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2018-0575

**AGREEMENT FOR PROFESSIONAL FEDERAL LOBBYING SERVICES**

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

This **AGREEMENT FOR PROFESSIONAL FEDERAL LOBBYING SERVICES** ("Agreement") is made on the date countersigned by the City Controller ("Effective Date") by and between the **CITY OF HOUSTON, TEXAS** ("City"), a Texas home-rule city, and **AKIN GUMP STRAUSS HAUER & FELD LLP** ("Firm"), a limited liability partnership authorized to do business in the State of Texas.

The City and Firm agree as follows:

**ARTICLE 1. PARTIES**

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

<b>City</b>	<b>Firm</b>
Director, Intergovernmental Relations or Designee City of Houston PO Box 1562 Houston, TX 77251-1562	Akin Gump Strauss Hauer & Feld LLP Robert S. Strauss Building 1333 New Hampshire Avenue, N.W. Washington, DC 20036-1564

**1.2. TABLE OF CONTENTS.** This Agreement consists of the following articles and exhibits:

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D	Contractor's Certification of No Safety Impact Positions
E	Drug Policy Compliance Declaration

- 1.3. **PARTS INCORPORATED.** The above described articles and exhibits are incorporated into this Agreement.
- 1.4. **CONTROLLING PARTS.** If a conflict between or among the articles or exhibits arises, the articles control over the exhibits.
- 1.5. **SIGNATURES.** The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

**[SIGNATURE PAGE FOLLOWS]**

FIRM:  
AKIN GUMP STRAUSS HAUER & FELD LLP

CITY:  
CITY OF HOUSTON, TEXAS

By: Susan Leut  
Name: Susan Leut  
Position: Partner

By: Amanda Washington  
Mayor

Tax Identification No.: 75-1338644

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

Sean Moore  
Name: Sean Moore

ATTEST/SEAL:

Mark Russell  
City Secretary

APPROVED:

Jerry Adams  
Chief Procurement Officer

APPROVED:

[Signature]  
Director, Intergovernmental Relations

APPROVED AS TO FORM:

WJG  
Sr. Assistant City Attorney  
L.D. File No. 0421800041002

COUNTERSIGNED BY:

James Polk  
City Controller

DATE COUNTERSIGNED:

7-26-18  
("Effective Date")



District of Columbia: SS  
Subscribed and Sworn to before me  
this 3rd day of July, 2018  
Sean J. Moore  
Sean Joseph Moore, Notary Public, D.C.  
My commission expires April 14, 2021

## ARTICLE 2. DEFINITIONS

- 2.1. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1. "*Agreement*" means this contract between the Firm and the City, including all exhibits and any written amendments authorized by the Firm and City Council.
  - 2.1.2. "*Business Day*" means any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday or City Holiday.
  - 2.1.3. "*City*" is defined in the preamble of this Agreement and includes its successors and assigns.
  - 2.1.4. "*City Attorney*" means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
  - 2.1.5. "*City Holiday*" means any office City of Houston holiday as determined each year by City Council.
  - 2.1.6. "*Day*" or "*Days*" means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural "*days*", those days will be consecutive.
  - 2.1.7. "*Director*" means the City's Director of Intergovernmental Relations, or his designee.
  - 2.1.8. "*Documents*" means the original and any non-identical copy of all written, typed, or printed matter, or electronically stored information, of any kind or description.
  - 2.1.9. "*Effective Date*" means the date the City Controller countersigns this Agreement and this Agreement becomes effective and binding.
  - 2.1.10. "*Firm*" is defined in the preamble of this Agreement and includes its successors and assigns.
  - 2.1.11. "*Include*" and "*including*", and words of similar import, shall be deemed to be followed by the words "without limitation".
  - 2.1.12. "*Party*" or "*Parties*" means the Firm and the City who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
  - 2.1.13. "*Reimbursable Expenses*" means (without markup):
    - 2.1.13.1. identifiable communication expenses including reasonable costs of copying and printing (other than for the Firm's internal use), postage, delivery services, and long distance telephone charges;
    - 2.1.13.2. upon the prior written approval of the Director and provided the travel is reasonably necessary to accomplish services under this Agreement and

the expenses are eligible for reimbursement under the City's then current travel reimbursement policy set forth in A.P. 2-5 (Revised), the ordinary and reasonable costs of travel to and from the City (including common carrier coach fares, ground transportation expenses, lodging and meals), and each such approved expense shall not exceed the amount established under the City's then current travel reimbursement policy set forth in A.P. 2-5 (Revised), which can be found at [www.houstontx.gov/adminpolicies/2-5.pdf](http://www.houstontx.gov/adminpolicies/2-5.pdf); and

- 2.1.13.3. any sales tax Firm is legally required to pay for its services under this Agreement.
- 2.1.14. "*Term*" means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.
- 2.1.15. "*Writing*" or "*written*" shall mean a written communication from one party to the other, including an electronic communication or e-mail.
- 2.2. 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.
- 2.3. The word "*shall*" is always mandatory and not merely permissive.

### **ARTICLE 3. RIGHTS AND DUTIES OF FIRM**

#### **3.1. SCOPE OF SERVICES**

- 3.1.1. In consideration of the payments specified in this Agreement, Firm shall provide all labor, material, and supervision necessary to perform the specific, measurable services set forth in **Exhibit "A"**.

#### **3.2. PERFORMANCE**

- 3.2.1. The Firm must regularly update the Director and other person(s) the Director designates regarding the Firm's performance under this Agreement. Firm shall meet (either by teleconference or if required by the Director, in person) on a quarterly basis with the Director to discuss issues handled by Firm under this Agreement and share relevant information regarding results of Firm's efforts. Firm's business practices shall be subject to and in accordance with the terms and conditions of this Agreement, as interpreted by the Director, in his sole, reasonable discretion.

#### **3.3. SUBCONTRACTORS AND FIRM'S PERSONNEL**

- 3.3.1. Firm shall not subcontract any part of its performance under this Agreement without the Director's prior written approval.
- 3.3.2. Upon notice from the Director that the City considers the services performed by a Firm employee or subcontractor to be inadequate, Firm shall give due consideration to removing such employee or subcontractor from performing services under this

Agreement.

**3.4. PAYMENT OF SUBCONTRACTORS.** In accordance with the Texas Prompt Payment Act, Firm shall make timely payments to all persons and entities that Firm has hired to supply labor, materials, or equipment for the performance of this Agreement. **FIRM SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF FIRM'S FAILURE TO MAKE THESE PAYMENTS REGARDLESS OF WHETHER THE NON-PAYMENT IS CAUSED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES.**

**3.5. RELEASE**

**3.5.1. FIRM 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 TO PERSONS OR PROPERTY IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. FIRM 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.**

**3.5.2. FIRM SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE TO THE CITY.**

**3.6. INSURANCE**

**3.6.1. The Firm shall maintain in effect certain insurance coverage and shall furnish certificates of insurance, in duplicate form, before beginning its performance under this Agreement. All liability policies must be issued by a company with a Certificate of Authority from the State Department of Insurance to conduct insurance business in Texas or a rating of at least B+ and a financial size of Class VI or better according to the current year's Best's Key Rating Guide, Property-Casualty United States. The Firm shall maintain Professional Liability insurance in the amount of \$2,000,000 per occurrence; \$2,000,000 aggregate.**

**3.6.2. The Firm shall give 30 days' advance written notice to the City before a policy may be canceled, materially changed, or nonrenewed. Within the 30-day period, the Firm shall provide other suitable policies in lieu of those about to be canceled, materially changed, or nonrenewed so as to maintain in effect the required coverage. If the Firm does not comply with this requirement, the City Attorney, at his or her sole discretion, may immediately suspend the Firm from any further performance under this Agreement and begin procedures to terminate for default.**

- 3.7. WARRANTIES.** Firm's performance shall conform to the professional standards prevailing in Washington, D.C. with respect to the scope, quality, due diligence, and care of the services Firm provides under this Agreement.
- 3.8. CONFIDENTIALITY – PROTECTION OF CITY'S INTEREST.** Firm, 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. Firm, its agents, employees, contractors, and subcontractors shall not disclose, disseminate, or use the Information unless authorized in writing by the Director. If Firm employs third party consultants or subcontractors in connection with its representation of the City, Firm shall obtain written agreements from such third parties which bind them to the terms in this Section.
- 3.9. USE OF WORK PRODUCTS**
- 3.9.1. The City may use all notes, plans, computations, databases, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively, the "Documents") that Firm prepares or obtains under this Agreement.
- 3.9.2. Throughout the Term, Firm shall deliver the original Documents to the Director on request. Within five business days after this Agreement expires or is earlier terminated, Firm shall deliver to the Director the original Documents, and all other files and materials Firm produces or gathers during its performance under this Agreement. Firm may retain copies of any such Documents for its own use.
- 3.10. LICENSES AND PERMITS.** Firm shall obtain, maintain and pay for all licenses, permits and certificates including all professional licenses required by this Agreement any statute, ordinance, rule or regulation, including but not limited to registration as a federal lobbyist in the District of Columbia. Firm shall immediately notify the Director of any suspension, revocation or other detrimental action against his or her license.
- 3.11. MINORITY AND WOMEN BUSINESS ENTERPRISES**
- 3.11.1. Firm 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. Firm shall make good faith efforts to award subcontracts or supply agreements in at least 19% of the value of this Agreement to MWBEs. Firm acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity and will comply with them.
- 3.11.2. Firm shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to mediation if directed to do so by the Office of Business Opportunity Director.
- 3.12. COMPLIANCE WITH LAWS.** Firm shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.
- 3.13. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE.** Firm shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Houston Code of Ordinances.



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

**3.15. DRUG ABUSE DETECTION AND DETERRENCE.**

3.15.1. 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 Firm while on City premises is prohibited. Firm shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office. For purposes of Exhibits "C", "D", and "E", Firm shall be referred to as "Contractor".

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

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

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

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

If Firm files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six 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"**. Firm 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 Firm begins work under this Agreement.

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

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

**3.16. CONFLICTS OF INTEREST.**

3.16.1. Firm represents and warrants that after a thorough review pursuant to its normal conflict-checking procedures, as of the Effective Date, Firm represents that it does not have an actual or potential conflict of interest with the City. Firm shall not take any action knowingly that will raise a potential or actual conflict of interest between the City's interests and the interests of other clients (or potential clients). In the event such action is taken, the Firm shall immediately notify the Director in writing or by phone and shall

immediately take action to resolve the conflict in a manner favorable to the City.

- 3.16.2. If an actual or potential conflict arises between the City's interests and the interests of other clients the Firm represents, the Firm shall immediately notify the City Attorney in writing. If the City Attorney consents to the Firm's continued representation of the other clients, the City Attorney shall notify the Firm in writing. If the City Attorney does not issue written consent within three business days after receipt of the Firm's notice, the Firm shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.
- 3.16.3. The scope of services includes monitoring regulatory matters and pending legislation, developing recommended action plans, briefing Members of Congress and communicating with the U.S. Conference of Mayors, the National League of Cities and other interest groups and federal regulatory agencies as directed by the Director on regulatory and legislative issues that could affect the City. However, if an ethical conflict presents due to an action taken by or a position asserted by a client of Firm, but not by any action taken or position asserted by Firm itself, this Agreement shall not require Firm to provide advice to the City regarding matters and policy relating to such conflict in which the City's position is adverse to the position of the conflicted Firm clients.
- 3.16.4. The Firm shall not represent third parties in meetings or through electronic or telephonic communications before the City and/or with City officials throughout the Term of this Agreement and for twelve months after the termination or expiration of this Agreement, whichever occurs first.
- 3.17. **SYMBOLS.** Firm shall have no right to use the trademarks, symbols, trade names or name of the City, either directly or indirectly, in connection with any production, promotion service or publication without the prior written discretionary consent of the Director.
- 3.18. **PUBLICITY.** Firm shall make no announcement or release of information concerning this Agreement until such release has been submitted to and approved in writing by the Director.
- 3.19. **NON-EXCLUSIVITY.** This Agreement does not create an exclusive right for Firm to perform all services relating to the subject of this Agreement. The City may procure and execute contracts with other entities for the same, similar, or additional services as those set forth in this Agreement.
- 3.20. **ANTI-BOYCOTT OF ISRAEL.** Firm certifies that Firm 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.

- 3.21. ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES.** The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Firm 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 Effective Date. Firm notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Firm or its subcontractors providing services or goods under this Agreement within seven days of Firm becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

#### **ARTICLE 4. RIGHTS AND DUTIES OF CITY**

##### **4.1. PAYMENT TERMS**

- 4.1.1. City shall pay Firm a fee of **\$20,000.00** per month for Firm's services rendered under this Agreement plus Reimbursable Expenses not to exceed **\$8,000.00** per year. For the first month that this Agreement is in effect, the monthly fee shall be prorated from the Effective Date to the end of the month. All monthly invoices shall be accompanied by a description of the services rendered by Firm for the month, together with an itemized listing of Reimbursable Expenses with copies of receipts. Payments made to Firm are solely for services rendered under this Agreement and are not intended to support Firm in any of its activities not specifically set forth in this Agreement. Payments shall be due within 30 days of receipt and approval by the Director of the invoice.
- 4.1.2. *Taxes.* The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Firm'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 Firm if requested.
- 4.1.3. *Fees: Disputes.* If the Director disputes an invoice Firm submits for any reason, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Firm of the dispute and request remedial action. After the dispute is settled, Firm shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

##### **4.2. LIMIT OF APPROPRIATION**

- 4.2.1. The City's duty to pay money to Firm under this Agreement is limited in its entirety by the provisions of this Section.
- 4.2.2. 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 **\$248,000.00** for services under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds (each a "Supplemental Allocation") for this Agreement, but they are

not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- 4.2.2.1. The City has not allocated supplemental funds or made a Supplemental Allocation for this Agreement unless the City has issued to Firm 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.

<b>NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS</b>
By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.
\$ _____

- 4.2.2.2. The Original Allocation plus all Supplemental Allocations are the "Allocated Funds". This Agreement is not an allocation of funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Firm must assure itself that sufficient allocations have been made to pay for Services it provides. If Allocated Funds are exhausted, Firm'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.

**4.3. ACCESS TO CITY DATA**

- 4.3.1. The City shall, to the extent permitted by law, allow Firm to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for Firm to perform under this Agreement.
- 4.3.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Firm's use.
- 4.3.3. For any raw data created, assembled, used, maintained, collected, or stored by the Firm for or on behalf of the City, Firm 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 5. TERM AND TERMINATION**

**5.1. CONTRACT TERM**

- 5.1.1. This Agreement is effective on Countersignature Date and remains in effect for two years ("Initial Term"), unless sooner terminated under this Agreement.

5.1.2. The Director, in his sole discretion and subject to the availability of funds, may elect to extend the Agreement for one additional one-year term ("Renewal Term") upon the same terms and conditions. To exercise a contract extension, the Director shall provide written request to Firm (with a copy of the notice sent to the CPO) at least 30 days before expiration of the then-current term.

## **5.2. TERMINATION FOR CONVENIENCE BY CITY**

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

5.2.2. On receiving the notice, Firm 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 and deliver all supplies and materials accumulated in performing this Agreement to a place designated by the Director. As soon as practicable after receiving the termination notice, Firm 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 Firm for services actually performed, but not already paid for, in the same manner as prescribed in **Article 4** unless the fees exceed the allocated funds remaining under this Agreement.

5.2.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE FIRM'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. FIRM 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, LOST PROFITS OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.2.4. The rights and remedies of the City provided in **Section 5.2** are in addition to any other rights and remedies provided by law or under this Agreement.

## **5.3. TERMINATION FOR CAUSE BY CITY**

5.3.1. Any violation or breach of terms of this Agreement on the part of the Firm or its Subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the Parties to this Agreement. The duties and obligations imposed by the Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

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

5.3.2.1. Firm fails to perform any of its material duties under this Agreement;

5.3.2.2. Firm becomes insolvent;

5.3.2.3. all or a substantial part of Firm's assets are assigned for the benefit of its creditors; or

5.3.2.4. a receiver or trustee is appointed for Firm.

5.3.3. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Firm describing the default and the termination date. The Director, at his sole option, may extend the termination date to a later date. If the Director allows Firm to cure the default and Firm does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Firm does not cure the default before the termination date, then the Director upon notice of termination, may terminate this Agreement on the termination date, at no further obligation to the City, and pay Firm for all services performed, if any, through such date.

5.3.4. To effect final termination, the Director must notify Firm in writing. After receiving the notice, Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, promptly cancel all orders or subcontracts chargeable to this Agreement and deliver all supplies and materials accumulated in performing this Agreement to a place designated by the Director.

5.3.5. In the event of termination due to Firm's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, Firm shall be liable to the City for any additional cost occasioned to the City thereby.

5.3.6. If after termination for failure to fulfill contract obligations, it is determined that the Firm had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, payment shall be made as provided in **Section 5.2**.

5.3.7. The rights and remedies of the City provided in **Section 5.3** are in addition to any other rights and remedies provided by law or under this Agreement.

**5.4. TERMINATION FOR CAUSE BY FIRM.** Firm 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 Firm wishes to terminate the Agreement, then

Firm 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. Firm, at its sole option, may extend the proposed termination date to a later date, not to exceed 30 days. 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 Firm may terminate its performance under this Agreement on the termination date.

## **ARTICLE 6. MISCELLANEOUS**

- 6.1. RELATIONSHIP OF THE PARTIES.** Firm shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.
- 6.2. SEVERABILITY.** If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.
- 6.3. ENTIRE AGREEMENT.** This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.
- 6.4. WRITTEN AMENDMENT.** Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Firm. The Director is only authorized to perform the functions specifically delegated to him in this Agreement.
- 6.5. APPLICABLE LAWS**
  - 6.5.1.** This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, Airport rules and regulations, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction without reference to their choice of law provisions.
  - 6.5.2.** The parties consent to venue for any litigation relating to this Agreement being Harris County, Texas.
- 6.6. NOTICES.** All notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS, or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in **Section 1.1.** 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.
- 6.7. CAPTIONS.** Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.
- 6.8. NON-WAIVER**

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

## **6.9. INSPECTIONS AND AUDITS**

- 6.9.1. City representatives have the right to perform, or have performed, (i) audits of Firm's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement.
- 6.9.2. Firm shall keep its books and records available for this purpose for at least seven years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

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

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

**6.12. SURVIVAL.** Firm 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.

**6.13. PARTIES IN INTEREST.** This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Firm only.

**6.14. SUCCESSORS AND ASSIGNS.** This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets as set out in **Section 6.16**. This Agreement does not create any personal liability on the part of any employee, officer, or agent of the City.

## **6.15. BUSINESS STRUCTURE AND ASSIGNMENTS**

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



6.15.2. Firm shall not delegate any portion of its performance under this Agreement without the Director's prior written consent, which consent shall not be unreasonably withheld.

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

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

**6.18. FIRM DEBT.** IF FIRM, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT FIRM HAS INCURRED A DEBT, HE SHALL IMMEDIATELY NOTIFY FIRM IN WRITING. IF FIRM 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 FOR ANY PAYMENTS OWED TO FIRM UNDER THIS AGREEMENT, AND FIRM WAIVES ANY RECOURSE THEREFOR.

**[THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]**

## EXHIBIT "A"

### SCOPE OF SERVICES

The Firm shall perform the following services in coordination with the Director:

1. Coordinate meetings and visits by City officials to the District of Columbia.
2. Monitor and keep IGR informed of existing and proposed federal legislative and regulatory policy issues and actions that would positively or negatively impact City interests.
3. Proactively identify opportunities to develop legislation and regulations that will benefit the City.
4. Prepare comments or otherwise respond to proposed regulatory changes and other Executive Branch actions that may impact the City.
5. Assist with the development of the City's annual federal agenda and develop strategies necessary for its implementation.
6. Serve as a liaison with the Houston congressional delegation and staff, the U.S. Congress, congressional committees, the executive branch and other federal government officials.
7. Proactively promote City positions on policy matters to elected officials, their staffs, and other decision makers through personal contact, written testimony, or verbal testimony.
8. Prepare letters in support of City positions to members of Congress, congressional committees, federal agencies and other key stakeholders for the Mayor's or Director's signature.
9. Provide copies of bills, amendments, committee reports and analyses, regulations or other information reasonably available, which may be pertinent to City interests.
10. Draft and manage passage of legislation.
11. Prepare testimony to be presented by City officials before legislative or regulatory bodies.
12. Arrange and attend meetings and help establish relationships between federal legislators or federal legislators or federal agency representatives and City staff.
13. Proactively identify opportunities to obtain grants for capital projects, including airport-related projects.
14. Advise and assist in the preparation of federal appropriations requests and submit on behalf of the City in accordance with Congressional deadlines.
15. Develop and participate in strategic coalitions with associations and governmental and business organizations to further the City's federal agenda and interests.
16. Register, on behalf of the City, with the necessary federal offices and agencies, and comply with all reporting requirements mandated by the Lobbying Disclosure Act, and any other legal requirements.

17. Provide frequent written updates to the City on activities related to all items listed above, and provide a written weekly report of recent and upcoming activities and actions in Congress and federal agencies.
18. Perform other legal services as required by the Director and the City of Houston Legal Department.
19. The Firm shall provide up to 10 hours annual pro bono legal services in representation before regulatory agencies, commentary on federal rules, or providing assistance on federal legal issues to the City's Legal Department.

**EXHIBIT "B"**

**FIRM'S PERSONNEL**

The Firm represents that the following persons will have the responsibility for providing the above services to the City:

<b>Name</b>	<b>Title</b>	<b>Role</b>
Susan Lent	Partner	Client Lead and Relationship Manager
Geoff Verhoff	Senior Advisor	Congressional and Executive Outreach
Vic Fazio	Senior Advisor	Congressional Outreach
Hunter Bates	Partner	Congressional Outreach
Arshi Siddiqui	Partner	Congressional Outreach
Ed Pagano	Partner	Congressional Outreach
Hans Rickhoff	Senior Counsel	Congressional Outreach
Ian Shavitz	Senior Counsel	Environmental Law Expertise
Jeffrey McMillen	Partner	Tax Policy Expertise
Todd Tuten	Senior Advisor	Health Law Expertise
Sidharth Sharma	Policy and Regulatory Specialist	Legislative and Regulatory Monitoring

Subject to **Section 3.3**, other partners, associates, in-house consultants, and legal assistants may perform services on the City's behalf.

**EXHIBIT "C"**

**DRUG POLICY COMPLIANCE AGREEMENT**

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

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with City of Houston; and that by making this Contract, I affirm that 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 City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for 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 City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with 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 City and may result in non-award or termination of the contract by 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, \_\_\_\_\_, \_\_\_\_\_, (Contractor)  
(Name) (Title)

as an owner or officer of \_\_\_\_\_  
(Name of Company)

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

in performing \_\_\_\_\_  
(Project)

Contractor agrees and covenants that it shall immediately notify 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 \_\_\_\_\_ (Contractor)
(Name) (Print/Type) (Title) (Name of Company)
have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_.

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 \_\_\_\_\_ to \_\_\_\_\_ the following tests have occurred:
Initials (Start Date) (End Date)

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

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.
Initials

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)