

**ASBESTOS ABATEMENT SERVICES
Spring VILLAGE APARTMENTS**

1. PARTIES

THIS AGREEMENT FOR ASBESTOS ABATEMENT SERVICES (this "Agreement") is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the "City"), a home-rule city of the State of Texas principally situated in Harris County, and **AAR INCORPORATED** ("Contractor"), a Texas corporation.

1.1. Address

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

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

AAR Incorporated
6640 Signat Dr.
Houston, Texas 77041
Attention: Dwain Bankston

The Parties agree as follows:

1.2. Table of Contents

1.2.1. This Agreement consists of the following sections:

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1.3. Parts Incorporated

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

1.4. Controlling Parts

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

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1.5. Signatures

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

AAR INCORPORATED

DocuSigned by:
By: Dwain Bankston
Name: Dwain Bankston
Title: Vice President
Federal Tax ID Number: 76-0219081

DS



DocuSigned by:
Pat Jefferson-Daniel
2F30AB366C0B4B1...
City Secretary

DocuSigned by:
APPROVED:
Michael Nichols
726A132PDP624CF...
Director, Housing and Community Development Department

DocuSigned by:
APPROVED:
812J834A077C41A...
Chief Procurement Officer

DocuSigned by:
APPROVED AS TO FORM:
Calvin Curtis
A0B9E07A9B0147B...
Sr. Assistant City Attorney
L.D. File No. CON-0000002615

CITY OF HOUSTON, TEXAS
Signed by: [Signature]
Mayor
DocuSigned by:
Cynthia Wilson
E8132C0179C...
COUNTERSIGNED BY: [Signature]
City Controller
DocuSigned by:
Leonard Polk
69DD4F50D145438...
COUNTERSIGNATURE DATE:
9/5/2024

DS

2. DEFINITIONS

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

- 2.1. **"Agreement"** means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
- 2.2. **"Business Day"** means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
- 2.3. **"Change Order"** written instrument prepared by the City and signed by CPO and Contractor, specifying the following:
 - 2.3.1. a change in the Work;
 - 2.3.2. a change in Contract Price, if any; and
 - 2.3.3. a change in Contract Time, if any.

The value of a Change Order is the net amount after offsetting all deductions against all additions effected by the Change Order.
- 2.4. **"Chief Procurement Officer"** ("CPO") means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
- 2.5. **"City"** is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.6. **"Contractor"** is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.7. **"Contract Price"** the monetary amount stated in Section 4.1 adjusted by Change Order, and increases or decreases in unit price quantities, if any.
- 2.8. **"Contract Time"** the number of days stated in Section 3.11.2 to substantially complete the Work, plus days authorized by Change Order.
- 2.9. **"Countersignature Date"** means the date shown as the date countersigned on the signature page of this Agreement.
- 2.10. **"Date of Commencement of the Work"** date established in the Notice to Proceed on which Contract Time will commence. This date will not be changed by failure of Contractor, or persons or entities for whom Contractor is responsible, to act.
- 2.11. **"Date of Final Completion"** date that the Work, or portion thereof designated by the Director, is certified by the Director to be 100% complete.

- 2.12. **"Date of Substantial Completion"** date that the Work, or portion thereof designated by the Director, is certified by the Director to be substantially complete. Substantial completion occurs when the Work, or a portion thereof, is sufficiently complete in accordance with the Agreement and can be utilized for its intended use and there is only minor work left to correct or complete.
- 2.13. **"Director"** means the Director of the City of Houston Housing and Community Development Department ("HCDD") or such other person as he or she designates.
- 2.14. **"Documents"** mean notes, manuals, notebooks, plans, computations, computer databases and diskettes, software, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.
- 2.15. **"Effective Date"** means the date this Agreement is countersigned by the City Controller.
- 2.16. **Notice of Noncompliance:** a written notice by Director to Contractor regarding defective or nonconforming work that does not meet the Agreement requirements, and that establishes a time by which Contractor shall correct the defective or nonconforming work.
- 2.17. **"Notice to Proceed"** means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance and establishing the Date of Commencement of the Work.
- 2.18. **"Party" or "Parties"** means one or all of the entities set out in the Preamble who are bound by this Agreement.
- 2.19. **"Work"** entire asbestos abatement required by this Agreement as set out in more detail in Exhibit A, including all labor, materials, and services provided by Contractor to fulfill Contractor's obligations.

3. DUTIES OF CONTRACTOR

3.1. Scope of Services

- 3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to perform the services described in Exhibit A.
- 3.1.2. Execution of the Agreement by Contractor is conclusive that Contractor has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. Contractor further agrees that it has carefully correlated personal observations with requirements of the Agreement .

3.1.3. The Agreement has been read and carefully considered by Contractor, who understands and agrees to their sufficiency for the Work. The Agreement may not be more strongly construed against the City than against Contractor and Surety.

3.1.4. Contractor shall include all items necessary for proper execution and completion of the Work.

3.2. Permits, Fees, and Notices

3.2.1. Unless otherwise provided in the Agreement, Contractor shall secure and pay for all construction permits, licenses, and inspections:

3.2.1.1. necessary for proper execution and completion of the Work;
and

3.2.1.2. legally required at time bids are received.

3.3. Cultural Resources and Endangered Species

3.3.1. Contractor may not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If Contractor discovers one of these items, Contractor shall immediately notify the Director and further comply with the requirements of 13 Tex. Admin. Code Chs. 25 and 26 (2002), or successor regulation. Contractor shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by the Director.

3.3.2. Should either threatened or endangered plant or animal species be encountered, Contractor shall cease work immediately in the area of encounter and notify the Director.

3.4. Cleaning

3.4.1. Contractor shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from Contractor's operations, whether on-site or off-site. Unless otherwise authorized in writing by the Director, Contractor shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.4.2. Failure of Contractor to maintain a clean site, including access streets, is the basis for the Director to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, the Director may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due to the Contractor.

3.4.3. Contractor shall legally dispose off-site, all waste materials and other excess materials resulting from Contractor's operations.

3.5. Sanitation

3.5.1. Contractor shall provide and maintain sanitary facilities at site for use of all construction forces under the Contract. Newly constructed or existing sanitary facilities may not be used by Contractor.

3.6. Supervision and Construction Procedures

3.6.1. Contractor shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Agreement. Contractor is solely responsible and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all work under the Contract.

3.7. Coordinate Performance

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

3.8. City's Right to Stop the Work

3.8.1. If Contractor fails to carry out the Work in accordance with the Agreement, or fails to correct work which is not in accordance with requirements of the Agreement, the City may, by Notice of Noncompliance, order Contractor to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of the City to stop the Work will not give rise to a Claim for delay or to a duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity. If Contractor corrects the defective or nonconforming work within the time established in Notice of Noncompliance, CPO or Director will give written notice to Contractor to resume performance of the Work.

3.9. The City's Right to Carry Out Work

3.9.1. If Contractor fails to carry out work in accordance with the Agreement, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, the City may, after expiration of the required period, correct the deficiencies without prejudice to other remedies the City may have, including rights of the City under Section 5.4.

3.9.2. When the City corrects deficiencies, CPO or Director will issue an appropriate Change Order and deduct from payments then or thereafter due Contractor the cost of correcting the deficiencies, including compensation for Design Consultant's and Construction Manager's additional services and expenses made necessary by such default, neglect, or failure. This action by the City and amounts charged to Contractor are both subject to prior approval of CPO and Director. If

payments, then or thereafter due to the Contractor, are not sufficient to cover these amounts, Contractor shall pay the difference to the City.

- 3.9.3. Notwithstanding the City's right to carry out work, maintenance and protection of the Work remains Contractor's responsibility, as provided in the Agreement.

3.10. Reports

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

3.11. Contract Time

- 3.11.1. The Director shall provide Contractor a written Notice to Proceed specifying the Date of Commencement of the Work.
- 3.11.2. Contractor shall begin its performance no later than the Date of Commencement of the Work. Contractor shall achieve Date of Substantial Completion within 90 days from Date of Commencement of the Work unless the Contract Time is extended by Change order. Contractor acknowledges that time is of the essence.

3.12. Construction Schedules

- 3.12.1. On receipt of Notice to Proceed, Contractor shall promptly prepare and submit construction schedule for the Work for Director's review. The schedule must reflect the minimum time required to complete the Work not to exceed Contract Time.
- 3.12.2. Contractor shall give 24-hour written notice to Director before commencing work or resuming work where work has been stopped. Contractor shall also give the same notice to inspectors.
- 3.12.3. Each month, Contractor shall submit to Director a copy of an updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of the Work within Contract Time.

3.13. Liquidated Damages

- 3.13.1. Time is of the essence in performing services under this Agreement. If Contractor fails to complete the Work within the Contract Time, the City will suffer harm, although the actual damages from that harm are difficult to estimate. Therefore, if Contractor does not complete the Work [within the Contract Time, the Contractor shall pay to the City the amount stipulated below as liquidated damages. This amount is a reasonable forecast of just compensation for the harm to the City. Contractor shall pay the amount stipulated for each day of delay beyond the Contract Time until the Work is complete. Liquidated damages are \$1,200.00 per day.

3.14. Payment of Subcontractors

- 3.14.1. IN ACCORDANCE WITH THE TEXAS PROMPT PAYMENT ACT, CONTRACTOR SHALL MAKE TIMELY PAYMENTS TO ALL PERSONS AND ENTITIES THAT CONTRACTOR HAS HIRED TO SUPPLY LABOR, MATERIALS, OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE FAILURE TO PAY IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), OR GROSS NEGLIGENCE, (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY, INTENTIONAL ACTS, OR OTHER CONDUCT OR LIABILITY OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.
- 3.14.2. Failure of Contractor to pay its employees as required by law shall constitute a default under this Agreement, for which Contractor and its surety shall be liable on Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement.

3.15. Prevailing Wage

- 3.15.1. Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.
- 3.15.2. Federal Prevailing wage rates applicable to the Work may be one or a combination of the wage rates identified in Exhibit i:
- 3.15.3. Each week Contractor shall submit to the Housing and Community Development Department's compliance officer identified by the Director certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors, and Suppliers for each employee under the Agreement, for any day included in the Agreement.

3.16. Personnel of Contractor

- 3.16.1. Contractor shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on the Contractor.
- 3.16.2. Contractor shall notify Director in writing of its intent to replace the Superintendent. Contractor may not replace the Superintendent if Director makes a reasonable objection in writing.
- 3.16.3. Contractor shall provide competent, qualified personnel to perform asbestos abatement as required by the Agreement. The City may, by written notice, require Contractor to remove from the Work any employee

of Contractor or Subcontractors to whom City Engineer makes reasonable objection.

3.17. Release

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

3.18. Indemnification

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

3.18.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 3.18.1.1 THROUGH 3.18.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

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

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

3.18.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$1,000,000.00 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

3.19. Subcontractor's Indemnity

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

3.20. Indemnification Procedures

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

- 3.20.1.1. a description of the indemnification event in reasonable detail;
- 3.20.1.2. the basis on which indemnification may be due; and
- 3.20.1.3. the anticipated amount of the indemnified loss.

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

3.20.2. Defense of Claims

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

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

3.21. **Insurance**

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

[

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<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for: (i) Any Auto; or (ii) All Owned, Hired, and Non-Owned Autos
Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit each Occurrence/ aggregate
Contractor's Pollution Liability: Including pollution coverage for Contractual Liability, Clean-up costs, Abatement, Transport, and Non-owned disposal sites. Including Bodily Injury Liability, Property Damage Liability, and environmental damage arising from pollution conditions caused in performance of operations. Including Asbestos and Lead if part of operations.	\$1,000,000 each occurrence
(MCS - 90 endorsement to Auto Policy and removal of Pollution Exclusion)	\$1,000,000 combined single limit
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000 combined single limit
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

- 3.21.2. *Insurance Coverage.* At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.
- 3.21.3. *Form of insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never: (i) excuse non-compliance with the terms of this Section; or (ii) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.
- 3.21.4. *Required Coverage.* The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Agreement provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Agreement with a duration of two years after substantial completion. All certificates of insurance submitted by Contractor shall be accompanied by endorsements for: (i) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies; and (ii) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers'

Liability policies. The Director will consider all other forms on a case-by-case basis.

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

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

3.22. **Performance and Payment Bonds**

3.22.1. For Contracts over the value of \$25,000, Contractor shall provide Bonds on the City's standard forms covering faithful performance of the Contract and payment of obligations arising thereunder as required in the Agreement pursuant to Chapter 2253 of the Government Code. The Bonds must be for 100 percent of Original Contract Price and in accordance with conditions stated on standard City Performance and Payment Bond and Statutory Payment Bond forms. Bonds may be obtained from Contractor's usual source and cost for the Bonds are included in Contract Price.

3.23. **Surety**

3.23.1. Bond that is given or tendered to the City pursuant to the Agreement must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

3.23.2. If a Bond is given or tendered to the City pursuant to the Agreement in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

3.23.3. If the amount of a Bond is greater than \$100,000, Surety shall:

3.23.3.1. also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or,

3.23.3.2. Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

3.23.4. Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

3.23.5. Each Bond given or tendered to the City pursuant to the Agreement must be on City forms with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

3.23.6. Surety shall designate in its Bond, power of attorney, or written notice to the City, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

3.23.7. Contractor shall furnish information to a payment bond beneficiary as required by Tex. Gov't Code Ann. Ch. 2253.

3.24. Delivery of Bonds

3.24.1. Contractor shall deliver required Bonds to the City within time limits stated in Notice of Intent to Award and prior to Date of Commencement of the Work.

3.25. Materials and Equipment

3.25.1. Unless otherwise provided in the Agreement, Contractor shall provide and assume full responsibility for products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting-up, and completing the Work.

3.25.2. Contractor shall store materials and equipment in a safe, neat, compact, and protected manner. Contractor shall also store materials and equipment delivered during the work, along the right-of-way:

3.25.2.1. so as to cause the least inconvenience to property owners, tenants, and general public; and

3.25.2.2. so as not to block access to, or be closer than, three feet to any fire hydrant.

Contractor shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by Contractor, Contractor shall, at its sole expense, restore the damaged property to at least its original condition.

3.26. Warranties

- 3.26.1. Contractor warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Agreement. Contractor further warrants that the Work has been performed in a thorough and workmanlike manner.
- 3.26.2. Contractor warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.
- 3.26.3. Work not conforming to requirements of Section 3.26 may be considered nonconforming work.

3.27. Compliance with Laws

- 3.27.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.
- 3.27.2. In anticipation of the City's potential use or application for reimbursement of restricted federal funds to pay for some or all of the services provided under this Agreement and any change orders, Exhibits E, F, G, H, I and J are incorporated into this Agreement. The Parties agree to take such action as is necessary to amend this Agreement, if the Director determines that it is necessary to incorporate additional state or federal laws and regulations or grant requirements into this Agreement. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the applicable state and federal laws and regulations and grant requirements.

3.28. Compliance with Equal Employment Opportunity Ordinance

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

3.29. Minority and Women Business Enterprise Compliance

- 3.29.1. Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 26% of the value of this Agreement to MWBEs ("Stated MWBE goal(s)"). If the Contractor is a certified MBE or WBE, Contractor may count toward goals the work that it commits to perform with its own work force, capped

at 50% of the total advertised goal. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

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

3.29.3. The OBO Director, in consultation with the Director, may review, at any time during the Term of this Agreement, Contractor's progress toward attainment of the Stated MWBE goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Contractor has made to such MWBE subcontractors. If the OBO Director determines that Contractor is not in compliance with this Section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy, the OBO Director may:

3.29.3.1. After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Contractor of such determination:

3.29.3.1.1. Enter a written agreement with Contractor allowing Contractor to cure the noncompliance matter;

3.29.3.1.2. Suspend Contractor from engaging in any contract with the City for a period up to , but not to exceed, five years, pursuant to Section 15-88 of the City's Code of Ordinances, as may be amended from time to time; or

3.29.3.1.3. Take any other appropriate remedy.

The determination of the OBO Director is final.

- 3.29.3.2. Make a recommendation to the Director and the Chief Procurement Officer, to:
 - 3.29.3.2.1. Withhold payment or reimbursement under this Agreement;
 - 3.29.3.2.2. Make a finding that Contractor is in default or has breached this Agreement;
 - 3.29.3.2.3. Determine not to renew this Agreement;
 - 3.29.3.2.4. Terminate for cause this Agreement; or
 - 3.29.3.2.5. Take any other appropriate remedy.
- 3.29.4. Contractor shall maintain records showing;
 - 3.29.4.1. Subcontracts and supply agreements with Minority Business Enterprises;
 - 3.29.4.2. Subcontracts and supply agreements with Women Business Enterprises;
 - 3.29.4.3. Subcontracts and supply agreements with Small Business Enterprises (if any);
 - 3.29.4.4. Written confirmation from MWBE subcontractors and suppliers that they are participants on the contract; and
 - 3.29.4.5. Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Contractor shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.
- 3.29.5. Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:
 - 3.29.5.1. [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
 - 3.29.5.2. Within five (5) business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of

Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.

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

3.30. Drug Abuse Detection and Deterrence

- 3.30.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 (the "Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 3.30.2. Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 3.30.2.1. a copy of its drug-free workplace policy;
- 3.30.2.2. 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
- 3.30.2.3. if applicable (e.g., no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit C.
- 3.30.3. 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 D. 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.
- 3.30.4. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

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

3.31. Pay or Play

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

3.32. Environmental Laws

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

3.32.2. Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants, or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

3.33. Compliance with Certain State Law Requirements

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

3.33.2. *Anti-Boycott of Energy Companies.* Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

3.33.3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Contractor certifies that Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

3.33.4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Contractor certifies that, at the time of this Agreement neither Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

3.34. Zero Tolerance Policy for Human Trafficking and Related Activities

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

3.35. Preservation of Contracting Information

3.35.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Contractor agrees that this Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Contractor shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Contractor shall provide any Contracting Information related to this Agreement that is in the custody or possession of Contractor. Upon the expiration or termination of this Agreement, Contractor shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this Agreement that is in the custody or possession of Contractor, or (b) preserve the Contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

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

3.36. Changes

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

CHANGE ORDER

TO [Name of Contractor]

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

DATE: [Date of Notice]

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

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

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

Signed:

[Signature of Director]

- 3.36.3. The Director may issue more than one Change Order, subject to the following limitations:
 - 3.36.3.1. Council expressly authorizes the Director to approve one or more Change Orders, provided each Change Order cannot exceed \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.
 - 3.36.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - 3.36.3.3. The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 3.36.4. Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

- 3.36.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- 3.36.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4. DUTIES OF CITY

4.1. Payment Terms

- 4.1.1. Subject to all terms and conditions of this Agreement, the City agrees to pay for the services described in Exhibit A a lump sum fee of \$774,814.00. The fees must only be paid from Allocated Funds as provided below.
- 4.1.2. *Early Payment Discount.* The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tex. Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from Contractor as follows:
 - 4.1.2.1. Payment Time - 10 Days: 2% Discount
 - 4.1.2.2. Payment Time - 20 Days: 1% Discount

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

4.2. Taxes

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

4.3. Method of Payment

- 4.3.1. The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director showing the services performed and the percentage of completion. The City shall make payment to

Contractor within 30 days of the receipt and approval by the City of such invoices.

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

4.4. Limit of Appropriation

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

- 4.4.2. 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 \$774,814.00 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 (each a "Supplemental Allocation" and collectively, the "Supplemental Allocations") for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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

4.5. Access to Site

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

4.6. Access to Data

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

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

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

5. TERM AND TERMINATION

5.1. Agreement Term

5.1.1. this Agreement is effective on the Effective Date and expires upon the completion of the project unless terminated sooner.

5.2. Notice to Proceed

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

5.3. Termination for Convenience BY CITY

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

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

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

5.4. Termination for Cause by City

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

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

5.4.1.2. Contractor becomes insolvent;

- 5.4.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- 5.4.1.4. a receiver or trustee is appointed for Contractor.
- 5.4.2. If a default occurs and the Director determines that the City wishes to terminate the Contractor's performance or the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date, with a copy of the notice to the CPO. The date must be at least 30 days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate the Contractor's performance or this Agreement on the termination date, at no further obligation of the City.
- 5.4.3. To effect final termination, the Director must notify Contractor in writing, with a copy of the notice to the CPO. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.5. Termination for Cause by Contractor

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

5.6. Removal of Contractor Owned Equipment and Materials

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

6. MISCELLANEOUS

6.1. Independent Contractor

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

6.2. Force Majeure

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

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

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

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

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

6.2.4. 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.

6.3. Severability

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

6.4. Entire Agreement

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

6.5. Written Amendment

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

6.6. Governing Law and Venue

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

6.7. Notices

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

6.8. Captions

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

6.9. Non-Waiver

- 6.9.1. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.
- 6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10. Inspections and Audits

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

6.11. Enforcement

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

6.12. Ambiguities

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

6.13. Survival

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

6.14. Publicity

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

6.15. Parties in Interest

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

6.16. Successors and Assigns

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

6.17. Business Structure and Assignments

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

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

6.18. Remedies Cumulative

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

6.19. Contractor Debt

6.19.1. IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE

DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

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MAYOR'S REQUEST FOR EMERGENCY PASSAGE

To the Honorable City Council of the City of Houston:

In accordance with the provisions of Article VII, Section 7 of the Charter of the City of Houston, I submit and introduce to you the ordinances set out in the attached agenda for the meeting of the City Council of the City of Houston on the 13th and 14th day of AUGUST 2024, with the request that all such ordinances, except for those ordinances making a grant of any franchise or special privilege, or requiring multiple readings under state law or the City Charter, be passed finally on the date of their introduction. Other than those items excepted, there exists a public emergency requiring final passage on the date of introduction, and I accordingly request that you pass the same if they meet with your approval.

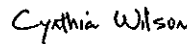
Signed by:



DATE: AUGUST 13, 2024

Mayor of the City of Houston

DocuSigned by:



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