

TABLE OF CONTENTS

Page No.

ARTICLE 1. PARTIES.....	1
1.01 ADDRESS	1
1.02 TABLE OF CONTENTS	1
1.03 PARTS INCORPORATED	3
1.04 CONTROLLING PARTS	3
1.05 DEFINITIONS	4
1.06 SIGNATURES.....	5
ARTICLE 2. DUTIES OF CONTRACTOR.....	6
2.01 SCOPE OF SERVICES	6
2.02 COORDINATE PERFORMANCE	6
2.03 TIME EXTENSIONS	6
2.04 REPORTS	6
2.05 PAYMENT OF SUBCONTRACTORS	6
2.06 RELEASE	7
2.07 INDEMNIFICATION	7
2.08 SUBCONTRACTOR'S INDEMNITY	8
2.09 INDEMNIFICATION PROCEDURES	8
2.10 INSURANCE.....	9
2.11 PROFESSIONAL STANDARDS.....	11
2.12 CONFIDENTIALITY.....	11
2.13 USE OF WORK PRODUCTS.....	11
2.14 LICENSE AND PERMITS	12
2.15 COMPLIANCE WITH LAWS	12
2.16 COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE	12
2.17 MWBE COMPLIANCE.....	12
2.18 DRUG ABUSE DETECTION AND DETERRENCE	13
2.19 CONFLICTS OF INTEREST	14
2.20 PAY OR PLAY	14
2.21 CONTRACTOR'S PERFORMANCE.....	14
2.22 ADDITIONS AND DELETIONS	14
2.23 CHANGES	15
2.24 ENVIRONMENTAL LAWS	16
2.25 ANTI-BOYCOTT OF ISRAEL.....	16
2.26 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES	17
2.27 PRESERVATION OF CONTRACTING INFORMATION	17
ARTICLE 3. DUTIES OF CITY.....	18
3.01 PAYMENT TERMS	18
3.02 TAXES	18
3.03 METHOD OF PAYMENT	18
3.04 LIMIT OF APPROPRIATION	18
3.05 ACCESS TO SITE.....	19

3.06 ACCESS TO DATA 19

ARTICLE 4. TERM AND TERMINATION 20

4.01 AGREEMENT TERM 20

4.02 NOTICE TO PROCEED 20

4.03 RENEWALS **Error! Bookmark not defined.**

4.04 TERMINATION FOR CONVENIENCE BY CITY 20

4.05 TERMINATION FOR CAUSE BY CITY 21

4.06 TERMINATION FOR CAUSE BY CONTRACTOR 21

4.07 REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS ... 21

ARTICLE 5. MISCELLANEOUS..... 22

5.01 INDEPENDENT CONTRACTOR 22

5.02 FORCE MAJEURE 22

5.03 SEVERABILITY 23

5.04 ENTIRE AGREEMENT 23

5.05 WRITTEN AMENDMENT 23

5.06 GOVERNING LAW AND VENUE 23

5.07 NOTICES 23

5.08 CAPTIONS 23

5.09 NON-WAIVER 23

5.10 INSPECTIONS AND AUDITS 24

5.11 ENFORCEMENT 24

5.12 AMBIGUITIES 24

5.13 SURVIVAL 24

5.14 PUBLICITY 24

5.15 PARTIES IN INTEREST 24

5.16 SUCCESSORS AND ASSIGNS 24

5.17 BUSINESS STRUCTURE AND ASSIGNMENTS 25

5.18 REMEDIES CUMULATIVE 25

5.19 CONTRACTOR DEBT 25

EXHIBITS

- "A" DEFINITIONS
- "B" SCOPE OF SERVICES
- "C" DRUG POLICY COMPLIANCE AGREEMENT
- "D" CERTIFICATION OF NO SAFETY IMPACT POSITIONS
- "E" DRUG POLICY COMPLIANCE DECLARATION
- "F" FEES AND COSTS

1.03 PARTS INCORPORATED

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

1.04 CONTROLLING PARTS

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

1.05 **DEFINITIONS**

1.05.1 Certain terms used in this Agreement are defined in Exhibit "A".

1.06 **SIGNATURES**

1.06.1 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.

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

Name:
Title:

CONTRACTOR:
LOCKE LORD, LLP

DocuSigned by:
Miles Holsworth
By: AA23F8ERC217408
Name: Miles Holsworth
Title: Executive Director/Secretary and Treasurer
Federal Tax ID Number: 74-1164324

ATTEST/SEAL:

Art J. Manuil

City Secretary **Interim**

CITY OF HOUSTON, TEXAS

Signed by:
Sandra Bonham

Mayor

APPROVED:

DocuSigned by:
Bill Kelly

Director, Mayor's Office of Government Relations

COUNTERSIGNED BY:

Cliff B. Brown

City Controller *Jennal Pich*

APPROVED:

DocuSigned by:
Jerry Adams

Chief Procurement Officer

COUNTERSIGNATURE DATE:

11-20-2020

APPROVED AS TO FORM:

DocuSigned by:
Saira Shah

Sr. Assistant City Attorney
L.D. File No. 0422000202001

ARTICLE 2. DUTIES OF CONTRACTOR

2.01 SCOPE OF SERVICES

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

2.02 COORDINATE PERFORMANCE

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

2.03 TIME EXTENSIONS

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

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

2.04. REPORTS

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

2.05 PAYMENT OF SUBCONTRACTORS

2.05.1 In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment by, through, or under Contractor in the performance of this Agreement.

2.05.2 **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.

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

2.06 RELEASE

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

2.07 INDEMNIFICATION

2.07.1 **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:**

2.07.1.1 **CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBPARAGRAPHS 2.07.1.1 THROUGH 2.07.1.3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**

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

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

2.07.2 **CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR**

YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

2.07.3 INTELLECTUAL PROPERTY INDEMNITY

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE ACITY@) 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 COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.

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

WITHIN 60 DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, 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.

2.08 SUBCONTRACTOR'S INDEMNITY

2.08.1 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.

2.09 INDEMNIFICATION PROCEDURES

2.09.1 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:

2.09.1.1 a description of the indemnification event in reasonable detail;

2.09.1.2 the basis on which indemnification may be due; and

2.09.1.3 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.

2.09.2 Defense of Claims

2.09.2.1 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.

2.09.2.2 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.

2.10 INSURANCE

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

<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
Professional Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate

Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability and Automobile Liability	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

2.10.2 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.

2.10.3 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.

2.10.4 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.

2.10.5 **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.

2.10.6 **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.

2.11 **PROFESSIONAL STANDARDS**

2.11.1 Contractor's performance shall conform to the professional standards prevailing in the Harris County, Texas, with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

2.12 **CONFIDENTIALITY**

2.12.1 Contractor, its agents, employees, contractors, and subcontractors shall hold all City information, data, and documents (collectively, the "Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless the Director authorizes it in writing. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

2.13. **USE OF WORK PRODUCTS**

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

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

2.13.3 Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor

produces or gathers during its performance under this Agreement.

2.13.4 Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to all Documents, including work products and all proprietary rights therein.

2.13.5 All Documents, including work products, are "made for hire".

2.13.6 Notwithstanding anything to the contrary, the City is, will be, and shall remain at all times the sole owner of all Documents, including all work products. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in all Documents, including work products. Contractor shall not possess nor assert any lien or other right against any Documents, including work products.

2.14 **LICENSES AND PERMITS**

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

2.15 **COMPLIANCE WITH LAWS**

2.15.1 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.

2.16 **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY ORDINANCE**

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

2.17 **MWBE COMPLIANCE**

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

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

[Name of MWBE subcontractor] shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Office of Business Opportunity Director (the "Director").

[Name of MWBE subcontractor] shall permit representatives of the City of Houston,

at all reasonable times, to perform: (i) audits of the books and records of the subcontractor; and (ii) 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 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.

Within five Business Days of execution of this subcontract, 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.

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.

2.18. **DRUG ABUSE DETECTION AND DETERRENCE**

- 2.18.1 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.
- 2.18.2 Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):
- 2.18.2.1 a copy of its drug-free workplace policy;
 - 2.18.2.2 the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C", together with a written designation of all safety impact positions; and
 - 2.18.2.3 if applicable (*e.g.*, no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".
- 2.18.3 If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E". Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

2.18.4 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.

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

2.19. **CONFLICTS OF INTEREST**

2.19.1 If an actual or potential conflict arises between the City's interests and the interests of other client(s) Contractor represents, Contractor shall immediately notify the Director in writing of the legislative subject matter in conflict (the "Conflict"). The Director shall issue a letter of consent or non-consent to Contractor's representation, potential or otherwise, of the other client(s) relating to the Conflict within 10 Business Days after receipt of Contractor's notice. If the Director issues a non-consent letter, Contractor shall immediately terminate its representation, potential or otherwise, of the other client(s) relating to the Conflict. With mutual agreement in writing, Contractor may continue to represent the other client(s) on other matters that are substantially unrelated to the Conflict and that do not pose an actual or potential conflict with the City's interests.

2.20. **PAY OR PLAY**

2.20.1 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.

2.21. **CONTRACTOR'S PERFORMANCE**

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

2.22. **ADDITIONS AND DELETIONS**

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

for the equipment, supplies, services, or locations classified in the Fees and Costs (Exhibit "F").

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

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

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

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

2.23. CHANGES

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

2.23.2 The CPO will issue the Change Order in substantially the following form:

<u>CHANGE ORDER</u>	
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:	
<u>[Signature of CPO]</u>	

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

- 2.23.3.1 The City Council expressly authorizes the CPO to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 over the approved contract amount must be approved by the City Council.
 - 2.23.3.2 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.
 - 2.23.3.3 The total of all Change Orders issued under this section may not increase the original contract amount by more than 25%.
- 2.23.4 Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The CPO's decision regarding a time extension is final.
- 2.23.5 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.
- 2.23.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

2.24 **ENVIRONMENTAL LAWS**

- 2.24.1 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.
- 2.24.2 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.

2.25 **ANTI-BOYCOTT OF ISRAEL**

- 2.25.1 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.

2.26 ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES

2.26.1 The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of 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.

2.27 PRESERVATION OF CONTRACTING INFORMATION

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

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

ARTICLE 3. DUTIES OF CITY

3.01 PAYMENT TERMS

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

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

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

3.01.3 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.

3.02 TAXES

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

3.03 METHOD OF PAYMENT

3.03.1 The City shall pay on the basis of monthly invoices submitted by Contractor and approved by the Director showing the services performed and the attendant fee. The City shall make payment to Contractor within 30 days of the receipt and approval by the City of such invoices. If the City disputes any item in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After any dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

3.04 LIMIT OF APPROPRIATION

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

3.04.2 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 **\$672,000** 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:

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

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

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

\$ _____

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

3.05 ACCESS TO SITE

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

3.06 ACCESS TO DATA

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

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

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

ARTICLE 4. TERM AND TERMINATION

4.01. AGREEMENT TERM

4.01.1 Unless sooner terminated in accordance with the terms and conditions hereof, this Agreement shall commence on December 1, 2020 and expires November 30, 2022.

4.02. NOTICE TO PROCEED

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

4.03 Intentionally Left Blank

4.04. TERMINATION FOR CONVENIENCE BY CITY

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

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

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

4.05. **TERMINATION FOR CAUSE BY CITY**

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

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

4.05.1.2 Contractor becomes insolvent;

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

4.05.1.4 a receiver or trustee is appointed for Contractor.

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

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

4.06 **TERMINATION FOR CAUSE BY CONTRACTOR**

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

4.07. **REMOVAL OF CONTRACTOR OWNED EQUIPMENT AND MATERIALS**

4.07.1 Upon expiration or termination of this Agreement, Contractor is permitted 10 days

within which to remove contractor-owned material and equipment from the City's premises. This City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The City reserves the right to deny any extension of time.

ARTICLE 5. MISCELLANEOUS

5.01 INDEPENDENT CONTRACTOR

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

5.02 FORCE MAJEURE

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

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

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

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

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

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

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

AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

5.03 SEVERABILITY

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

5.04 ENTIRE AGREEMENT

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

5.05 WRITTEN AMENDMENT

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

5.06 GOVERNING LAW AND VENUE

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

5.07 NOTICES

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

5.08 CAPTIONS

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

5.09 NON-WAIVER

5.09.1 If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other terms.

If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

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

5.10 **INSPECTIONS AND AUDITS**

5.10.1 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.

5.11 **ENFORCEMENT**

5.11.1 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.

5.12 **AMBIGUITIES**

5.12.1 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.

5.13 **SURVIVAL**

5.13.1 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.

5.14 **PUBLICITY**

5.14.1 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.

5.15 **PARTIES IN INTEREST**

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

5.16 **SUCCESSORS AND ASSIGNS**

5.16.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on

assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

5.17 **BUSINESS STRUCTURE AND ASSIGNMENTS**

5.17.1 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.

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

5.18 **REMEDIES CUMULATIVE**

5.18.1 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.

5.19 **CONTRACTOR DEBT**

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

EXHIBIT "A"

DEFINITIONS

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

1. "Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
2. "Business Day" means any calendar day except Saturdays, Sundays and full-day holidays for employees of the City (as designated by City Council).
3. "Chief Procurement Officer" ("CPO") means the Chief Procurement Officer of the City of Houston, as set forth in Chapter 15 of the Houston Code of Ordinances.
4. "City" is defined in the preamble of this Agreement and includes its successors and permitted assigns.
5. "Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.
6. "Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.
7. "Director" means the Director of the City of Houston Mayor's Office on Government Relations or such other person as he or she designates.
8. "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.
9. "Effective Date" means the date this Agreement is countersigned by the City Controller.
10. "Notice to Proceed" means a written communication from the Director or the CPO to Contractor instructing Contractor to begin performance.
11. "Party" or "Parties" means one or all of the entities set out in the Preamble who are bound by this Agreement.

EXHIBIT "B"

SCOPE OF SERVICES

Locke Lord, LLP (the "Contractor") will be engaged to represent the City of Houston (the "City") and work in coordination with the Mayor's Office of Government Relations (GR) for the 87th Texas Legislature, including the Regular Session and any Called Sessions.

Specifically, the Contractor's services shall include:

Proactive Legislation

- Work with GR to identify and prepare potential proactive legislation.
- Assist in developing a strategy to pass the proactive legislation including, but not limited to, meeting with other organizations to provide grassroots support;
- Meet with groups that may oppose legislation to address their concerns with maintaining a strong position for the City;
- Assist in drafting legislation;
- Assist in securing authors, co-authors, sponsors and co-sponsors of the proactive legislation;
- Proactively promote City positions on policy matters to elected officials, their staffs, and other decision makers through personal contact, written testimony, or testimony;
- Brief the Governor, Lt. Governor, Speaker, and other legislative leaders on the importance of the legislation;
- Identify witnesses and prepare strategies for committee hearings;
- If requested by GR, assist in preparing a bill analysis on proactive legislation;
- Work with GR in support of the City's position and coordinate all aspects of the legislative strategy;
- Pursue all necessary steps to obtain final enactment into law of proactive legislation; and
- Other services as required by GR or the City's Legal Department.

Adverse Legislation

- Assist GR in tracking adverse legislation throughout the legislative process;
- Negotiate with opposition groups during the legislative session; The Contractor shall work to advance the City's legislation early in the session and attempt to address the oppositions' concerns to avoid legislative battles;
- Prepare a strategy to defend against any adverse legislation and implement a legislative strategy involving floor leaders, witnesses and leadership opposition to the adverse legislation;
- Brief the Governor's staff regarding the impact of negative legislation and develop and implement a strategy to obtain the appropriate action by the Governor; and
- Other services as required by GR or the City's Legal Department or the City.

Filed Legislation

- In consultation with GR, monitor filed legislation to identify bills which may be adverse to the City;
- Consult with GR and other appropriate individuals to develop a strategy to defeat unanticipated negative legislation file during the legislative session;

- Assist in identifying unanticipated damaging amendments that may be offered and in developing a strategy to defeat hostile floor amendments in the House or Senate;
- Help prepare all witnesses for committee testimony in the House and Senate;
- Brief legislative committee members in advance of any legislation being considered, especially the City's delegations;
- Address concerns of members of the appropriate committees, in advance of committee hearings, regarding any legislation or amendments they propose or intend to propose;
- Organize floor action and help develop grassroots support for the delegation members on all proactive legislation; and
- When all bills pass both Houses of the Legislature, work with the Governor's staff to secure the Governor's signature or veto.

General Services

- Build working relationships with members of the City's delegation and work with City Council members to develop a system of personal contacts and grassroots support during critical times throughout the legislative process;
- Coordinate with representatives of other cities on mutually beneficial legislative issues;
- Upon request, be active in the appropriations process of behalf of the City;
- Conduct legislative negotiations, on the City's behalf, based on GR's instructions;
- Represent the City at fundraisers, receptions, and other related functions in Austin and Houston;
- Assist the City in handling regulatory matters that may arise in State agencies;
- Represent the City and its interests in the formulation of interim studies on municipal issues of interest;
- Perform other State governmental relationship activities as requested by the City;
- Maintain a written bill-tracking system to monitor all proactive and negative legislation during the legislative session; and
- Assist the City in any matters of interest that arise during the Legislative and/or Special Sessions

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

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

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

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

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

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

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

Date

Contractor Name

Signature

Title

EXHIBIT "D"

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

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

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "E"

DRUG POLICY COMPLIANCE DECLARATION

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

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

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

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

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

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

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

Table with 4 columns: Random, Reasonable Suspicion, Post Accident, Total. Rows include Number Employees Tested, Number Employees Positive, and Percent Employees Positive.

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

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

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

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT "F"

FEES AND COSTS

The City of Houston (the "City") shall pay for services and expenses attributable to Locke Lord, LLP (the "Contractor") in accordance with the following schedule:

Not to Exceed Fixed Fee. For and in consideration of the services to be rendered by (the "Contractor", the City shall pay, and the Contractor shall receive a fixed fee not to exceed **\$757,000**.

The fixed fee does not include the prosecution or defense of any litigation or alternative dispute resolution procedure. The Contractor shall not charge the City for any expenses unless pre-approved in writing.

The fee will be billed monthly in advance, and shall be due and payable as follows:

- December 1, 2020 - \$5,000

- January through May 2021 -- \$115,000 each month
 - o \$60,000 of this amount will be paid to the subcontractors each month
 - o \$55,000 of this amount will be the Contractor's fee

- June 2021 through November 2022 - \$5,000 each month
 - o Retainer increases to \$15,000 for each month in which a special session commences for up to two months.

- Calculation of Not to Exceed Fixed Fee
 - o Firm: \$55,000 x 5 months = \$275,000
 - o Subs: \$60,000 x 5 months = \$300,000
 - o Firm: \$5,000 x 19 months = \$95,000
 - o Firm: Possible additional \$20,000 for two special sessions (\$10,000 x 2)
 - o Subs: Possible additional \$67,000 for special circumstance or projects (\$67,000)

TOTAL \$757,000