Exhibit “H” – Flow-Through Provisions
- Exhibit “I” – Non-Exclusive List of Applicable Laws, Rules, and Regulations

1.4 Parts Incorporated.

1.4.1 The above described sections, exhibits and recitals are incorporated into this Agreement.

1.5 Controlling Parts.

1.5.1 If there is a conflict between any of the Program Documents, such conflict shall be resolved in the following order of precedence: Grant Agreement between the Texas General Land Office ("GLO") and the United States Department of Housing and Urban Development ("HUD") for the CDBG-DR17 Program (Hurricane Harvey), a copy of which will be provided to Contractor upon receipt; then the HUD CDBG-DR17 Guidelines; then the GLO Hurricane Harvey Disaster Recovery Housing Guidelines; then the Contract between the City and the GLO relating to the CDBG-DR17 Program (Hurricane Harvey), a copy of which will be provided to Contractor upon receipt; then this Agreement between the City and Contractor, and then any authorized Change Orders.

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1.6 Signatures.

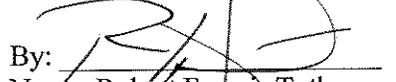
1.6.1 The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that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

CITY OF HOUSTON:

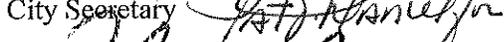
By: 
Name: _____
Title: _____

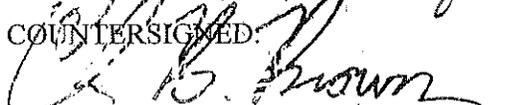
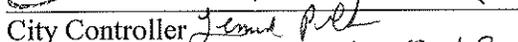
CONTRACTOR:

ICF INCORPORATED, L.L.C.

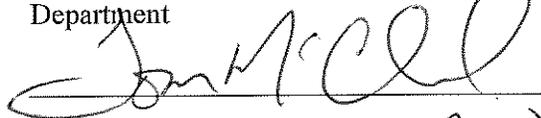
By: 
Name: Robert Francis Toth
Title: Senior Vice President,
Contracts and Administration
Federal Tax ID No.: 52-0893615

ATTEST/SEAL:


City Secretary 

COUNTERSIGNED:

City Controller 
Countersignature Date: 11-8-18
("Effective Date")

APPROVED:
Director, Housing and Community Development
Department



APPROVED:
Chief, Procurement Officer
Strategic Procurement Division



APPROVED AS TO FORM:


Senior Assistant City Attorney
LD. File No.

2. DEFINITIONS

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

- 2.1.1 "Administrative and Audit Regulations" means the regulations included in Title 2 CFR Part 200; Chapter 321 of the Texas Government Code; Subchapter F of Chapter 2155 of the Texas Government Code; and the requirements of this Agreement. With regard to any federal funding agencies with the necessary legal authority include: HUD, the Comptroller General, the General Accounting Office, the Office of Inspector General, and any of their authorized representatives. In addition, with regard to any state funding, state agencies with the necessary legal authority include: the GLO, the GLO's contracted examiners, the State Auditor's Office, and the Texas Attorney General's Office.
- 2.1.2 "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.1.3 "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.1.4 "Chief Procurement Officer" or "CPO" means the City's Chief Procurement Officer, or any person designated by the CPO to perform one or more of the CPO's duties under this Agreement.
- 2.1.6 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.1.7 "City Attorney" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
- 2.1.8 "City Data" means any Confidential City Information, or Information as those terms are defined in Section 3.14 of this Agreement, services to be provided under the Scope of Services as that term is defined in Section 2.1.29 of this Agreement, Documents that the City or persons acting on the City's behalf provides, makes available to, or transmits to Contractor on the City's behalf; and Documents Contractor receives, obtains, has access to, modifies, creates, develops, analyzes, uses for modeling or other services under this Agreement or otherwise prepares in connection with this Agreement.
- 2.1.9 "Contract Price" means the price to be paid by the City to the Contractor for the performance of the Scope of Services under this Agreement pursuant to the Fee Schedule as previously agreed to by the City and Contractor and attached to this Agreement as Exhibit "A-1". Any changes in the Contract Price shall only result from authorized revisions to the Scope of Services and Fee Schedule. The Contract Price shall be paid monthly pursuant to a Request for Payment made by Contractor.
- 2.1.10 "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns as well as its legal counsel or law firm subcontractor.
- 2.1.11 "Contractor's Request for Payment" means the Contractor's monthly request for a portion of the Contract Price, including invoices, description of Services and other items the Director may require to support the Request for Payment.

- 2.1.12 "Countersignature Date" means the date the City of Houston Controller countersigns this Agreement and the date this Agreement becomes effective and binding on the Parties.
- 2.1.13 "Deliverables" mean a unit or increment of work to include any item, report, data, document, photograph, drawing, process, computer program or code, or other submission required to be delivered under the terms of this Contract, in whatever form.
- 2.1.14 "Director" means the Director of Housing and Community Development Department ("HCDD") of the City, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.15 "Documents" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description. The word "documents" includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, images, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them), plans, and other work products prepared, obtained, modified, or created by the Contractor pursuant to or in connection with this Agreement.
- 2.1.16 "GLO Contract" means the Contract between the Texas General Land Office and the City of Houston relating to the Hurricane Harvey CDBG-DR17 Program.
- 2.1.17 "Guidelines" shall mean any GLO and/or City developed guidelines, policies and procedures related to the CDBG-DR program and other City housing programs for which Contractor may provide services under this Agreement.
- 2.1.18 "Homeowner" means the owner/occupant of a single-family structure who applies and qualifies for participation in the Program.
- 2.1.19 "Include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation."
- 2.1.20 "Notice to Proceed" means an individually negotiated document, issued by the Director, authorizing Contractor to proceed with the performance of services under the Agreement, which date of issuance shall not be prior to the Countersignature Date.
- 2.1.25 "Program" refers to the CDBG-DR Programs and any other City housing program that may be agreed upon the Parties, in which services will be performed that are consistent with Scope of Services contained herein.

- 2.1.22 "Program Documents" mean as applicable, GLO's Grant Agreement with HUD, the GLO's CDBG-DR Action Plan, the City's CDBG-DR Local Action Plan, the GLO's Agreement with the City, this Agreement, the Scope of Services, the Guidelines, the Progress Schedule, Notice to Proceed and any other documents required by the GLO, HUD, or the City, or other documents executed in connection with this Agreement.
- 2.1.21 "Progress Schedule" means the schedule of the services to be performed by certain dates, as determined by the Contractor and approved by the Director in connection with the performance of services under the Agreement.
- 2.1.23 "Prompt Payment Act" means Chapter 2251 of the Texas Government Code.
- 2.1.24 "Property" means the location of a dwelling unit located within the incorporated areas of the City, that is owned by an applicant who may be eligible for housing assistance, as described in the Program Documents.
- 2.1.26 "Public Information Act" means Chapter 552 of the Texas Government Code.
- 2.1.27 "Rehabilitation" means restoring a Property to a habitable condition by removing life, health, or safety hazards as described in the Program Documents.
- 2.1.28 "Regulations" include all Applicable Laws, statutes, codes, judicial decisions, ordinances, regulations, rulings, restrictive covenants, certificates, permits, requirements or orders enforceable by all federal, state and local government authorities having jurisdiction over the subject matter of this Agreement.
- 2.1.29 "Scope of Services" means the detailed itemized list of services to be performed under this Agreement as set forth under Exhibit "A" or as included in a change order issued under this Agreement.
- 2.1.30 "Subcontractor" means any person or entity who, pursuant to this Agreement, will carry out services under the Agreement at the request of Contractor.
- 2.1.31 "Writing" or "written" shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

3. DUTIES OF CONTRACTOR

3.1 Scope of Services

3.1.1 In consideration of the payments specified in this Agreement, Contractor shall provide and pay for all labor, materials, equipment, tools, water (for its own consumption), heat (for its own consumption), utilities (for its own consumption), transportation, and other facilities and services necessary for the Contractor's sole use and consumption and for the proper execution and completion of the services described in Exhibit "A".

3.1.2 Contractor shall perform limited legal services under the direction of a Handling City Attorney and in accordance with the City Attorney's Policy on Engagement of Outside Legal Counsel (**Exhibit A-2**).

3.2 Notice to Proceed

3.2.1 Contractor shall not begin the performance of services under this Agreement until the Contractor receives an initial Notice to Proceed ("NTP") from the Director. During the term of this Agreement, the City may request that Contractor perform certain tasks detailed in Exhibit "A".

Multiple NTPs may be issued during the term of this Agreement. Each NTP will include deliverables; a time schedule; and such other information or special conditions as may be necessary to perform the services requested. Contractor shall complete each assigned project within a specified number of days from issuance of the Notice to Proceed.

3.2.2 The City, in its sole discretion, and in conformance with state and federal law, may amend an NTP as necessary.

3.3 Reports

3.3.1 Contractor shall submit reports as requested by the Director and in furtherance of the services set forth in Exhibit. Contractor shall also submit progress updates periodically on a weekly, monthly, quarterly and yearly basis, as required by the Director.

3.3.2 Contractor shall keep in close contact with the City and shall notify the City of any change in contact information or circumstances related to performance of services. The City shall issue official letters, call official meetings, and require documentation to be submitted on a periodic basis. Contractor shall respond in writing to the Director within ten (10) business days of the date of any written or oral inquiry by Director to ensure timelines related to performance of services are met, and compliance with local, state and federal government requirements is achieved.

3.3.3 If all required documentation and cooperation are not provided by the Contractor to the Director, the Director may withhold further payments until such documentation and cooperation are completed, or the Director may take such other action as specified in this Agreement.

3.4 Time of Performance

3.4.1 Performance of the Scope of Services under this Agreement shall commence on the date of issuance of the Notice to Proceed. The services shall be completed within the time specified in the Notice to Proceed.

3.4.2 The City and the Contractor agree in any event caused by reason of the Contractor's failure to complete the services under this Agreement within the time specified in a Notice to Proceed, or as extended by a Change Order pursuant to Section 4.7, the City may recover actual damages that results from the Contractor's failure to begin the Scope of Services when ordered, carry it forward uninterruptedly after beginning, or complete it within the time specified and in strict accordance with the Scope of Services or Change Order. The City shall have the right to deduct and withhold the amount of any and all actual damages, from any monies owing the Contractor.

3.5 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 execution and performance of this Agreement. **CONTRACTOR SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

3.6 Release

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, BUT EXCLUDING ANY INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY CAUSED BY THE CITY'S SOLE NEGLIGENCE. CONTRACTOR HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.

3.7 Indemnification

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

3.7.1.1 CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY REFERRED TO AS "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

3.7.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR (4) YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.8 Indemnification – Patent, Copyright, Trademark, and Trade Secret Infringement

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

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

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

3.9 Subcontractor's Indemnification

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

3.10 Indemnification Procedures and Notice of Claims

3.10.1 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, and
- b. the basis on which indemnification may be due, and
- c. the anticipated amount of the indemnified loss.

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

3.10.3 Defense of Claims

3.10.3.1 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. If Contractor assumes the defense of the claim, 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. Contractor shall notify the City of any and all offers to settle the claim.

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

3.11 Insurance

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

In addition to the insurance coverage stated above, Contractor shall be responsible for obtaining insurance for any furniture and equipment leased/purchased under this Agreement.

3.11.1 With no intent to limit Contractor's liability or the indemnification provisions set forth herein, the Contractor shall provide and maintain certain insurance and endorsements in full force and effect at all times during the Term of this Agreement. Such insurance is described as follows:

3.11.2 If professional liability coverage is written on a "claims made" basis, Contractor shall also provide:

- a. Proof of renewal each year for two years after substantial completion of the services; or
- b. In the alternative, evidence of extended reporting period coverage for two years after substantial completion; or
- c. A project liability policy for the services covered by this Agreement with a duration of two years after substantial completion.

3.11.3 Insurance Coverage. At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or Contractors 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.

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

3.11.5 Required Coverage. The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Scope of Services under this Agreement, 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 Scope of Services covered by this Agreement with a duration of two years after substantial completion.

3.11.6 Deductibles. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents or employees.

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

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

3.12 Performance Standards

Contractor shall use that degree of care and skill ordinarily exercised by members of the same profession performing the same or similar services under similar conditions in Harris County, Texas and its 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. Contractor shall perform all Scope of Services in conformance with the applicable Scope of Services.

3.13 Data Security and Data Return

3.13.1 Contractor shall maintain the security of all City Data whether in physical or electronic form, including but not limited to all City-specific data, personally identifiable information (PII), employee data, user or citizen data, and any other data that was provided to Contractor or that Contractor generates, creates, or analyzes for the City. Contractor shall continuously audit its controls designed to protect the security of City Data. Contractor shall regularly test and audit the systems, controls, and procedures outlined in this section, which tests, and audits shall occur at least once per calendar month. Contractor shall implement and maintain appropriate and reasonable administrative, technical, and physical controls, safeguards, measures, and procedures to (i) secure, protect and safeguard the privacy, security, integrity, and confidentiality of the City Data, (ii) prevent, detect, contain, and correct security breaches in, involving, or against the City data, (iii) store City Data only in places and in a manner that is safe from access by unauthorized persons or for unauthorized uses, and (iv) ensure that the City Data 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. At a minimum, Contractor shall develop, implement, and maintain a reasonable written security program that includes appropriate administrative, technical, organizational, and physical safeguards and security measures that (i) maintain user identification and access controls designed to limit access to authorized users; (ii) protect the City Data from unauthorized activity; (iii) use encryption technology, and (iv) comply with any specifications as requested by the Director. 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. In the event that information technology systems are used to store PII, Contractor will utilize the security and risk management provisions of the National Institutes of Standards and Technology (NIST) "Framework for Improving Critical Infrastructure Cybersecurity" to implement appropriate administrative, technical, and/or physical controls and safeguards (including but not limited to access controls that comply with the least user privileges principles, data encryption during transit and at rest, intrusion detection/intrusion prevention systems, etc.) to secure any and all IT systems holding City data and PII. 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 Data or PII, or the software or hardware in so far as it relates to Contractor's performance of this Agreement, Contractor shall:

- (a) Limit access only to the authorized Contractor personnel who need to know or have access to this information to perform the services described in Exhibit "A";

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

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

3.13.3 **SSAE 16 Compliance.** If Contractor has City Data, and for as long as Contractor has City Data, Contractor will 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. 16 SOC1 Type II Report (or equivalent report), received from its third-party auditors. Contractor will, upon written request, provide the Director with copies of then-current SSAE No. 16 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 the GLO Contract with regard to the services described in this Agreement and in Exhibit "A".

3.13.4 **Data Breach.** If Contractor learns of a breach of information; any unauthorized exposure, release or misuse of City Data or PII; that any person (including Contractor personnel and third parties) has gained unauthorized access to City Data or PII; 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 or PII 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, mitigate, or respond to 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.

3.14 Confidentiality

3.14.1 Contractor, its agents, employees, contractors, and subcontractors shall hold all Confidential City Information, City Data, and Documents that they receive, or to which they

have access in connection with this Agreement (collectively, “the Information”), in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this section. Confidential City Information shall mean all Documents, data, and information given to Contractor by City except for (1) information that Contractor possessed prior to the date of this Agreement, (2) information that Contractor develops independently without use of any of the information provided by the City, (3) information Contractor rightfully receives from a third party free to make such disclosure without breach of any legal obligation, or (4) information that becomes publicly available without breach of this Agreement. The terms and conditions of this Confidentiality section shall survive the expiration or termination of this Agreement for any reason.

3.15 Conflicts of Interest

3.15.1 If an actual or potential conflict arises between the City’s interests and the interests of other clients Contractor represents, Contractor shall immediately notify the Director in writing. If the Director consents to Contractor’s continued representation of the other clients, he shall notify Contractor in writing.

3.15.2 Contractor acknowledges that it, and its employees and agents, and their respective immediate family members, are ineligible to participate in any manner in responding to any solicitation, request for qualification, request for proposals, or resulting agreements or payments that it will assist the City to develop, evaluate or negotiate. Such participation may create a conflict of interest and will provide an unfair advantage as it relates to the award of a contract to the successful bidder or proposer. This ineligibility is applicable to both a prime or subcontractor role and includes any affiliates, partners or members.

3.16 Work Products and Ownership

3.16.1 The City is, will be, and shall remain at all times the owner of all of the City Data. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in the City Data and Contractor shall not possess or assert any lien or other right against the City Data. 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 Data and all City-specific data from any Contractor owned or controlled software, programs, devices, and products, and the right to use the City Data for the City’s own use, for use with other non-Contractor products, or to load elsewhere. Contractor shall provide a reasonable data export tool that is approved by the Director that returns City Data on demand. Contractor shall not use City Data for any other purposes other than what is expressly specified in this Agreement.

3.16.2 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, software (including Software), domain names, invention, creation, data, discovery, and all documents (including 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 (collectively "Works"). 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. 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.

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

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

The City owns all data it provides to Contractor under this Agreement. Contractor shall return all data provided in whatever form it is maintained or recorded at the end of this Agreement.

3.17 Licenses and Permits

Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation to perform work under this Agreement. Contractor shall promptly notify the Director of any suspension, revocation, or other detrimental action against its license(s) or the license of any of its legal counsel or attorneys. Contractor shall pay, at its sole cost and expense, all taxes, assessments, fees, premiums, permits, and licenses required by law.

3.18 Compliance with Laws

Contractor shall comply with all applicable state, local and federal laws and Regulations and the City Charter and Code of Ordinances.

3.19 Compliance with Equal Opportunity Ordinance

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

3.20 MWSBE Compliance

3.20.1 Contractor shall comply with the City's Minority, Women and Small Business Enterprise ("MWSBE") 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 57% of the value of this Agreement to MWSBEs. For purposes of this subsection 3.2.1, the value of this Agreement includes any Change Orders, thereto, authorized by the Director. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity ("OBO") and will comply with them.

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

1. _____ (MWSBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's OBO Director ("the Director").
2. _____ (MWSBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least five (5) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.
4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

3.20.3 Contractor shall adhere to and comply with 2 CFR § 200.321 if subcontracts are to be let under this Agreement. The Contractor, if subcontracts are to be let, is required to take the following affirmative steps to ensure that small business firms, minority business firms, women's business enterprises, and labor surplus area firms are used when possible, pursuant to 2 CFR Section §200.321. Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

3.20.4 Contractor must clearly document the communication and outreach to the certified business. Documentation may include mail logs, phone logs, or similar records documenting the use of the above identified sources of information about MWSBE firms, the efforts to contact them, and other efforts to meet the above requirements.

3.21 Drug Abuse Detection and Deterrence

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

3.21.2 Before the City signs this Agreement, Contractor shall file with the Agreement 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 "B", 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 "C".

3.21.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "B-1". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

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

3.21.5 Contractor shall require that its subcontractors comply with EO 1-31, and Contractor shall secure and maintain the required documents for City inspection.

3.22 Section 3 Regulations

The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the U.S. Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U. S.C. 170u, "Section 3") and implementing regulations at 24 CFR Part 135 apply to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

4. DUTIES OF THE CITY

4.1 Payment Terms

4.1.1 Upon the Director's acceptance and approval of the Deliverables, the City shall pay and Contractor shall accept the Contract Price set out in Exhibit "A-1", subject to allocation of funds as set out below.

4.1.2 Throughout the term of this Agreement as set forth under Section 5.1, the City will pay Contractor at the end of each month on the basis of Director-approved invoices showing the percentage of total services performed during the preceding month, along with other evidence of costs as requested by the Director.

4.1.3 The City shall pay Contractor the documented actual cost of reimbursable expenses that have been approved pursuant to Section 4.1.3.1 within 30 days of receipt and Director's approval of Contractor's itemized invoice. The reimbursable expenses will be paid out of the line item for Other Direct Costs, ("ODC"), included under Exhibit "A-1".

4.1.3.1 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 the categories and amounts of reimbursable expense in writing before Contractor incurs them. The compensation for reimbursable expenses shall not exceed the amount of the ODC line item under Exhibit "A" (\$1,972,752) unless the Director, at his sole discretion, approves a written amendment prior to the Contractor incurring the additional costs, and obtains City Council approval, to the extent required by law or the City Charter.

4.1.3.2 Reimbursable expenses are the actual expenditures Contractor and its subcontractors make while performing services requested by the Director. Reimbursable expenses may include travel if requested by the Director and such travel is reasonably necessary to perform services in connection with the Agreement.

4.1.3.3 Contractor shall deliver invoices for reimbursable expenses for the Director's approval monthly.

4.1.4 ALL EXPENDITURES UNDER THIS AGREEMENT MUST BE MADE IN ACCORDANCE WITH THIS AGREEMENT, THE CITY'S INTERLOCAL AGREEMENT WITH THE GLO, THE GUIDELINES, RULES AND REGULATIONS, PROMULGATED UNDER THE CDBG-DR PROGRAM, AND ANY OTHER APPLICABLE LAWS. ALL FUNDS ARE SUBJECT TO RECAPTURE AND REPAYMENT FOR NONCOMPLIANCE. The City may terminate the Agreement and recapture and be reimbursed for any payments the City makes that (i) exceed the maximum allowable rates; (ii) are not allowed under Applicable Laws, rules, or regulations; or (iii) are otherwise inconsistent with this Agreement, including any unapproved expenditures.

4.2 Method of Payment

4.2.1 Throughout the term if this Agreement as set forth under Section 5.1, the City shall pay Contractor on the basis of Requests for Payment submitted by Contractor and approved by the Director. A Request for Payment shall not exceed the Contract Price.

4.2.2 Contactor's Request for Payment shall reflect the cost for the Scope of Services performed and include any documentation requested by the Director, and otherwise be in form and substance acceptable to the Director. Contractor must submit invoices showing the specific items completed and the corresponding prices for each item as indicated in the Scope of Services.

4.2.3 The City will review and verify the Request for Payment. The Director's review, verification and approval process may include Contractor site inspections.

4.2.4 The City of Houston's standard payment term is to pay 30 days after receipt of an approved invoice, receipt of goods, or receipt of services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code Chapter 2251). When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

4.2.5 All Requests for Payment and invoices must be approved by the Director. All payments will be made by check payable to the Contractor. Payments will be mailed to the address specified herein. Neither partial payments made, nor approval of invoices or services by the Director, constitute final acceptance or approval of the Contractor's services to which the partial payment or approval relates.

Account Name		ICF Consulting Group, Inc.
Bank Name		PNC Bank
Bank Address		800 17th Street NW Washington, DC 20006
Domestic EFT	ABA Number	031207607
	Account Number	80-2637-4453

4.2.6 If the Director disputes any items in an invoice or Request for Payment 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 notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount in a subsequent monthly invoice or on a special invoice for the disputed item only, together with a notation that the dispute is settled. The City will then pay the invoiced amount within 30 days of receipt.

4.3 Acceptance and Rejection

4.3.1 Contractor shall not be entitled to payment and the City shall have no duty to pay Contractor unless the Director Accepts the Services and other Deliverables as set forth in **Exhibit "A"**.

4.3.2 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"**. On or before the 20th Business Day after the date the Director receives such written notice of completion and/or delivery, the Director shall notify Contractor whether the Director has accepted the Services and other Deliverables or rejected said services and deliverables, along with the reason(s) for the rejection, if any.

4.3.3 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"**.

4.3.4 If the Director rejects any Services or other Deliverables, Contractor shall have 15 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.

4.3.5 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), and then the City shall have no obligation to pay any amount whatsoever under this Agreement and this Agreement shall immediately terminate.

4.3.6 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 Commerce Code.

4.4 Taxes

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

4.5 Limit of Appropriation; Limitation of City's Duties

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____.

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

4.5.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$5,000,000.00 to pay money due under this Agreement during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies set forth below.

4.5.3 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.

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

4.5.4 The Original Allocation plus all supplemental allocations are the "**Allocated Funds.**" Pursuant to the terms of the ordinance approving this Agreement, the Director, in his sole discretion, may also reduce the amount of Allocated Funds under

this Agreement, which reduction shall accordingly release the City's obligation and liability under this Agreement for any amount in excess of the reduced amount of Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds, as reduced, if any such reduction occurs. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted or should the City fail to make arrangements to make payments through the supplemental allocations process referenced in this Section 4.5, then (i) Contractor shall have no further obligation to perform Services under this Agreement; (ii) Contractor's only remedy is suspension or termination of its performance under this Agreement, and (iii) Contractor has no other remedy in law or in equity against the City and no right to damages of any kind.

4.6 Access to Data

4.6.1 The City grants to Contractor a non-exclusive, royalty-free license to use the City data and City-specific data during the Initial Term and any renewals thereto of this Agreement solely to provide services to the City as necessary and to monitor and improve the services under this Agreement. Parties agree that to the extent reasonably possible, as determined by the City, the Contractor will store data in the City's system of record.

4.6.2 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.

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

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

4.7 Changes

4.7.1 At any time during the Agreement Term as set forth Section 5.1, the Director may issue a Change Order to increase or decrease the Scope of Services, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement, plus any special provisions, specifications, or special instructions issued to execute the extra work.

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

CHANGE ORDER

[Name of Contractor]

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

FROM: _____

DATE: [Date of Notice]

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

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following: [Here describe the additions to or changes to the equipment or services and the change order charges applicable to each.]

Signed: [Signature of Director]

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

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

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

(c) The total of all Change Orders issued under this section may not increase the amount of the Original Agreement by more than 25%.

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

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

4.7.6 If the Contractor determines that a change in the services or Contract Price is required, the Contractor may submit a written Change Order request that includes the estimate for increases or decreases and an explanation of requested changes. The Director shall review the Change Order request to determine if the change is valid before authorizing. If the Director elects to authorize the change, the Director will compute the reduction from or addition to the Contract Price and will authorize the Change Order in writing. All Change Orders must be submitted and approved in writing. Contractor is not authorized to perform any additional services and the City shall have no obligation to pay for any additional services or change in the services unless a Change Order is approved

by the City. **The Contractor shall not have any obligation to perform any change in the services until a Change Order has been authorized and issued by the Director.**

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

5. TERM AND TERMINATION

5.1 Term and Renewal Options

This Agreement is effective on the Countersignature Date and remains in effect until one (1) year thereafter, unless sooner terminated under this Agreement. If the Director, at his or her sole discretion, makes a written request for renewal to Contractor (with a copy of the request sent to the CPO) at least 30 days before expiration of the then-current term and if sufficient funds are allocated, then, upon expiration of the initial term, this Contract may be renewed for up to two successive one-year terms upon the same terms and conditions.

5.2 Termination for Convenience by the City

5.2.1 The Director may terminate this Agreement at any time in its entirety without cause by giving five (5) days written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.2.2 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 for all services performed, but not already paid for, through the date of termination for the respective task order; or, in the case of the termination of this Agreement in its entirety, which shall be payable in the manner provided in Section 4 of this Agreement.

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

5.3 Termination for Cause by the City

5.3.1 If Contractor defaults under this Agreement, the Director may either terminate this Agreement in its entirety 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:

- a. Contractor fails to perform any of its material duties under this Agreement;
- b. Contractor abandons the performance of services under this Agreement, neglects to perform the Scope of Services in connection with the Agreement in a timely manner, or refuses or neglects to supply or proper or sufficient materials or workmen, or fails to perform under the provisions of any of the Program Documents pertaining to the Scope of Services;
- c. Any warranty or representation made by the Contractor in this Agreement is at any time false or misleading in any respect;
- d. Contractor becomes insolvent;
- e. All or a substantial part of Contractor's assets are assigned for the benefit of its creditors;
- f. Contractor violates any law or ordinance; or
- g. A receiver or trustee is appointed for Contractor.

5.3.2 If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor (with a copy of the notice to the CPO) describing the default and setting a 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 Agreement will terminate on the termination date, at no further obligation to the City. To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO.

5.3.3 After receiving the termination notice in Section 5.3.2, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.3.4 If the City terminates this Agreement in its entirety for cause, the City may take possession of the site or sites at which work is performed under this Agreement and utilize any and all materials and appliances to be provided under the respective Program Documents which are located on the site or sites to finish the Scope of Services. The City shall not prejudice any of the City's rights or remedies under this Agreement or the respective Program Documents, or by law, by terminating this Agreement in its entirety for cause or by taking possession of the site or sites.

5.4 Effect of Termination

5.4.1 Upon termination of this Agreement, Contractor is permitted ten (10) days within which to remove Contractor-owned material and equipment from the premises. The Director shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The Director reserves the right to deny any extension of time.

5.4.2 In case of termination of this Agreement in its entirety, for cause pursuant to this subsection 5.4, the Contractor shall not be entitled to receive any payment for the Scope of Services or authorized Change Order until the authorized services, are completed. Upon completion of the Scope of Services, the Contractor shall be entitled to payment for the Scope of Services performed through the date of termination, to the extent services have been performed in

accordance with the terms and/or conditions of this Agreement, less any damages and expenses incurred by the City in finishing the services, including any costs in addition to or in excess of those originally contemplated in the Scope of Services . If the cost in completing the services is greater than the original Contract Price, the Contractor shall pay the difference to the City upon ten (10) days written demand.

5.4.3 In the event of termination or expiration, whichever is earlier, Contractor shall, at Contractor's own expense and at no cost to the City, transfer all City Information, Documents, all City data, including but not limited to City-specific data, Works, and any other work product created under this Agreement for the City or any other Documents or materials as specified by the Director, to City within two days.

5.4.4 Upon request by the Director at any time during the Initial Term or any renewals thereto, and upon expiration or termination of this Agreement, Contractor shall, at Contractor's own expense and at no cost to the City, retain, migrate, or dispose of the City Data 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 Data, 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 Data, Contractor shall, at no cost to the City, perform the following to the extent applicable unless otherwise directed by the Director:

- a. deliver the City Data (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;
- b. destroy the City Data (in whole or in part, as directed by the Director) and provide a notarized statement of destruction to the Director;
- c. destroy physical media using secure methods;
- d. remove the City Data (in whole or in part, as directed by the Director) from the hosted database, storage device, or other repository or storage means; or
- e. retain the City Data (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.

5.5 Suspension of Services

5.5.1 The Director may, by written notice to Contractor, suspend at any time the performance of any or all portions of the services to be performed under the Agreement. Upon receipt of such notice, Contractor shall, unless the notice requires otherwise:

- a. Immediately discontinue services on the date and to the extent specified in the notice;
- b. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City of all subcontracts, orders and other agreements to the extent that they relate to the performance of suspended work;
- c. Continue to protect and maintain the services including those portions of the services which have been suspended; and
- d. Take any other reasonable steps to minimize costs associated with such suspension.

6. MISCELLANEOUS PROVISIONS

6.1 Independent Contractor

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

6.2 Force Majeure

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

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

- a. Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure.
- b. Provides the other Party with prompt written notice of the cause, its anticipated effect and estimated time of suspension of performance.
- c. The Contractor must notify the Director in writing of the delay and the reason or reasons for the delay within three (3) days after the beginning of such delay. All such extensions shall be documented by a written change order executed by the Contractor and Director.

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

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

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

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

6.3 Entire Agreement

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

6.4 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. An approval by the Director or by any other employee or agent of the City, that is not specifically authorized herein, 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.

6.5 Applicable Laws

6.5.1 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.

6.5.2 The Parties consent to venue for any litigation relating to this Agreement is Harris County, Texas.

6.6 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, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section 1.2. Postage or delivery charges must be paid by the party giving the notice.

6.7 Interpretation

6.7.1 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.

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

6.7.3 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.

6.8 Non-Waiver

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

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

6.9 Acceptance and Approvals

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

6.10 Inspections and Audits

6.10.1 Any City, State and Federal governmental entity, by and through their authorized representatives may perform, or have performed, (i) audits of all documents and records pertinent to the Scope of Services, and (ii) inspections of all places where services are performed in connection with this Agreement. Contractor shall keep its books and records available for this purpose for (i) the time period required by 2 CFR §200.333 (retention requirements for records) in the event the City receives all federal funds under the Agreement; or (ii) five (5) years after the Agreement terminates, whichever is longer. If the books and records are located outside of Harris County, Texas, Contractor agrees to make them available in Harris County, Texas. This provision does not affect the applicable statute of limitations.

6.10.2 Audits of Contractor's books, documents, papers, and records, including electronic versions, pertaining to the Scope of Services, may include, but are not limited to:

- a. payroll and personnel records, such as salaries, benefits and bonuses;
- b. subcontractor agreements, records and invoices;
- c. any accounting or management systems, or computers or servers on which City information is stored; and
- d. all documents or files evidencing costs and underlying expenses relating to Contractor's performance.

6.10.3 Contractor shall provide the Director, the City, the GLO, HUD, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making copies, audits, examinations, excerpts, and transcriptions. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6.10.4 Contractor shall provide the City, the GLO, HUD, and other applicable governmental agencies, or their authorized representatives access to work sites pertaining to the services being completed under this Agreement. Contractor shall allow the City, the GLO, HUD, or an entity or organization approved by the City, the GLO, or HUD, to conduct inspections, as required, to ensure an acceptable level of services as determined by the City, the GLO, or HUD. No notice to the Contractor is required prior to an inspection.

6.10.5 If any audit or inspection performed by HUD, GLO, City or any other local, state or federal entity providing funding to pay for Contractor's services under this Agreement, results in the disallowance, recapture, repayment, refund, return and/or reimbursement of funds used by the City to pay fees and/or expenses for Contractor's services, based on Contractor's performance under this Agreement, Contractor shall repay, refund, and/or reimburse the City for all of such fees and/or expenses required to be paid by the City or in the case of a City audit, amounts requested or disallowed by the City, as unallowed or unauthorized, or otherwise inconsistent with this Agreement or Task Order. Contractor shall be given a reasonable opportunity to review and dispute in writing the findings of such audit or inspection. Any adjustments or payments that must be made as a result of any such audit or inspection of the Contractor's performance under the Agreement, including invoices or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the written findings by the City to the Contractor. In no event will the Contractor be responsible for disallowed, recaptured or reimbursed amounts that the City has paid to any party other than Contractor. Each Party shall bear its own costs of any such audit.

6.11 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.

6.12 Survival

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

6.13 Publicity

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

6.14 Parties in Interest

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

6.15 No Quantity Guarantee

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

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

6.16 Successors, Assignments and Delegation

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

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

6.16.3 Notwithstanding this provision, it is mutually understood and agreed that Contractor may subcontract with others for some or all the services to be performed. In any approved subcontracts, Contractor shall legally bind such subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Contractor as specified in this Contract. Nothing in this Contract shall be construed to relieve Contractor of the responsibility for ensuring that the goods delivered, and/or the services rendered by Contractor and/or any of its subcontractors comply with all the terms and provisions of this Contract.

Contractor will provide written notification to the City of any such subcontractor performing fifteen percent (15%) or more of the work under this Contract, including the name and taxpayer identification number of subcontractor, the task(s) being performed, and the number of subcontractor employees expected to work on the task.

6.17 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 consistent with this Agreement. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

6.18 Dispute Resolution

6.18.1 For purposes of this Section "Project Manager" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.

6.18.2 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 Manager and Contractor must be handled as described below:

- a. The Project Manager 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 Manager, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within 15 working days following receipt of the Project Manager's original decision. The Director shall provide Contractor with a written response to the appeal within 14 working days following its receipt. The decision of the Director is final.

6.19 Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in **Executive Order No. 1-7**, as revised from time to time are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement. The Pay or Play Program Requirements Form (POP-1) and all other POP Forms are available for download from the City of Houston's website at: <http://www.houstontx.gov/obo/popforms.html>.

6.20 Non-Discrimination

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

6.21 HUD Requirements

The Parties acknowledge that the City intends to seek reimbursement from the GLO for costs incurred under this Agreement. Contractor shall comply with and shall perform services in compliance with all GLO/HUD requirements outlined in the

Agreement, including the applicable exhibits (Exhibits "D", "E", "F", "G", "H", and "I").

6.22 CONTRACTOR DEBT

6.21.1 IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE/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 THEREFORE. 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.

6.23 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 the Countersignature 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.

6.24 Anti-Boycott of Israel

Contractor certifies that Contractor is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

6.25 Flow-Through Provisions

6.25.1 The City is a subrecipient of federal funds to be awarded and administered by the Texas General Land Office pursuant to a contract between the GLO and the City ("GLO Contract"), the number for which is yet to be determined. The City will be a party to the GLO Contract that will contain Flow-Through Provisions applicable to this Agreement. These Flow-Through Provisions must be approved in writing by the Parties and shall be incorporated herein as an exhibit to this Agreement and shall supplement the provisions of this Agreement without the need for an amendment hereto. Contractor shall comply with the terms set out in the Flow-Through Provisions exhibit except, in the event of a conflict between the Flow-Through Provisions exhibit and the terms of the Agreement, the controlling provision will be determined as expressly stated in the Flow-Through

Provisions exhibit and if it is not expressly stated therein, the sections of the Agreement will control. For example, and without limiting the generality of the foregoing, Contractor's indemnity obligations to the City are governed by Section 3.7 of this Agreement.

6.25.2 In the event the City is a recipient or subrecipient of other grant, federal, or state funds or the City otherwise uses restricted funds to pay Contractor for services or expenses provided under this Agreement, Contractor shall agree, in writing, to be bound by the same contract or grant terms and conditions, laws, and regulations as the City, to the extent relevant to Contractor's Scope of Services ("Additional Flow Down Provisions"). Contractor's agreement to the Additional Flow Down Provisions must be in writing, signed by the Contractor and Director and approved by the City Attorney or designee. Such written agreement does not require amendment of this Agreement but shall be incorporated into this Agreement as if fully referenced herein. If within a reasonable time after receipt of a written request from the Director (not to exceed 15 business days), the Parties are unable to reach a written agreement on the relevant Additional Flow Down Provisions following good faith negotiations, the Director, at his sole discretion may (i) immediately suspend Contractor from any further performance under the applicable Agreement, or, (ii) terminate this Agreement.

6.26 LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR:

- (1) ANY AMOUNTS REQUIRED TO BE PAID OR REIMBURSED BY CONTRACTOR PURSUANT TO SECTION 6.10.5; AND
- (2) AMOUNTS OWED UNDER THE INDEMNITY PROVISIONS OF THIS AGREEMENT WITH REGARD TO CLAIMS MADE BY THIRD PARTIES; AND
- (3) CONTRACTOR'S VIOLATION OF APPLICABLE LAW; AND
- (4) CONTRACTOR'S BREACH OF ITS DATA SECURITY AND/OR CONFIDENTIALITY OBLIGATIONS AS SET FORTH IN SECTION 3.13 AND SECTION 3.14 OF THIS AGREEMENT,

CONTRACTOR'S MAXIMUM LIABILITY IN THE AGGREGATE FOR ALL DAMAGES, CLAIMS, LOSSES, EXPENSES, COSTS, REMEDIES, OR LIABILITY OF ANY KIND WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT, AND THE CITY'S REMEDY FOR ALL CAUSES OF ACTION ARISING HEREUNDER, WHETHER BASED IN AGREEMENT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, EQUITY, OR ANY OTHER CAUSE OF ACTION, SHALL BE LIMITED TO THE AMOUNT OF TEN MILLION DOLLARS (\$10,000,000.00).

6.27 Contract Work Hours and Safety Standards

Contractor shall comply with Federal Acquisition Regulation (FAR) 52.222 – 4 – Contract Work Hours and Safety Standards - Overtime Compensation (May 20,2018).

6.28 Energy Efficiency

6.28.1 The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

6.28.2 The Contractor agrees to include the above paragraph in each third-party subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

z/realstate/pierce/outreachintakemanagementfinal10.22.2018